

## **Tenant Sues Landlord for Failing To Provide Promised Outside Lighting**

Illinois: A jury will determine whether a landlord promised a tenant she would provide and maintain outside lighting and whether the landlord's failure to do so was the cause of a sexual attack on the tenant.

The tenant rented an apartment in an old mansion that was converted by the landlord-owner into an apartment building with three large apartments. When the tenant rented the apartment, she told the landlord that she often had to work late and was concerned about the area and how dark it was around the apartment building. The tenant says the landlord assured her the building was safe and would be well lit at night.

The tenant moved into the apartment after signing the lease. She arrived home at approximately 11 p.m. one night and parked one block from her building. She walked to the front gate where the mailboxes were located to retrieve her mail before going into her apartment.

The appellate court finds that the jury could conclude that the landlord may be liable for failing to keep her oral promises to the tenant to keep the apartment building "well lit."

A man grabbed her from behind, made her unlock the gate and subsequently raped and robbed her in a dark area inside the gate but outside the building. The tenant resisted the attack and tried to call for help by pressing the door buzzer intercom buttons located near the gate when the attack began. She claimed the door buzzers were not working.

The tenant sued her landlord alleging the landlord assumed a duty to protect her from such attacks by providing outside security lights to reduce the risk of criminal conduct on the property late at night. She also alleged that she relied upon the security lights, and the landlord's promises to her that the area would be kept bright at night when she signed the lease.

The tenant alleged in her lawsuit that the landlord failed to repair the lights and failed to warn her that the lights were not working on the night of the attack. The evidence indicated the landlord spent \$700 to have the lights repaired right after the tenant was attacked.

The tenant claimed that as a result of the lack of lighting and the landlord's failure to repair the lights, she was "subjected to the sexual assault." The tenant also alleged in her lawsuit that the landlord assumed and breached a duty to provide security for her "through installing, but not maintaining, door buzzers, which also proximately caused her injuries."

The landlord filed a motion for summary judgment with the court asking the court to dismiss the case because she did not owe a duty to her tenant since the landlord-tenant relationship was not recognized as a "special relationship" imposing a duty to protect against third-party criminal attacks" under state law.

The landlord further argued that the lights and door buzzers the tenant claimed were security measures did not constitute a "voluntary undertaking to provide security" but were "merely conveniences" provided for her tenants.

And the landlord said she could not be held liable because the attack was an independent, unforeseeable, and superseding cause "removing any causation of injury from any alleged acts or omissions" by her.

The trial court agreed with the landlord and dismissed the tenant's case. According to the trial court, the landlord did not voluntarily assume a duty to provide security to her tenants by installing door buzzers and lights.

The court also agreed that even if the landlord negligently maintained the building, the tenant could not prove that the landlord's negligence was the proximate cause of her injury because it was too speculative. The attack may have occurred regardless of whether the lights and door buzzers were functioning properly.

The tenant appeals the trial court's decision and the appellate court reverses part of the lower court's decision and affirms part - but the tenant will be able to go to trial regarding the landlord's promise to maintain lighting for the tenant's security.

The tenant successfully convinces the appellate court that the trial court wrongly refused to consider the "landlord's promise to the tenant about fixing the lights" when she moved into the apartment. The tenant claims the landlord told her that her tenants' safety and security was important and that the outside lights would be fixed and maintained to keep the property safe.

The police who investigate the attack noted that the lights were not working on the night of the attack and they were required to use flashlights to walk around. The assailant, who was captured and confessed to the attack, also said the area was dark when he attacked the tenant.

Under state law, a landlord cannot generally be held liable for unforeseeable criminal attacks by third parties. But there is an exception to this rule and it provides that a landlord may be held liable for the criminal attacks by third parties when the landlord "voluntarily undertakes to provide security measures but performs the undertaking negligently, if the negligence is the proximate cause of the injury to the plaintiff."

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The landlord "specifically agreed to light the mansion in order to protect her from attacks late at night" says the appellate court. This is sufficient to allow a jury to provide lighting was a "voluntary undertaking" of a security measure intended to protect her tenants and the trial court's ruling that there was no duty, was "reversible error."

The issue of whether the lights were functioning properly and whether the landlord's negligence in maintaining the lights was the proximate cause of the attack will go to the jury.

The appellate court does agree with the trial court's decision that the installation and maintenance of the door buzzers was not a voluntary security undertaking because the buzzers were there simply as a convenience for tenant to use in communicating with their guests and they were not there to prevent a criminal attack. The jury will not consider whether the landlord's failure to maintain the buzzers caused the attack.

The case is sent back to the trial court where a jury will determine whether the landlord's promise to provide outside lighting was a voluntary undertaking and whether landlord's failure to do so was the cause of the tenant's injury.

If the jury concludes the attack would have occurred even if the lights were functioning properly at the time, the landlord will probably not be held liable.

***Lesson: Landlords generally have no duty to protect tenants from a criminal attack by third party unless the attack is reasonably foreseeable or unless the landlord "voluntarily" but negligently provided security measures for its tenants. Landlords who have properties in high crime areas will have to do more to protect tenants in other areas because it may be reasonably foreseeable that a criminal attack will occur.***

*Carla Bourgonje, Plaintiff-Appellant, v. Luann Machev, Defendant-Appellee. 2005 IL App. LEXIS 1193.*

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