

Landlord Not Liable for Repeat Attack by C.D. Publications

Georgia: A tenant attacked in her apartment on two separate occasions loses a claim for damages against her landlord because there's no evidence the landlord knew of the danger before the first attack and the tenant was equally aware of the danger before the second attack but failed to protect herself.

The tenant rented a ground-floor apartment from her landlord in 1997. It was located directly across the parking lot from the laundry room. After living there incident-free for four years, the tenant was doing laundry on a Friday evening in the building's laundry room. Because it was located close to her unit, she did not lock her door while going to and from the unit with her laundry.

Landlords have an obligation to protect tenants from reasonably foreseeable criminal activity by third parties and they have to exercise ordinary care under the circumstances.

After returning to her apartment that night, she was attacked in her bedroom by an unidentified man. He sexually assaulted her and stole several items. She testified the assailant told her not to do laundry at night or after dark. He even asked if she saw him standing there in the dark before the attack.

The tenant reported the attack to the police and her landlord. The next day, she circulated a notice to the other tenants asking for information on the assailant.

The property manager sent a "Crime Awareness Letter" to all tenants and warned them to be cautious, lock their doors and avoid walking alone at night. The landlord had all outside lights checked and trimmed the shrubs to avoid dark areas at the complex.

The tenant later testified she felt safe in her unit before the attack because she never heard of any criminal activity at the complex. A resident property manager with 10 years experience said she knew of no serious crimes at the property before the attack. The tenant decided to remain as a resident after the attack. She stopped doing laundry at night for some period of time but eventually returned to her Friday night routine.

Approximately 10 months later, she was attacked again by the same assailant. This time, the assailant grabbed her as she returned to her unit and forced her to let him in. The tenant was not sexually assaulted but was robbed again. The assailant was never apprehended.

The tenant vacated the apartment shortly after the second attack. She subsequently sued the landlord for failing to protect her from the two attacks, claiming the landlord had an obligation to protect her based on "superior knowledge of the dangerous and defective condition of the premises because of prior, substantially similar incidents." The prior attack gave the landlord "reason to anticipate a criminal act would occur on its premises," she claimed.

The landlord filed for summary judgment, arguing it had no legal duty to protect the tenant from third-party criminal conduct. The trial court ruled police reports and computer printouts provided sufficient basis for the court to defer ruling regarding the first attack. The trial court denied the motion for summary judgment as to the second attack based on the landlord's knowledge of the first attack. The landlord appealed.

In Georgia, landlords must protect tenants from third-party criminal attacks under certain circumstances. They must exercise ordinary care to prevent foreseeable third-party attacks on tenants.

The landlord's duty to guard against crime arises when the landlord has reason to anticipate criminal attacks based on the landlord's prior experience with substantially similar types of crime at the property.

A tenant may not recover, however, even when the landlord has knowledge of the prior criminal acts if the tenant has "equal or superior knowledge of the risk and fails to exercise ordinary care for his or her own safety."

The appellate court reverses the trial court's decision to defer a ruling on the first attack, dismissing the claim. It reverses the decision denying summary judgment as to the second attack,

as well. The landlord did not have knowledge “superior to that” of the tenant of the danger from another attack, the court says.

Lesson: The burden was on the tenant to prove the landlord had prior knowledge of the danger in order to hold it liable for the first attack and because she had equal or superior knowledge of the danger before the second attack, she could not hold the landlord liable for her damages. Landlords have an obligation to protect tenants from reasonably foreseeable criminal activity by third parties and they have to exercise ordinary care under the circumstances. There was no evidence the landlord breached this obligation to this tenant but the landlord certainly is now on notice of the potential for criminal attack on its property. Dolphin Realty v. Headley. 2005 GA App. LEXIS 34.

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