

From June 2008 Report

## **Landlord Loses Nuisance Eviction Claim for Lack of Evidence** **By C.D. Publications**

*[Editor's Note: Landlord Law & Multi-Housing Report includes expert analysis of the latest legal developments in the rental housing sector as well as news about the multi-housing market, landlord-tenant relations and successful management strategies. Rental housing laws vary from state to state and some may not be applicable to California; however, most cases contain valuable lessons for housing providers.]*

Connecticut: An appellate reverses a trial court's decision in favor of a landlord eviction case because the landlord failed to prove the tenant's conduct created in a serious nuisance that posed a serious and immediate danger to the other tenants.

The landlord owned a rooming house containing nine individual units. The tenant lived in the building before the landlord purchased it from the previous owner.

One of the landlord's employees looked inside the tenant's room shortly after the landlord purchased the building. He reported that the room was so cluttered with trash, boxes, bags, chairs, food containers and personal household items that the furniture and floor were barely visible. He also reported that the tenant had three large refrigerators in the room.

After learning about the condition of the tenant's unit, the landlord and tenant entered into an oral lease agreement in which the tenant agreed to pay \$460 for the use and occupancy of the room for a one month term.

The landlord claimed it was a concern that the conditions inside the room would attract rodents and vermin and the refrigerators would overload the electrical system and cause a fire. The landlord repeatedly asked the tenant to clean his room but the tenant failed to comply.

Before the one month lease term expired, the landlord served the tenant with a notice to vacate. The tenant failed to vacate and landlord filed a holdover eviction complaint alleging that the conditions in the tenant's room were a serious nuisance because they posed a fire hazard.

The landlord entered the tenant's room several weeks later without his permission to inspect the room. The landlord noted that the room was still full of trash, boxes and other items piled up waist high in some places and that all three refrigerators were running. The landlord also alleged there was a stench in the room.

The landlord claimed it was entitled to possession of the room because:

- The lease terminated by lapse of time
- The conditions in the room constituted a serious nuisance under state law; and
- The tenant was keeping motor vehicles on the property that constituted a serious nuisance

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The trial court dismissed the first and third claims in favor of the tenant but ruled in favor of the tenant on the second claim and found that the condition of the room constituted a fire hazard.

According to the trial court, the tenant's conduct was more than just a nuisance and said it "has caused and continues to cause, an immediate and serious danger to the safety of the other tenants."

The trial court agreed the landlord proved all the elements of its serious nuisance claim and rendered judgment in favor of the landlord for immediate possession of the property.

The tenant appealed the trial court's decision allowing the landlord to evict him for causing a serious nuisance. The tenant argues on appeal that the landlord failed to produce sufficient evidence to establish that the conditions in his room posed a fire hazard.

The landlord argues on appeal the evidence sufficiently established that the tenant's room was "extremely cluttered and contained three refrigerators" and that his evidence would allow a person of ordinary knowledge and experience to reasonably conclude that the conditions created an immediate and serious risk of fire.

The landlord argues on appeal it did not need to produce an expert witness to prove the conditions inside the apartment created a fire hazard in order to prevail in a serious nuisance claim.

The appellate court disagrees with the landlord and reverses the trial court's decision. Under state law, a "serious nuisance means conduct which presents an immediate and serious danger to the safety of other tenants or the landlord."

In order to prevail in a claim for possession based on a serious nuisance claim, the landlord must establish by a preponderance of the evidence that the conditions created a risk of fire that was both "immediate and serious."

The appellate court concludes that the landlord's evidence clearly established that the tenant's room was extremely cluttered and contained three running refrigerators. But the evidence was legally insufficient to support a reasonable inference that the conditions created an immediate and serious risk of fire.

The landlord failed to present any evidence to prove that the heat normally generated by the refrigerators would be sufficient to ignite the clutter and there was no evidence the three refrigerators could overload the available electrical capacity. There was also no evidence the clutter contained particularly flammable items for the court to consider.

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The landlord's evidence did not support the trial court's decision that the tenant created a hazard that was sufficiently "immediate and serious" as to constitute a serious nuisance under state law as required to evict the tenant.

The appellate court says it may have reached a different conclusion if the landlord's evidence indicated the tenant was keeping cans of gasoline, paint, cleaning fluid or other especially flammable items in this room.

***Lesson: The landlord cannot evict the tenant for creating a serious nuisance but may be able to evict him for holding over if the landlord properly terminates the month-to-month oral lease arrangement. The landlord may have prevailed if it had hired had hired an expert witness to testify at trial about the conditions in the unit because the appellate court said there was insufficient evidence adduced at trial to prove the landlord's claim of a serious nuisance. Cardinal Realty Investors, LLC v. Rene Bernasconi. 2008 Conn. App.***

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