

LANDLORD LAW REPORT
Attempts to Remedy Pest Problem
Avert Quiet Enjoyment Damages on Appeal
courtesy of CD Publications

New Hampshire: A tenant loses a quiet-enjoyment claim on appeal because there's no evidence he suffered a loss of use or enjoyment of his apartment due to roach infestation.

The tenant and his two children rented an apartment from a landlord in a 24-unit building. Before the tenant moved in, the landlord hired a professional pest-control service to treat the entire building for roaches.

The tenant did not know about the roach problem before moving in. Four months later, he received a notice from the pest-control service saying it would re-inspect the building and asking tenants to report any roach sightings.

At trial, the landlord's employee testified the roach problem was caused by another tenant who improperly maintained his apartment.

The tenant told the landlord weeks later that he saw a roach in his apartment. The landlord scheduled an appointment and the pest-control service treated his apartment.

Over the next six months, the tenant reported several more roach sightings. The city's code-enforcement officer then contacted the landlord on behalf of the tenant. The apartment was treated a third time for roaches. After the last treatment, the tenant again notified the landlord there were numerous roaches in his apartment.

The tenant sued the landlord for willfully violating his quiet enjoyment of his tenancy. At trial, the landlord's employee testified the roach problem was caused by another tenant who improperly maintained his apartment.

This, according to the employee, allowed the roach problem to flourish despite the landlord's efforts to correct the problem using the pest control company.

As of the trial date, the employee said the landlord had taken additional steps by evicting the problem-causing tenant and changing pest control companies.

Despite the positive testimony from the landlord's employee, the court agreed with the tenant and awarded him damages. The landlord appealed the decision.

Quiet enjoyment statutes stipulate "No landlord shall willfully violate a tenant's right to quiet enjoyment of his tenancy" and make violators susceptible to damages.

The appellate court reverses the ruling and damages award. It says the landlord did not substantially interfere with the tenant's right to possession during the tenancy and did not deny the tenant his beneficial use or enjoyment of the property. In order to find a willful violation of a tenant's right to quiet enjoyment, the tenant must prove the roach infestation caused him to lose the use of his leased premises. The tenant did not claim this.

The tenant may have suffered breach of the implied warranty of habitability, the court adds, but this claim was not raised at the trial.

LESSON: The tenant might have been entitled to damages, but he failed to prove he lost use or possession of his apartment as required to prevail under a quiet-enjoyment claim. He might have had a breach of the implied warranty of habitability claim but it was not raised. The landlord escaped liability but still has the obligation to get rid of the roaches. *Mansfield Adams, Jr. v. Woodlands of Nashua*. 2005 NH LEXIS 4.

Landlord Law Report is written by a practicing landlord-tenant attorney and contains quick-reading highlights of recent federal and state court decisions on fair housing, premises liability, rent control, lease enforcement, drug use, eviction, handicapped accessibility, building security, lead paint/asbestos, and Section 8 tenants, plus summaries of HUD rulings. Each issue is filled with advice on how multifamily property owners and managers can be better prepared to protect themselves from expensive and time-consuming litigation.

This article has been reprinted from Landlord Law Report, a monthly newsletter from CD Publications. AOA News and Buyers Guide readers can save 25% on a subscription to Landlord Law Report by calling (800) 666-6380 or visiting www.cdpublications.com and using priority code D017.