

Court Rules Pervasive Secondhand Smoke Can Justify Early Termination

by C.D. Publications

New York: A trial court rules that pervasive secondhand smoke is a breach of the implied warranty of habitability and a landlord has an obligation to try and alleviate the hazardous condition.

Under the implied warranty of habitability, a landlord has a duty to ensure the rental property is fit for human habitation and that the rental property is being used as intended. The trial court says secondhand smoke can be “just as insidious and invasive as the more common conditions such as noxious odors, smoke odors, chemical fumes, excessive noise, water leaks and extreme dust penetration.

The court rules that “as a matter of law” secondhand smoke qualifies as a condition that invokes the protections of the implied warranty of habitability. But in order to trigger the protections, a court must determine whether the secondhand smoke “is so pervasive as to actually breach the implied warranty of habitability and/or cause a constructive eviction.” Here the landlord sued his tenants after they moved out prior to the end of their lease term. The landlord claimed they owed for the five months of rent. The tenants filed a counterclaim against their landlord for breach of warranty of habitability and constructive eviction under state law.

The tenants lived in the apartment for three years before new tenants moved into the apartment next to their apartment. The new tenants “constantly smoked in the common fifth floor hallway” and in their apartment.

The landlord did not take steps to alleviate the problem. The tenants attempted to block the smoke by adding weather stripping and purchasing air filters. They gave one final notice to their landlord informing him if the secondhand smoke problem was not corrected, they would find somewhere else to live. The tenants vacated 30 days later because the landlord took no steps to curtail the smoking.

The landlord argues his tenants cannot hold him liable for breaching implied warranty of habitability because he has no control over the tenants who smoke. The trial court denies the motion for summary judgment and rules the implied warranty of habitability can apply to conditions beyond the landlord’s control.

The landlord failed to present evidence that he took steps to alleviate the hazardous condition before the tenants moved out. The case will go to trial where the tenants will have the burden to prove the other tenants’ secondhand smoke breached the implied warranty of habitability and caused a constructive eviction sufficient to justify their decision to terminate the lease.

Lesson: The court ruled that pervasive secondhand smoke which renders an apartment unsafe and uninhabitable is a breach of the implied warranty of habitability. The tenants may prevail if they can prove the tenants’ smoking habits rendered their apartment unsafe. If they can prove their case, they will avoid liability for the breach of lease and may be entitled to damages for their constructive eviction.

Peter Poyck, Plaintiff. V. Stan Bryant and Michelle Bryant, Defendants. 2006. N.Y. Misc. LEXIS 2278

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