

Landlord Liability for Maintenance

A recent case in Florida illustrates a landlord's potential liability for a maintenance item. In *Markel v. Mi Casa, LTD.*, an appeals court considered the liability of the owners and property manager due to a resident tripping on rubber weather stripping along the metal threshold on the front door on her apartment.

The owner and property manager argued that the condition of the weather stripping was "open and obvious," so they were not liable for her fall. The court agreed and dismissed the case. However, on appeal, the court found a basis for Markel's lawsuit to proceed.

According to Markel, the weather stripping was poorly installed and constituted a "hidden trap" unknown and undiscoverable by her. She was living in the unit for almost six months before the accident occurred.

But an expert in risk analysis stated the weather stripping was designed, installed and maintained improperly and would not necessarily be visible to a person entering or exiting the apartment. The expert added, however, that a minimally experienced maintenance or repair individual would have easily discovered it during the normal course of inspection. The expert went on to say there was no formalized or regular inspection of the threshold area, and it was merely a matter of time before someone would catch a heel and trip as Markel had.

Neither the owner nor the property management company could counter this allegation by asserting that there were any regular inspections of the threshold area. They relied solely on the argument that Markel should have discovered the condition. Therefore, she was responsible for the fall, not the owner or property management company, the defendants argued.

The court felt Markel could not have easily discovered the defective weather stripping, but a minimally experienced maintenance or repair individual could have. Furthermore, the owner or property management company could have discovered it with a reasonable inspection of the premises. The court stated that even after the initial occupancy, the landlord has a continuing obligation to exercise reasonable care to repair defective conditions in the apartment.

Arizona Law

The Arizona Residential Landlord and Tenant Act observes an affirmative obligation for the landlord to maintain fit premises in A.R.S. 33-1324(A)(2). It states the landlord shall "make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition."

If a case similar to *Markel v. Mi Casa* arises in Arizona, a court might allow it to go to a jury to determine liability. In the Florida case, the court allowed the jury to determine the extent of the owners' and property management company's negligence versus that of the resident. The Florida case is unclear whether the landlord had actual notice of the defective weather stripping. If notice is given, the resident would clearly establish the landlord's liability.

Landlord Liability for Maintenance

The landlord has an affirmative obligation to maintain the premises in a fit and habitable condition and respond to any repair requests to keep the premises in a reasonably safe condition.

The landlord also needs to exercise a continuing duty of care to address any defective conditions that maintenance could reasonably discover.

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