

## **Dead Smoke Detector Batteries Lead To Allegations of Landlord Negligence**

Delaware. In an effort to bar evidence of negligence, a landlord who fails to maintain smoke detectors cannot hide behind a statute that says evidence of the smoke detector violation cannot be used against him in a civil lawsuit.

Two tenants were forced to jump out of a window in their second story apartment to escape a fire. Before they jumped, they dropped their infant daughter into the arms of an onlooker on the ground below. The tenants were seriously injured when they jumped to the ground.

The fire started in the basement where the smoke detector was not working. The flames spread to the first floor where the smoke detectors were working. First floor tenants were subsequently alerted and able to escape.

The fire then spread to the second floor where the smoke detectors did not work. The tenants there barely escaped by jumping out of a window.

The landlord admitted he never replaced the batteries or maintained the smoke detectors in the basement or on the other floors.

The tenants who jumped from the second floor window sued their landlord for negligently failing to maintain the smoke detectors in proper working order. They also claimed the landlord's failure to maintain the fire alarms and smoke detectors, as well as his failure to keep the area near the heating unit (which is where the fire began) free and clear of debris was "grossly and wantonly reckless."

The tenants alleged the landlord's conduct violated a local county code requiring landlords to maintain smoke detectors in residential buildings.

The landlord filed a motion for summary judgment to prevent the tenants from using his violation of the local code and state law as evidence proving he was negligent and that his negligence caused the fire.

The trial court granted the landlord's motion and agreed another state statute prevented the tenants from using the landlord's violation of the smoke detector statutes in the civil case to establish his liability. The trial court dismissed the tenants' case after the court ruled that the tenants would not be able to prevail in their civil claim without this evidence.

The tenants appealed the dismissal of the case, and the appellate court reverses the trial court's decision. The appellate court rules the case must go to trial. It further rules the tenants can use the evidence barred by the trial court to establish the landlord negligently failed to maintain the smoke detectors.

The trial court incorrectly ruled that Sec. 6636 was "intended to bar any evidence of failure to install or maintain smoke detectors in any civil action even if the failure" violated other local laws as well.

The statute does not expressly bar evidence of the underlying conduct or evidence the conduct constituted a violation of state law as long as the evidence is not intended to prove the violation itself since it isn't necessary in the civil case.

The tenants may, in fact, introduce evidence to prove their landlord failed to install the proper number of smoke detectors, and that he failed to maintain the ones that were already installed. They may not, however, use the evidence to prove he violated the statute in order to further bolster their case.

***Lesson: The landlord failed to properly maintain the property and keep it in safe***

**condition by failing to replace dead batteries in most of the smoke detectors in his building. He also violated a number of state and local laws. While the tenants cannot use the evidence to prove the statutory violations, they can use it to prove he was negligent. 2005 DE LEXIS 385.**

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