

Landlord NOT Liable After Tenant's Guest Breaks Her Ankle

By CD Publications

Illinois. A court refused to hold a landlord liable for a guest's broken ankle because the landlord did not have a duty to inspect or repair the stairs where the guest was injured.

The tenant's girlfriend broke her ankle when she tripped and fell down some stairs while visiting him at his apartment. She sued the landlord for negligently failing to maintain the stairs in a safe condition.

The tenant testified he inspected the apartment before moving in and did not notice a problem with the carpeting on the stairs. However he said he "stapled the carpeting to the stairs just for more grip" several weeks after he took possession.

The tenant claimed he told the landlord there was a problem with the stairs later but admitted he never asked the landlord to make repairs. According to the tenant, he and several other people in the apartment tripped and fell on the stairs prior to his girlfriend's injury. After his girlfriend fell, the tenant removed the carpeting from the stairs.

The tenant's girlfriend said she had been "up and down the stairs" several times on the day she fell and did not notice any defects in the carpet or on the steps before she fell. She said she was looking down the stairs and took about three steps when the "carpeting came loose" and her foot slid out from underneath her. She fell and slid down the stairs to the bottom and broke her ankle.

She said she inspected the stairs the next day and noticed "ripples" in the carpeting. The tenant admitted he also inspected the stairs the next day but did not notice anything out of the ordinary.

The landlord purchased the apartment building the year before the tenant moved in and admitted he did not make any repairs or alterations to the carpeting during this time. He said he went up and down the stairs between 25 – 50 times during this two-year period and never noticed problems.

According to the landlord, there were no complaints about the stairs and no request for repairs before the tenant's girlfriend fell down the stairs. He also testified the tenant told him after the accident that his girlfriend was wearing sandals and "lost her footing" when she fell. He denied that the tenant told him he and others had fallen on the stairs prior to this accident.

The landlord filed a motion for a summary judgment claiming he could not be held liable for injuries caused by a defective condition on premises leased to the tenant and under the tenant's control.

The court granted the landlord's motion to dismiss but allowed the girlfriend to file an amended complaint. The amended complaint alleged the landlord "owed plaintiff a duty of care because the lessor contracted by covenant in the lease or otherwise to keep the land in repair... The lessor failed to exercise reasonable care to perform his contract."

The landlord filed another motion to dismiss and the trial court granted the landlord's motion and agreed the landlord did not have a duty to repair the stairs in this case. The injured guest appealed the trial court's decision.

Under state law, a landlord is not liable for injuries caused by a defective or dangerous condition on premises leased to a tenant and which is under a tenant's control. As a

result, the landlord does not have a duty to a third party who is injured while on the leased property.

There are several exceptions to this rule which make landlords liable for damages under certain circumstances. A landlord may be held liable where:

1. “a latent defect exists at the time of the leasing that the landlord should know about;
2. the landlord fraudulently conceals a dangerous condition;
3. the defect causing the harm amounts to a nuisance
4. the landlord has contracted by a covenant in the lease to keep the premises in repair;
5. the landlord violates a statutory requirement of which a tenant is in the class designated to be protected by such requirement; or
6. the landlord voluntarily undertakes to fender a service.”

The injured guest argues on appeal that the landlord assumed a duty to repair the premises in the lease and therefore falls within an exception to the general rule prohibiting landlord liability.

She claims the lease provision which allows the landlord to inspect the property and make any repairs he deems necessary and which prohibits the tenant from making any alterations or repairs creates a duty on the part of the landlord to repair the property.

The appellate court disagrees and says none of the provisions cited by the plaintiff require the landlord to repair or maintain the property.

The appellate court says the lease expressly requires the tenant to “maintain and keep the demised premises in as good condition and repair as the same shall be upon taking possession.” It is clear the landlord and tenant intended the duty of repair to rest on the tenant and not on the landlord, says the appellate court.

The landlord did not assume a duty to make repairs by prohibiting the tenant, through the terms of the lease, from making any alterations or repairs. **In addition, the landlord’s reservation of the right to enter the apartment and make any repairs he deems necessary does not impose a duty to repair on the landlord.**

The landlord did not make any repairs to the property during the course of the tenant’s lease term and she cannot argue the landlord assumed a duty to make repairs through a “course of conduct” when there was no such conduct says the appellate court. The tenant testified he made repairs when necessary and admitted he never asked the landlord to repair the stairs.

The appellate court affirms the trial court’s decision to dismiss the amended complaint and agrees the landlord did not have a duty to make any repairs to the apartment and cannot be held liable for the broken ankle.

Lesson: The landlord escapes liability because he used a well-written lease agreement and never agreed to make any repairs. In most cases, a landlord will not be held liable for a defective condition unless the landlord has notice of the defect and an opportunity to correct it before anyone is hurt. Here, the court said there was no duty at all and the tenant admitted he never told the landlord he wanted anything repaired.

Rhonda Gilley, Plaintiff-Appellant, v. Gerald Kiddel, Defendant-Appellee. 2007 Ill. App.

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