

LANDLORD LAW REPORT
Landlord Liable for Fire Injuries?
Courtesy of CD Publications

Georgia: A family will have an opportunity to prove its landlord is liable for injuries incurred because members had to jump from a second-floor balcony to escape a fire. The landlord had nailed a gate shut which could have provided a less risky means of escape.

A family of refugees from Somalia leased an apartment from a landlord with the assistance of the World Relief Organization – which had helped it move to the United States. The apartment was on the top floor of a two-story building containing four units. The two upstairs apartments shared a common balcony accessible through a sliding glass door in each unit. The balcony had one set of stairs leading to the ground, located at the end farthest from the family's apartment. A privacy gate on the balcony between the two apartments prevented the family from using the stairs unless the gate was unlocked and open.

The tenants sued the landlord for their injuries and the death of their sibling.

Before the tenants moved in, the landlord had the gate nailed shut to prevent vandals from reaching the unit the family rented. The landlord said the nails were removed when the family moved in but the neighboring tenant testified the gate remained nailed shut after the family moved in.

Less than a week after the family arrived, an arsonist poured gas on its front door, starting a fire. The tenants could not escape through the front door. Seven of the eight members reached the balcony but had to jump to the ground. The eighth family member died in the fire.

The tenants sued the landlord for their injuries and the death of their sibling. The mother said she couldn't open the gate on the balcony during the fire so they were forced to jump two stories, resulting in many injuries. The tenants claimed the landlord was negligent for not removing the nails from the gate, causing their injuries and the wrongful death of the family member.

The landlord filed for summary judgment asking the court to dismiss the tenants' claims. The trial court agreed, dismissing all claims except one for the mother's injuries. It refused to dismiss her claims when it found a triable issue of fact as to whether the gate was nailed shut on the night of the fire.

The tenants' appeal the dismissal of their claims and the landlord appeals the refusal to dismiss the mother's claims. The tenants say their claims shouldn't be dismissed because they address the same issue – whether the gate was nailed shut. The landlord contends all claims should have been dismissed because there was no evidence any act or omission on its part caused any injuries or the death.

A landlord has a duty to keep its rental premises in repair and may be liable for damages for failing to do so. But a landlord is not "an insurer of its tenant's safety." Liability attaches only when a landlord has actual or constructive superior knowledge of a defective condition.

The appellate court reverses the decision to dismiss all the other claims, except for the claim brought on behalf of the deceased tenant. It says there is no evidence indicating the tenant who died made it safely to the balcony. Therefore, the tenant did not die as a result of the landlord's actions.

There is sufficient evidence and a triable issue of fact remaining to be resolved, however, as to whether the gate was nailed shut and could not be opened during the fire. If the tenants prove the gate was still nailed shut on the night of the fire and could not be used as an escape route, the landlord will be liable.

The landlord may have a hard time proving its cases because it appears the gate may have been destroyed in the fire or by rescue personnel.

LESSON: The landlord may be liable here if there is evidence the gate was still nailed shut on the night of the fire. The mother and the next-door tenant will both testify it was and the landlord will say it was not. Because the gate may have been destroyed, the landlord may be liable. Landlords must take all reasonable steps to make their properties as safe as possible.

Nailing shut an escape route is more than just negligent; it probably is criminal as well. Osman et al. v Olde Plantation Apartments on Montreal, LLC et al. & vice versa. 2004 GA App. LEXIS 1545.
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