

“Constructively Evicted” Tenants Win Damages by CD Publications

Colorado: A landlord who did not act quickly enough to replace a dangerous furnace must pay damages to his tenants for retaining their personal property and he cannot sue them for unpaid rent.

The tenants rented a house from their landlord pursuant to a written lease. The landlord subsequently sold the property and a new landlord took over the property – subject to the terms of the original lease agreement.

Later on, the furnace in the house was inspected by a heating company following a complaint by the tenants. The tenants were concerned because the carbon monoxide alarm went off while the furnace was being used.

The heating company determined the furnace had a cracked heat exchanger and that it was unsafe. The heating company informed the landlord on the day of the inspection that the furnace was unsafe and would need to be replaced. The company faxed a copy of the inspection report to the landlord.

The landlord said he ordered anew furnace and he said he told his tenants it would be installed the following week. The tenants claimed their landlord told them he was not going to install anew furnace and they denied he ever told them he was have one installed the next week. The tenants testified their area was experiencing a record “cold snap” and the temperatures in the house ranged from 45 degrees to 55 degrees because they couldn’t use the furnace.

The tenants said they and their two small children were forced to huddle near a small gas fireplace in the living room area to stay warm. They also said they asked their landlord to provide them with temporary housing until the furnace was fixed – but he refused. They contacted an attorney who told them to move out of the house.

The tenants moved most of their possessions out of the house five days after the house was originally inspected by the heating company. The landlord said he discovered his tenants moved out when he went there to install the new furnace the next week.

He changed the locks and retained possession of the property left behind by the tenants. The landlord demanded his tenants pay the remaining rent balance due under the lease before he would return the property they left behind.

The tenants refused and sued their landlord claiming they were constructively evicted from the house and their landlord converted their personal property.

The landlord responded and claimed he had the right to retain their property because they failed to give him written notice as required by statute before terminating their lease and moving out. The trial court ruled the tenants were constructively evicted from the house by lack of heat. The court said the landlord’s claim that he said he would immediately replace the furnace was not credible and it was reasonable for the tenants to believe he would not act quickly to replace the furnace – based on their past dealings with him.

The court agreed the tenants did not give written notice as required but said their failure to provide the written notice was “not fatal to their constructive eviction claim.”

The court agreed the tenants did not breach the lease by moving out or by failing to pay the additional rent. The court also ordered landlord to return their security deposit and awarded the tenants \$2,180 for the items retained by the landlord. The landlord appealed the trial court’s decision.

The appellate court affirms the lower court's decision and agrees the tenants were justified in vacating the property.

Under state law, a tenant must be notified by service personnel if there is a hazardous condition caused by an unsafe gas appliance.

The landlord is required to correct the hazard within a specified time (72 hours excluding weekends and legal holidays.) If the landlord does not correct the hazard as required, the lease becomes null and void and the tenant is entitled to a security deposit refund.

However, the tenant's remedies are not limited to terminating the lease and having the security deposit returned says the appellate court. The tenant may still bring action for constructive eviction and seek damages from the landlord, as in this case.

Lesson: The court did not believe the landlord's testimony and found he constructively evicted his tenants by not acting quickly enough to replace the furnace. Since the landlord did not have any evidence to support his side of the case, he lost his claim and must pay his tenants for the possessions he kept and still must replace the furnace. The landlord should have documented his repair plans in writing with the tenants he may have avoided this lawsuit and damages. Alan Copeland and Nicole Copeland, Plaintiffs – Appellants, v. Stephen R. Lincoln, Defendant-Appellant. 2007 Colo. App.

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