

Can You Be Held Responsible for Your Tenant's Sexual Assault? by CD Publications

Texas. A jury concludes that a tenant cannot hold her landlords liable because they installed the wrong lock on an exterior door in her bedroom since it was not the proximate cause of the attack.

The landlords leased their house to a married couple pursuant to a two-year lease agreement. The landlords were moving to Japan and would be out of the country for an extended period of time.

Near the end of the initial lease term, the landlords and tenants began discussing whether the lease would be extended or whether the landlords would sell the house. The tenants invoked an extension clause in the lease which permitted them to unilaterally extend the lease an additional six months.

However, just before the initial two-year lease term expired, the tenant was sexually assaulted in the house. The tenants notified their landlords they no longer wanted to live in the house as a result of the attack and said that if the landlords did not list the house for sale, they would have to find sub-tenants and sublease the house for the six-month extension term.

The tenants ultimately vacated the house one month into the six-month lease extension term without subleasing it.

The landlords subsequently sued the tenants for the rent that was due under the lease extension and for property damages.

The tenants filed a counterclaim against their landlords asserting a statutory claim for wrongfully withholding their security deposit and a premises liability claim based on the sexual assault.

In their premises liability claim, the tenants alleged their landlords failed to equip the home with property security devices as required by state law. The tenants also sued the landlords' property management company as well and the landlord filed a claim against the man who sexually assaulted the tenant as a "responsible third party" with respect to the premises claim.

The trial court entered judgment in favor of the landlords on their unpaid rent claim before the trial and the remaining claims went to trial.

The court then dismissed the premises liability claims against the landlord and the property management company before the case was submitted to the jury.

The security deposit claim, the property damage claim and the issue of attorneys' fees were submitted to the jury at the end of the trial.

The jury found in favor of the landlord on all of the claims and the tenants appealed. The appellate court agrees that the landlords never released the tenants from the six-month extension agreement and therefore they owed rent and late fees for the entire six-month period totaling \$8,850.00. And since the tenants' breached the lease extension agreement, the landlords were entitled to retain their deposit and did not violate the state security deposit statute by keeping the full amount of the deposit to apply to the damages. The appellate court also affirmed the jury's decision that the tenants caused \$5,198 in damages to the house during their tenancy. The lease allowed the landlords to deduct the damages from the security deposit.

The landlords did not send a security deposit disposition notice to the tenants after they vacated because the tenants did not provide them with a forwarding address.

Under the state's security deposit statute, (Texas) the landlord is not required to provide the disposition notice if the tenant fails to provide a forwarding address. The tenants cancelled their email address they used with the landlord during the lease when they vacated so the landlord could not communicate with them.

The appellate court also affirms the jury's decision to award the landlords \$23,000 in attorneys' fees incurred in defending against the tenants' security deposit counterclaim. The appellate court affirms the jury's decision to award the landlords \$10,000 in attorneys' fee they had to pay in order to obtain their judgment for the unpaid rent and damages as well.

The appellate court also affirms the jury's decision that the landlords and their property management company were not liable to the tenants under their premises liability claim. The man who sexually assaulted the tenant testified during the trial that he followed her home from her fitness club one day to see where she lived. He then went back to the house the next day when no one was at home and entered the house through the unlocked front door. He waited for the tenant to return home and when she did, he assaulted her in the master bedroom.

There was a door in the master bedroom where the attack occurred which lead to the back yard. But the door had a lock which required a key to open it from the inside and the tenants did not keep the key in the lock at the time of the attack.

The tenants allege that under state law, the door should have had a "keyless bolting device" (a deadbolt) and not a lock that required a key to open it from the inside. The tenant also testified she did not try and escape from her assailant during the attack because she said she knew she would not be able to get the key and then get to the door to escape.

The tenants assert she would have had a better chance to escape if the exterior bedroom door had been equipped with a keyless deadbolt as required by statute.

Under state law, a person has no legal duty to protect another from criminal acts of a third person. However, Texas courts have recognized an exception to this general rule in cases where a landlord retains control over the security and safety of the premises.

If a landlord retains control, then the landlord has a duty to use ordinary care to protect tenants from the criminal acts of third parties if the landlord knows or has reason to know of an unreasonable and foreseeable risk of harm to the tenants.

In order for a risk of harm to be foreseeable, there must be evidence of specific previous crimes on or near the premises. The court will consider whether any criminal conduct previously occurred on or near the property, how recently the criminal conduct occurred, how often it occurred, how similar the conduct was to the conduct on the property, and what publicity was given to the occurrences to indicate whether the landlord knew or should have known about the previous instances of criminal conduct.

The tenants did not claim their landlords failed to protect them or prevent the crime from occurring, instead, they claimed their landlords' failure to install the required deadbolt lock prevented the tenant from escaping the attack after it began.

In order to prevail in their premises liability claim, the tenants had to establish the landlords had a duty, that they breached that duty and that her damages and injuries were proximately caused by her landlords' breach. The issue in this case is whether the landlords' breach was the proximate cause of the tenant's injuries.

Proximate cause has two components: "cause in fact" and "foreseeability." Neither element can be established by "mere conjecture, guess or speculation: says the appellate court.

The test for "cause in fact" is whether the act or omission was a substantial factor in causing the injury without which the harm would not have occurred. If a defendant's negligence merely furnished a condition that made the injury possible, there can be no cause in fact.

The appellate court concludes there is no evidence that the lack of a keyless deadbolt on the exterior bedroom door proximately caused the tenant's injuries. There is no evidence beyond "conjecture, guess or speculation" that a different type of lock on the bedroom door would have allowed her to escape her assailant and avoid the assault.

Lesson: The landlords prevail here and are awarded their damages plus approximately \$33,000 in attorneys' fees incurred in pursuing their claims and defending against the tenants' claims. The landlords prevailed because they did not agree to release the tenants from the lease extension and because the jury properly concluded that the landlords' failure to install a keyless deadbolt was not the proximate cause of the tenant's injuries inflicted in the sexual assault. However, the landlords could have been held liable if the tenants were injured as a result of a fire or other situation because they could not escape through the back door. Landlords must comply with all

building and housing code requirements – especially those dealing with health and safety issues. All security safety devices should meet the code requirements. Stephanie Williams a/k/a Stephanie Scholler and Tim Williams, Appellants, v. William Colthurst, Yuko Colthurst, WGW Properties, Inc., d/b/a/ Century 21 Advantage, et al. No. 11-06-00103-CV (Tex.App.2008).

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