

Tenant Sues for \$5,000 Over Secondhand Smoke

By C.D. Publications

New York. A tenant who was bothered by his neighbor's secondhand cigarette smoke is entitled to damages because it constituted a private nuisance.

The tenant sued the heavy cigarette-smoking tenant (defendant) who lived next door to him, claiming \$5,000 in damages from the secondhand smoke that filtered into his apartment.

The trial court agrees with the tenant's allegation that secondhand smoke is a hazard for nonsmokers. The court pointed to numerous state and local statutes that regulate smoking in certain public areas. But, as the court points out, these laws do not apply to "private residences."

The tenant argues that even though state and local laws that regulate smoking do not apply to private residences, the court could still act because the defendant's secondhand smoke "either intentionally or negligently" created a private nuisance, entitling the injured tenant to damages.

A private nuisance is an interference with the use and enjoyment of the premises and it "is actionable by the individual person or persons whose rights have been disturbed."

The defendant admitted being a heavy smoker but disagreed with the tenant's claim that her secondhand smoke caused him any damages.

The court agrees the tenant presented sufficient evidence to prove that the defendant created a private nuisance in his apartment by smoking in her own apartment, and therefore she could be held liable for his damages.

Even though he proved the defendant could be held liable for secondhand smoke damages, the tenant failed to produce evidence of his actual medical damages or injury attributable to the defendant's cigarette smoke.

A court cannot award damages based on speculation and conjecture, so it refuses to award him any damages for the personal injuries claimed in his lawsuit-alleged damages totaling nearly \$5,000.

The court does award the tenant \$335, however, for the cost of an air purification system he bought in an effort to clean the air in his apartment.

The court agrees the tenant had to purchase the filter as a result of the secondhand smoke from next door, and the tenant can recover the costs as damages.

Lesson: The landlord's lease prohibited tenant from creating conditions constituting a nuisance or affecting other tenant's right to peaceful enjoyment of the property. The tenant proved the tenant who smoked in her apartment created a nuisance in his apartment and he was awarded damages. The landlord may have been held liable under these facts for allowing the nuisance to exist but the tenant did not sue the landlord.

Edgar Duntley, Plaintiff/Claimant, v. Marion Barr, Defendant. 2005 NY Misc. LEXIS 2041.

This article has been reprinted from Landlord Law Report, a monthly newsletter from CD Publications. AOA News & Buyers Guide readers can visit www.cdpublications.com to download a free sample copy and index to other cases, or to

try a no-risk trial subscription at the special AOA rate of \$89 using our Offer Code D017. Or call us at 1-800-666-6380.