

Crimes on Your Property Could Cost You Big Bucks!

By Robert L. Cain

In many issues of *The Northwest Landlord*, we recount court cases regarding landlord liability. It seems as if all too often landlords are found liable for crimes that occur and hazards that exist on their properties.

Sometimes the reasoning of the courts is beyond belief. Things are now to the point that we have to start with the assumption that courts will generally rule on the side of the tenant, given any possible option to do so. Lawyers will also sue the person most likely to be able to pay them. That means that the landlord gets sued and the courts will rule against him when the opportunity arises.

One particularly expensive judgment against a landlord occurred when he hired a workman for his apartment complex who had been convicted of rape.

There is a pattern that is fairly reliable, though. What follows are situations where you, as a landlord, can just about guarantee being sued and judged liable, followed by things you can do to just about guarantee that you will not.

When You Are Liable

1. When you knew or should have known about a dangerous situation.

If you know about a dangerous or hazardous situation, you had best correct it. This is probably the number one reason that landlords get sued. There was either a hazard on the property or some other dangerous situation that the landlord should well have known about.

2. When you fail to correct a dangerous situation after being told about it.

If a tenant calls you about any situation that might remotely be considered dangerous, fix it immediately. The most perilous call is the one where they say, "I don't think this is very serious, but..." In that case, don't even finish your dinner; postpone the flight to Hawaii on your cell phone on the way and rush right over to see to it. Any time a tenant thinks something is not serious, chances are the building may fall down with the next strong wind.

Things you will want to see to right now are:

- Loose handrails
- Broken steps
- Locks to outside doors that don't work.
- Insecure outside doors
- Insecure windows that can be reached from the ground
- Loose things about the ground that could fall at any moment
- Loose electrical wires that spark, smoke and blow fuses or circuit breakers
- Fire hazards

These are situations where you knew about a problem but did not correct it. Count on paying big bucks to lawyers and in judgments if one of these situations turns deadly or damaging. And be sure it is done right. Doing a poor job is just as bad as none at all, as we shall see next.

3. When you try to protect tenants, but poorly. When something you do gives the expectation that they can rely on your word or deed, you are responsible for the person relying on that expectation. When you repair loose steps, people expect that they should be able to use them without extraordinary care. If the job was done badly, you will pay. If you put what looks to be secure locks in an outside door, make sure that they are, and not some cheap piece of garbage that even the most inexperienced crook can get through.

In fact, you undertake a greater responsibility once you repair a potential problem, than you would have, had you done absolutely nothing, because the tenant would automatically take more

care. He would be careful going up stairs and would block the doors to his unit. Fool him into thinking he is safe when he is not, and you will pay.

4. When you hire someone who will be a danger to tenants or property.

About the worst thing you can do is to hire someone to work on your property without checking them out. That includes not only if they are qualified to do the work, but if they have a criminal record.

One particularly expensive judgment against a landlord occurred when he hired a workman for his apartment complex who had been convicted of rape. Worse, yet, was the fact that the landlord gave him a master key so he could get into apartments to do work. The landlord never checked anything about this person, despite the fact that he could easily have learned about him with some reference checking.

Unqualified, druggy or drunk contactors are another danger. The property owner is ultimately responsible for any work done on his or her property, regardless of who did it. If you hire someone who does a sloppy or dangerous repair job and someone gets hurt because of it, it is your responsibility. Likewise, if you hire someone who drinks or takes drugs on the job. Even if the work was done satisfactorily and passed inspection by the building inspector. If something happened later on, a lawyer would try to make a case that the property owner was negligent because he hired a workman who was drunk or on drugs.

5. When you lie about dangers. Lying can take the form of outright misstatements and misleading or obfuscating statements. Say an applicant asks about crime in the area of your apartments. You know full well that there are a lot of break-ins, muggings, car prowls, the whole works. But, you say that this is a pretty good area. Of course, the first thing that happens when the tenant moves in is that she gets robbed. Then she finds out from other tenants that the crime is pretty bad around there.

Not about to take this lying down, she hires a lawyer, and the lawyer says you knew about all this crime, lied to her, perpetrated a fraud and should have to pay her damages and medical bills, plus for her moving to a "safe" apartment. Chances are, you will get to pay.

Just as bad is evading the crime question. An answer such as, "Don't suppose it's any worse than anywhere else," or even worse, "Isn't that a great view from this window, here," will get you into just about as much difficulty.

6. When they rent to someone whom they know to be dangerous.

This is a really touchy situation. Here's a possible scenario: An applicant responds to your ad for a vacancy. He tells you that he was in prison for assault. You rent to him anyway. The next week he gets mad at another tenant and puts him in the hospital. The injured tenant finds out that the tenant who assaulted him was a convicted felon and says you should never have rented to him. His lawyer agrees. You come to find out that this looney tune was in jail for injuring other people not just once, but several times. He has a long history of violent behavior.

Are you liable? Maybe, maybe not. It depends on how well your attorney presents your case, how well the plaintiff's attorney presents your case, how well the plaintiff's attorney presents his case, and what kind of a mood the judge and jury are in. Regardless, it will cost you a lot of money just in lawyer's fees and court costs.

When You Aren't Liable:

- When you could not have foreseen a problem. Usually, you're in the clear if there was no way you could have known about a dangerous situation. You may be sued, however, and it will be up to you to prove that you did not and could not have known about it. Your best defense is regular inspections of your properties with an eye toward finding hazards.

Regardless of the form that you use, or how you go about it, careful, written records are essential. Every time you visit a property for any reason, you need to make a note of the date and time of your visit and what you did and/or said. Without that record you will be hard-pressed to recall and prove what you did to maintain the property. Even if you visited the property for a reason other than repairs or maintenance, write it down on your record for that property.

You can certainly imagine a situation where a tenant would claim in court that he or she told you about a dangerous situation when you visited on a certain date. You, of course, wrote down what happened on that visit. You had called on him to inquire about late rent, the tenant came to

the door and you never went in. He said he'd have the rent in two days. That was the extent of your conversation. You know that because you wrote it in your property record for that tenant. So when he claims that he told you about the hazard on the property on a date before his guest was injured, you have a record of every contact you've had with the tenant and the property.

When there are no prior incidents to indicate criminal activity in the area.

This is part and parcel of the previous section. Here is a situation where you could not have foreseen. Here is your best defense. If you have procedures and policies for everything you do, and follow them religiously, you will have few, if any, problems with any aspect of property management. In the case of hazardous situations, you would have created a checklist and procedure for correcting it immediately. The checklist would be part of your tenant/property file.

Printed by permission of OnSite.