

CONSUMER ATTORNEYS OF CALIFORNIA

FORUM

VOLUME 37, NUMBER 10

DECEMBER 2007

Landlord/Tenant Law

Keeping the Premises Safe and Habitable: The Scope of a Landlord's Duty

By Shaana A. Rahman

The landlord-tenant relationship brings with it numerous duties for both the landlord and the tenant which may be governed by the rental contract, statutes, local ordinances and applicable case law. This article addresses two aspects of premises liability law as it relates to the landlord-tenant relationship: 1) a landlord's duty to keep the premises "safe" for a tenant and 2) a landlord's duty to maintain "habitable" premises.

ARE THE PREMISES SAFE?

When a tenant or a tenant's guest is injured either in a rental unit or in the common area of the rental premises by a dangerous or defective condition, a thorough analysis of the duties of all parties must be undertaken.

In general, a California landowner must use reasonable care in maintaining their property in order to prevent an unreasonable risk of harm. (*Rowland v. Christian* (1968) 69 Cal.2d 108; Civ. Code § 1714.) Accordingly, a landlord owes a tenant a duty of reasonable care in providing and maintaining any rental property in a safe condition. (Civ. Code § 1714(a); *Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1189; *Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1156.) As it is well established that a landlord may not be held strictly liable for an injury to a tenant caused by a defect in a leased dwelling, a negligence analysis must be used to evaluate liability.¹

Civil Code § 1714(a) provides that "[e]very one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property." (Civ. Code § 1714(a).) As explained by the Supreme Court in *Rowland*: "The proper test applied to the liability of the possessor of

land [according to section 1714 of the Civil Code] is whether in the management of his property, he has acted as a reasonable man in view of the *probability* of injury to others." (*Id.* at 119, emphasis added.)

In determining whether a landlord owes a duty of care to a tenant, several factors must be considered, including the foreseeability of harm to the injured party, the degree of certainty that the injured party suffered injury, the closeness of the connection between the landlord's conduct and the injury suffered, the moral blame attached to the landlord, the policy of preventing future harm, the extent of the burden to the landlord and the consequences to the community of imposing a duty on the landlord to exercise care with its resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved. (*Rowland v. Christian* (1968) 69 Cal.2d 108, 113.) The inquiry into foreseeability must not be based on whether the tenant's injury was reasonably foreseeable in light of a particular tenant's conduct, but rather on whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may be appropriately imposed on the negligent party. (*Ballard v. Uribe* (1986) 41 Cal.3d 564.) Thus a landlord who knows, or should reasonably know, that a condition upon the premises will cause an unreasonable risk of harm to those using the premises has a duty to either repair the danger or adequately warn of its existence.

Pursuant to Evidence Code § 669(a), a landlord's failure to exercise due care will be presumed if:

1. The landlord violated a statute, ordinance, or regulation of a public entity;



Shaana Rahman is with the firm of Rahman Gramly LLP in San Francisco. The firm's practice areas include personal injury, wrongful death, government tort claims, professional malpractice, family law and criminal law.

www.rahmangramly.com

2. The violation proximately caused death or injury to person or property;
3. The death or injury resulted from an occurrence of a nature which the statute, ordinance, or regulation was designed to prevent; and
4. The person suffering the death or the injury to their person or property was one of the class of persons for whose protection the statute, ordinance, or regulation was adopted.

As with any negligence per se standard, the presumption may be rebutted by proof that the landlord did what might reasonably be expected of a person of ordinary prudence, acting under similar circumstances, who desired to comply with the law. (Evid. Code § 669(b)(1).)

It is important to note that once a tenant takes possession of the property, the landlord's knowledge of a defect and the ability to reenter the premises are facts to be evaluated in determining whether or not the landlord used reasonable care to maintain the premises. Additionally, landlords do not have a duty to insure the safety of their property to others but rather to simply use ordinary care in keeping the premises reasonably safe and to give warnings of latent or concealed perils. (*Brown v. San Francisco Ball Club, Inc.* (1950) 99 Cal.App.2d 484, 486.)

