Residential Landlord's Implied Warranty Of Habitability Extended To Guests Of Tenants

by Richard D. Vetstein, Esq. on September 23, 2009

The Massachusetts Supreme Judicial Court ruled last week that a landlord was liable for breaching the implied warranty of habitability when a tenant's guest seriously injured himself falling from a defective porch. The case is *Scott v. Garfield*, and can be found here.

What's the Implied Warranty of Habitability?

The implied warranty of habitability is a multi-faceted legal concept that encompasses contract and tort principles, as well as the State building and sanitary codes. It imposes a legal duty on a residential landlord, in the form of an implied agreement, to ensure that a rental unit complies with the State building and sanitary codes throughout the term of the lease. If a tenant is injured due to the premises being in violation of code, the landlord can be held liable under the implied warranty of habitability. The implied warranty cannot be waived by a lease provision.

The Decision: **Extending the Doctrine**

In *Scott v. Garfield*, the SJC extended the reach of the doctrine from tenants to the guests and lawful visitors of any tenant. The injured victim in the *Scott* case was a friend of the tenant helping out with a move when a defective second story porch railing gave way, sending him falling and seriously injuring his shoulder. The Court upheld a $450,000 jury verdict in the victim's favor. The Court reasoned:

Our conclusion that lawful visitors, like tenants, may recover for personal injuries caused by breach of the implied warranty of habitability rests, in part, on the expectation that a tenant might invite a guest into his home, and the concomitant expectation that the tenant's home must be safe for a guest to visit — which together go to the very heart of the landlord's contractual obligation to deliver and maintain habitable premises that comply with the building and sanitary codes.

OK, So What?

Whether the implied warranty of habitability is in play in a personal injury case makes a huge difference. Personal injury attorneys love the implied warranty of habitability because the defense of comparative negligence is unavailable, unlike a straight-forward claim for negligence. The comparative negligence defense enables a jury to attribute fault to each party in a personal injury case and reduce liability accordingly. This was a factor in the *Scott* case as the injured guest had been drinking a few beers during the move, and the jury found him 20% at fault, which would have reduced his verdict by $90,000. (How a couple beers impacted the rotting porch is beyond me, I guess he leaned to hard–juries never cease to amaze me). The verdict remained intact, however, because the jury also found that the landlord had violated the implied warranty of habitability. Thus, in cases where the implied warranty is in play, landlords have one hand tied behind their backs as they can't point the finger at the plaintiff.

Take-Away: Check Your Porches and Your Liability Insurance

This case is yet another harsh reminder that all landlords must not only check their porches, stairways and railing for defects, but procure general liability insurance with sufficient coverage on rental property. I recommend at least $1 Million/person $2 Million/aggregate which would have covered this verdict entirely, plus paid for the attorneys. Another way to limit risk is to get title to residential rental property out of landlords' personal names and into a new limited liability company or other corporate entity (not a nominee trust).

This decision is not a surprise in light of the court's prior decisions eliminating old common law rules of liability for different types of people on property (i.e., tenants, guests, invitees, etc.– notably, trespassers remain a category not entitled to added protection). Given the significance of the case and the fact that it went up to the SJC, the landlord in *Scott* had liability insurance which covered this verdict and the appeal. But if you're a landlord on the wrong side of one of these cases, you got a big check to write or a bankruptcy attorney to see.

As always, email me at rvetstein@vetsteinlawgroup.com with any questions.