

Can a Landlord Be Held Liable for One Tenant's Assault on Another?

By Robert J. Silverman, Esq.

A recent California Court of Appeal case (MADHANI V. COOPER, 106 Cal. App. 4th 412; 130 Cal. Rptr.2d 778) held that a landlord can be held liable for injury to a tenant on the premises when the injury was caused by another tenant's criminal act. Although the decision may seem outrageous at first glance, in particular because the law rarely holds one party liable for the criminal acts of a third party, the facts of the case bring the ruling into focus.

Over a period of approximately six months, an apartment building tenant yelled profanely, otherwise verbally abused, and even physically abused another tenant and her mother. The victimized tenant reported at least six incidents to the apartment building managers, including one in which the abusive tenant shoved the victim's mother. When the shoving incident occurred, the victimized tenant called the police. The responding policeman recommended that the victimized tenant speak with her landlord, who the policeman indicated would be in a better position to handle the problem than the police.

During the course of these many incidents, the apartment managers consistently promised and reassured the victimized tenant that they would talk to the abusive tenant and take care of the problem. On at least one occasion, the managers went so far as to say that their attempt to resolve the problem was in process. Despite such assurances by the managers, they did nothing. The managers also acknowledged that they had received complaints about the abusive tenant from other people.

Finally, one evening, the abusive tenant committed an unprovoked assault on the victimized tenant by yelling at her, entering her apartment, pulling her out of her apartment by her hair, hitting her, pulling her down, and throwing her down some stairs. The victim lost consciousness and suffered serious injuries as a result of the assault.

The victim sued the landlord for negligence in failing to protect her from the other tenant's assault. The Appellate Court reversed a lower (trial) court that had summarily ruled in favor of the landlord. The Appellate Court held that given the pattern of physical and verbal abuse, a reasonable landlord would have taken action and made an attempt to end such occurrences.

Generally, the law in this area provides that a landlord has a duty to protect its tenants from "foreseeable harm". On the surface, one would not characterize the intentional infliction of harm by one tenant on another to be foreseeable by the landlord. Given a particular set of facts and circumstances, however, with the instant case being a prime example, foreseeability becomes much more clear.

In a number of cases decided in recent years, courts have rendered decisions holding that a landlord who knows of a dangerous situation has a duty to take reasonable steps to prevent harm to its tenants from such danger. For example, a California court ruled that a landlord who had a tenant who harbored a vicious dog had a duty to either demand that the dog be removed from the building or evict the tenant.

This new case serves to strengthen precedential case law under which a landlord may not simply disregard a dangerous condition on the premises when it is foreseeable that harm may come to a tenant as a result. In the subject case, one or more obvious remedial actions could have been taken by the landlord or the landlord's managing agents that would likely have prevented the victim's injuries. As in this case, and as would probably be applicable in a case with significantly less egregious facts, when a landlord has knowledge or "constructive knowledge" (i.e. should have known) of a tenant's threats and/or verbal abuse and/or physical abuse of another, the landlord will be deemed to foresee that serious injury may eventually result. Because of this foreseeability, the landlord will be charged with the duty to attempt to prevent such harm. If the landlord recklessly disregards the known propensity of a tenant to abuse or violence, or makes an insufficient attempt to prevent such abuse or violence, the landlord will be held liable if harm is caused therefrom.

The lesson for landlords is broader than simply to take actions to try to prevent injuries that might be inflicted by one dangerous tenant on another. The law imposes an obligation that common sense also

dictates - a landlord should take prompt, reasonable action to discover and prevent any kind of foreseeable harm to its tenants, employees, guests, etc. A "yellow flag" rises with the very first incident in which a landlord learns (or is put on "inquiry notice" – meaning that he should learn) of such dangerous or potentially dangerous condition. A "red flag" begins to wave when a second, let alone repeated, incidents, warnings, threats or complaints arise.

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