LIABILITY FOR A DANGEROUS OR DEFECTIVE CONDITION

There are numerous examples of dangerous conditions on rental properties, such as a slippery walkway, rickety steps, poor lighting which encourages criminal activity, unguarded trenches or holes, a broken hot water faucet, or an oven with a faulty gas connection. A condition gives rise to the level of "dangerous" if it will expose a user of the premises to an unreasonable risk of harm and the condition cannot be recognized, or the risks appreciated, by the users of the premises.

When a defect is established in a rental property, it has long been held that a landlord is afforded a reasonable time to remedy the condition. (See, *Queveda v. Braga* (1977) 72 Cal.App.3d Supp. 1, 7-8, disapproved on other grounds in *Knight v. Hallsthammer* (1981) 29 Cal.3d 46.) Thus, when an injury occurs within a rental unit or in the common area of a rental property, the danger at issue must be identified as must the length of time such a danger existed and the level of knowledge on the part of the landlord. Dangerous conditions can also arise from faulty repair work done by an independent contractor retained by the landlord or an employee. In the instance of an employee's negligence, a landlord assumes responsibility for the acts of employees committed within the course and scope of employment. (See, Civ. Code § 2338.) If a contractor's work is performed negligently, the landlord may still be liable to the injured party under the nondelegable duty theory. (*Brown v. George Pepperdine Found.* (1943) 23 Cal.2d 256, 260; see also *Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 725-727.)

1. Duty to Inspect the Premises

A landlord's duty of inspection prior to the turning over of the premises to the tenants only charges landlords with those

matters that would have been disclosed by a "reasonable inspection." (*Mora v. Baker Commodities, Inc.* (1989) 210 Cal.App.3d 771, 782.) However, during the tenancy term a landlord has no continuing duty to inspect a leased unit after possession is transferred. In fact, California Civil Code section 1954 significantly limits a landlord's ability to enter a tenant's premises during the tenancy term. Thus, absent knowledge of a dangerous condition, landlords are not liable on a negligence theory for defects that develop during the tenant's occupancy. (Civ. Code § 1954; *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 514.)

Additionally, once a tenant takes possession of the property, the landlord's knowledge of a defect and the ability to reenter the premises are facts to be evaluated in determining liability. Therefore, when a tenant is injured inside their rental unit the tenant must establish notice on the part of the landlord of the dangerous condition that caused the tenant's injury. Notice may be established in a number of ways, including correspondence to the landlord documenting the issue, evidence that the landlord entered the premises for inspection prior to the incident, or a pre-tenancy inspection checklist indicating that the defect existed prior to the commencement of the tenancy.

If an injury is caused by a dangerous condition located in the common area of the rental premises, notice on the part of the landlord may be easier to prove as landlords or their agents have a continuing obligation to inspect such areas. With such dangers, other users of the premises can provide crucial information regarding the length of time the condition existed, and whether complaints were made to the landlord or maintenance personnel. If it can be established that the landlord had knowledge of a defect through an inspection, the next inquiry is whether the landlord repaired the danger or adequately warned others of the danger.

2. Duty to Warn

If a danger is hidden, a landlord must warn the tenants and other users of the premises about the concealed danger. A landlord also has a duty to warn of dangers which are not latent if the danger exists and the landlord has not yet undertaken a repair. An example may be a crack in the walkway leading to the front door of the premises. The landlord may obtain notice of the uneven condition and take steps to have it repaired, e.g. hiring a contractor, but until the repair can be completed, a warning must be provided.

The type of warning becomes important as the warning has to be appropriate for the circumstance. For instance, in the example above of an uneven condition in the walkway leading to the front door of the property, a proper warning might consist of cordoning off the section of the walkway with the defect, provided there is an alternate, safe route to get to the door. However, if the landlord were to post a flyer inside the front doorway, causing people entering the front door to reach the warning after navigating the defect, such a warning would be inadequate. It should be noted that there is generally no duty to warn when the danger is obvious. However, this issue must also be analyzed using the factors identified in *Rowland* noted above. The question of whether a danger is obvious or trivial in nature is an issue for another article.

THE WARRANTY OF HABITABILITY

Civil Code § 1941 requires that a landlord of a residential property, "in the absence of an agreement to the contrary, put it [the building] into a condition fit for such [human] occupation, and repair all subsequent dilapidations ... which render it untenable." A dwelling is "untenable" if it "substantially lacks any of the following affirmative standard characteristics":

(a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.

