

Tenant Sues Landlord for \$50,000!

by C.D. Publications

New York. A tenant cannot sue her landlord in federal court for violating her constitutional rights because the landlord, as a private party, was not operating under the “color” of state law.

The Section 8 tenant sued her landlord for \$50,000 claiming the landlord violated her constitutional rights by allotting her scheduled Section 8 housing rental to another tenant after it was promised to her. She claimed that in July 2004 the New York City Housing Authority approved her for a Section 8 rental and that she subsequently entered into a one year lease agreement for the apartment.

Under the lease, the housing authority was to pay \$1,117 of her \$1,324 monthly rent to her landlord. Approximately 10 days after the housing authority approved her assistance request, the landlord told her the apartment had been given to another tenant.

The tenant claims she and her family were “traumatized” by the fact their apartment was leased to another tenant. The tenant claimed the landlord acted with “malice and contempt” toward her.

The landlord was a private party and not a proper party in a case involving a violation of constitutional rights. Since the landlord is a “private actor” and not operating under color of state law, the federal court has no jurisdiction to hear or decide the matter.

Lesson: The tenant loses her \$50,000 claim against the landlord because the landlord could not be held liable for violating the tenant’s constitutional rights because the landlord is a private party.

The landlord may be liable for breach of contract but the tenant would need to file her case in state court and she would not be entitled to punitive damages-just regular breach of contract damages.

94-Year Old Tenant Trips Over Lamp Cord, Sues Her Landlord

Michigan. An elderly tenant will have a chance to prove her landlord negligently placed a lamp cord in an area of heavy foot traffic where she tripped over it and was injured.

The tenant tripped over the lamp cord in the lobby of the senior citizen/assisted living facility where she lived. She sued her landlord claiming the lamp cord color “blended” with the carpeting and created an “unreasonable hazard in a highly trafficked area.” The tenant claimed the landlord was negligent and also breached its statutory duty of care.

The landlord filed a motion asking the court to dismiss the case claiming it could not be held liable because the lamp cord was an open and obvious hazard and under the open and obvious doctrine.

The trial court agreed and dismissed the case against the landlord. The tenant appealed. The appellate court reverses the decision, and the case will proceed to trial.

The trial court granted the motion to dismiss based mainly on photographs taken eight months after the tenant fell. The tenant testified the lamp cord ran along the floor between an end table and a sofa. She said the space was wide enough for her to walk through comfortably at the time.

The photographs presented by the landlord showed a very small space between the end table and the sofa. The landlord convinced the court it was not reasonable to expect that a tenant would try and squeeze through such a small space. The court said the photographs

accurately reflected the layout at the time of the accident based on the testimony of witnesses.

The appellate court reverses and points out that a trial court “may not make findings of fact or weight credibility in deciding a motion for summary disposition.” Since the trial court’s ultimate ruling was based on a factual dispute it resolved in favor of the landlord, the trial court’s decision to dismiss was improper.

The appellate court also rules that the “open and obvious” doctrine does not apply. The test for an “open and obvious” danger is whether “an average user with ordinary intelligence would have been able to discover the danger and the risk presented upon casual inspection.”

The court should not determine whether the plaintiff should have known the condition was hazardous, but rather decide whether a reasonable person in the plaintiff’s position would foresee the danger.

The tenant testified in this case that she did not see the lamp cord because it blended with the carpet. The landlord’s witness testified the lamp cord was not in the walkway but admitted the cord did “blend in with the carpet” and was difficult to see.

The testimony by the landlord’s witness presents a material question of fact as to “whether the cord ... was open and obvious.” Therefore the trial court should not have entered a summary disposition based on the open and obvious doctrine.

Lesson: The case will go to trial and the burden will be on the tenant to prove the landlord negligently placed the lamp cord on the floor between the sofa and the end table and that by doing so it created a hazardous condition that caused her injury. The landlord must establish that the tenant should not have been walking in that area or that it was an open and obvious hazard in order to avoid liability.

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