

Court Case Examines Landlord's Liability for Third Party Criminal Act

A recent case, *Vertucci v. NHP Management Company*, addresses a landlord's potential liability for a third party's criminal act when the landlord takes action to assure residents the property is safe.

The Vertucci family, a husband, wife and two teenage daughters, inquired about the security in the apartment community before they signed a lease. The landlord's agents said there was security at the property and each resident must use an identification card, particularly when using common areas on the property.

Vertucci believed the cards were to insure that only residents and their guests used the common areas, although none of his family members was ever asked to show the ID.

A few months later, a nonresident sexually assaulted the Vertucci's 15-year-old daughter at the property's swimming pool. The Vertuccis sued the apartment community claiming negligence. Initially, the court dismissed the complaint. However, on appeal, the Court of Appeals of Indiana ruled the case should proceed.

Disclaimer Provision

The landlord argued that the disclaimer provision in the lease meant there was no liability for criminal acts of a nonresident. The landlord's provision stated, "Landlord is not responsible for and does not guarantee the safety of the tenant, tenant's guests, family, employee, agents or invitees. Tenant agrees to look solely to the public police authorities for security and protection. Any security that may be provided is solely for the protection of the landlord's property."

The court refused to enforce this provision of the lease, concluding that it did not apply to the intentional criminal acts of a third party and that it does not preclude a landlord from assuming a duty to protect residents from criminal acts by third parties.

While the Vertuccis acknowledge that the landlord does not have a duty to protect them from loss or injury due to a criminal acts by a third party, they claimed an exception in this case. They argued that when a landlord assumes to act, even gratuitously for another by some sort of affirmative conduct or agreement, he or she takes on a duty.

Landlord Assumes Duty

The Vertuccis relied upon authority that found a landlord might be liable for criminal activity when he has voluntarily undertaken security measures but does so in a negligent manner.

Essentially, when a landlord assumes a duty to provide security, he must exercise reasonable care and skill in discharging that duty.

Court Case Examines Landlord's Liability for Third Party Criminal Act

The court looked to legal precedent in another case in which a landlord was liable when he provided self-closing, self-locking steel doors at the entry to the building and on the floor where the resident lived.

The court concluded that since the landlord undertook measures to provide security to the resident against criminal attack, he assumed a duty. It was up to the jury to determine if the landlord exercised reasonable care and skill in carrying out that duty.

In the Vertucci case, the appellate court looked at several factors to determine if the landlord took on such a duty. Since the landlord issued identification cards to each member of the Vertucci family and requested that they carry them at all times, the court found that the landlord undertook a security measure.

Therefore, the jury could determine if the landlord assumed the duty to protect residents from nonresidents and if a breach of that duty led to the assault of the Vertucci's daughter.

The case sends a message to landlords who make an effort to provide extra security measures. If the landlord adopts security features, he or she must exercise reasonable care and skill in discharging that duty.

An example is if the landlord hires a security guard at the property. The landlord should determine continuously if the security guard is carrying out his duties and responsibilities appropriately.

By Scott M. Clark, Esq.

3008 N. 44th Street, Phoenix, AZ 85018

602.957.7877

sclark@scottclarklaw.com

<http://www.scottclarklaw.com>

August 1999 / Apartment News