

## **A\$K DR. CASH FLOW**

### **Tenant Sues Landlord for Baby's Death**

**by Nick Sidoti, R.A.M.**

**Q.** Dear Dr. Cash Flow: As a beginning investor, I am concerned about lawsuits. I would like to know what I am liable for, and what I am not liable for when it comes to my rental units. J. Smith, Aurora, CO

**A.** Dear J. Smith: I am not an attorney, and want you to realize that laws differ from state to state. You should also realize that you can be sued for anything, but most attorneys won't take a case on contingency unless it has some merit.

Most state laws require the landlord to provide housing that is habitable and safe. It is the tenant's responsibility to notify the landlord if unsafe conditions exist. It is then the landlord's responsibility to correct the unsafe conditions.

A perfect example of this was a ridiculous case that was recently aired on "The People's Court" (You know, the one with the famous Judge Wopner). Just when we thought we'd heard it all, we heard this one. The tenant sued the landlord for \$5,000 which was funeral expenses & burial costs, for her seven month old baby and moving expenses to leave the apartment where the death occurred.

The tenant claimed that the landlord was responsible for her baby's death because he failed to come fix a slow draining bathtub. The tub would fill up while the tenant took a shower, and then it would slowly drain. The tenant's seven month old child drowned in the bathtub. The tenant had taken a shower, and then left the apartment to run a few errands. While she was gone, her three year old child carried the seven month old child into the bathroom and put him in the tub.

The water from the shower had not yet drained out, and the child drowned. The tenant argued that if the tub had been fixed, the child would not have died. She had asked the landlord to fix it.

Judge Wopner found that each of them was **50%** responsible. The landlord was negligent for not fixing the tub. The tenant was negligent for not supervising her children.

The point that I am flying to make by recounting this very sad story, is that most landlords do non-emergency repairs "when they get to them", and most landlords would never think that a slow draining tub would cause the death of a child.

To answer your question more directly, you can minimize the risk of suit by responding to maintenance calls promptly, and by correcting any hazardous conditions that you know of, whether or not you have been notified about them by the tenant. Also, be sure to carry adequate liability insurance, the very minimum being one million dollars for each property.

**NOTE:** Most insurance policies require that you notify the company immediately if someone tells you that they were injured on your property. Otherwise, the insurance company will not cover your claims.

For example, let's say that a tenant casually mentions to you that they fell on a stair, but says that they did not get hurt. If you do not tell your insurance company that the tenant told you this, and the tenant later decides that they did get hurt and sues you for pain and suffering, the insurance company may not be liable to cover you.

When you call your agent to report the possibility of an injury claim, have the agent send

you a confirmation of the call. (Your insurance company will not cancel your policy for alerting them to the possibility of a claim.)

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