

Be Aware of Hazardous Conditions

A recent case in Louisiana addressed the issue of management liability for resident injuries occurring on the property.

The landlord in question purchased a rental property in poor condition at a foreclosure sale and did not make any major repairs to improve it. Approximately a year and a half after the purchase a resident fell through his bedroom floor and ruptured a disk in his back. He brought a claim for compensation against management, who turned it over to its insurance carrier.

The landlord responded by evicting the resident, who then filed a lawsuit against the property. (Readers should note that while the case did not address the landlord's apparent retaliatory conduct, management should be cautious when responding to a resident's complaint.)

The resident testified that he fell through the floor up to his groin area and presented photographs and medical records supporting his injury claim. He also provided an expert witness who said the landlord refused to allow him to inspect the premises and, as a result, the landlord based his testimony solely on photographs taken after the incident. The witness stated that the bedroom floor was in "deplorable condition" and was dangerous to walk on because of holes and water damage.

The landlord argued that the incident never occurred and the resident fabricated the entire claim. He said the renter's knee was too large to even fit through the hole in the floor.

The court ruled that the bathroom floor was defective and caused injury to the resident. It awarded him \$100,000 for past and future pain and suffering, \$5,000 for lost wages and \$3,851 for medical expenses.

On appeal, the court first commented on the landlord's failure to allow the expert witness to inspect the premises. It then stated the landlord discarded the floorboards and repaired the flooring so no one could examine the evidence. Under Louisiana state law, the court presumed that the missing evidence would have been unfavorable to the landlord and he would have difficulty disproving his liability to make repairs.

The court then set forth some basic precepts in premises liability law. It stated that management is liable for negligence if it is aware of a potentially hazardous situation and fails to exercise reasonable care in correcting it. In evaluating the facts, the court found that the landlord knew the property was in poor condition since he visited it occasionally to make repairs. He even acknowledged seeing holes in the ceiling caused by water damage.

The court concluded the landlord knew or should have known of the hazardous conditions existing in the flooring before the accident and affirmed the damages awarded by the trial court.

Be Aware of Hazardous Conditions

This case clearly illustrates the landlord's duty to continue to inspect and repair the conditions of their properties, even when a resident does not specifically address a hazardous condition. In this case, the court held the landlord liable for the hazardous condition even though the resident did not make any specific complaints. The case underscores the need to continually implement preventive maintenance at a community to avoid possible lawsuits.

By Scott M. Clark, Esq.

3008 N. 44th Street, Phoenix, AZ 85018

602.957.7877

sclark@scottclarklaw.com

<http://www.scottclarklaw.com>

September 2000 / Apartment News