(b) Plumbing or gas facilities that conformed to applicable law in effect at the time of installation, maintained in good working order.

(c) A water supply, approved under applicable law, that is under the tenant's control, capable of producing hot and

Transportationexpert.com

cold running water, or a system that is under the landlord's control, that produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.

(d) Heating facilities that conformed with applicable law at the time of installation, maintained in good working order.

(e) Electrical lighting, with wiring and electrical equipment that conformed with applicable law at the time of installation, maintained in good working order.

(f) Building, grounds, and appurtenances at the time of the commencement of the lease or rental agreement, and all areas under control of the landlord, kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.

(g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter and being responsible for the clean condition and good repair of the receptacles under his or her control.

(h) Floors, stairways, and railing maintained in good repair.

While a landlord's duties regarding the provision of habitable premises are not

insignificant, a tenant also has a statutory duty to personally repair any damage and/or deterioration caused by the tenant's own acts or neglect. (Civ. Code § 1929.) In addition, Civil Code Section 1941.2 provides that a landlord has no duty to repair a condition under Civil Code Sections 1941 or 1942 if the tenant is in "substantial violation" of any affirmative tenant obligations if the tenant's violation substantially contributes to the existence of the defective condition or substantially interferes with the landlord's obligation to make the unit tenantable. Affirmative tenant obligations include: keeping the unit clean and sanitary; properly using and operating all electrical, gas and plumbing fixtures, and not permitting any person to willfully destroy, deface, or damage the unit. (Civ. Code § 1941.2.)

If a habitability condition exists, once notified, a landlord must repair the condition within a reasonable time. If such repairs are not made, a tenant may repair the condition themselves, if the cost of the repair does not exceed the value of one month's rent of the premises, and deduct the expenses from the rent. The tenant also has the option of vacating the premises. (Civ. Code § 1942.) Depending on the nature of the habitability issue and the length of time it exists without repair, a tenant may have additional remedies. The Civil Code further protects tenants by prohibiting a landlord from retaliating against a tenant for exercising rights pursuant to § 1942. (Civ. Code § 1942.5.)

While the warranty of habitability is a great protection for tenants, it does not require that a landlord ensure that leased premises are in perfect, "aesthetically pleasing condition," but rather that bare living requirements be maintained. (*Green v. Superior Court* (1974) 10 Cal.3d 616, 637.)

CONCLUSION

With the landlord-tenant relationship comes duties on both sides to maintain premises in a safe and habitable manner for all users of the premises. This balance can be upset when economic factors create an uneven playing field between a landlord and tenant or when there is insufficient communication to address safety concerns. It is important that tenants understand the fundamental protections that they are afforded in such a relationship to avoid injuries and accidents to themselves and others on the property. ■

¹ *Peterson v. Superior Court of Riverside County* (1995) 10 Cal.4th 1185. The *Peterson* court determined that "a tenant cannot reasonably expect that the landlord will have eliminated defects in a rented dwelling of which the landlord was unaware and which would not have been disclosed by a reasonable inspection." (*Id.* at 1206.)

² A dwelling is also deemed untenable for purposes of § 1941 if it meets the definition of a "substandard building" pursuant to H&S Code § 17920.3 or contains lead hazards pursuant to H&S Code § 17920.10.

RETAIL INDUSTRY EXPERT WITNESS

EVALUATE ALL ISSUES OF INDUSTRY STANDARDS OF CARE IN:

- * SUPERMARKETS
- * RESTAURANTS
- * SPECIALTY STORES

- * GENERAL MERCHANDISE STORES
- * FAST FOOD OPERATIONS
- * CONVENIENCE STORES

- * HOME IMPROVEMENT CENTERS
- * WAREHOUSE STORES
- * SMALL BUSINESS OPERATIONS

INDUSTRY STANDARDS ISSUES INCLUDE:

- * Slip/Trip and Fall
- * ADA Compliance
- * Food Handling Procedures

- * Floor Care & Maintenance Procedures
- * Merchandising Procedures
- * Internal Operation Procedures

- * Store Security
- * Loss Prevention
- * Wrongful Termination

Alex J. Balian, MBA

www.balian-and-associates.com (818) 702-0025 Plaintiff's Expert - Ortega vs. K-Mart