Landlord's Duty to Repair Expanded

By Samantha P. McDonald, Esq.

Since 1972, a landlord has had a duty to repair defects that violate municipal building codes in common areas of a commercial building, and the landlord could be held liable for negligence if a tenant or visitor was injured, either by the unsafe condition or from improperly made repairs. The duty was limited to common areas and did not extend to areas controlled solely by a tenant.

Under section 19 of G.L. ch. 186, enacted in 1972, a residential landlord had a duty to remedy unsafe situations in any part of a rented property, not just the common areas, within a reasonable time after learning about the problem.Id. Any person lawfully on the property who is injured because of the landlord's failure to correct the unsafe condition in a reasonable time can sue the landlord. The statute specifically states that this duty to repair cannot be waived. Id.

Until recently, that duty only applied to landlords of residential property. Forty years after the Legislature enacted the law, the Supreme Judicial Court decided that the statute applies to commercial property and expanded the duties of a commercial landlord. A landlord of commercial space must still make repairs to common areas and has a duty to ensure that the repairs are properly done. However, now a landlord also has a duty to make repairs to any unsafe conditions in any part of the property after receiving notice of the problem from a tenant. Bishop v. TES Realty, 459 Mass. 9 (2011).

In Bishop, the tenant operated a tanning salon in a single unit building she rented from the defendant. She gave notice to the landlord about roof leaks and cracks, including leaks around the skylights near the tanning beds. The landlord did some repairs but nothing on the side of the roof with the skylights. During a storm, the tenant put a bucket under one of the leaks and looked up at the ceiling. A piece of plaster dropped into her eye, she fell and tripped over the bucket, creating a significant shoulder injury. She then sued the landlord for her injury, alleging that they were negligent by their failure to repair the leaks after notice.

The court held that section 19 does apply to commercial property but the duty to repair is not triggered for tenant-controlled areas if the tenant does not give notice to the landlord.Id. at 17. The court held that this duty was not waivable by contract. In other words, it does not matter what the lease says: if you own the commercial property and the tenant has told you about a problem, you must fix the problem. Interestingly, the court did say that a lease can still impose a duty on the tenant to repair problems on the premises, reasoning that in such a case the tenant is "unlikely to provide such notice [to the landlord of problems] and is more likely to repair the condition herself." Id. at 18. But even if the tenant has the duty to repair under the lease, if the tenant chooses not to make a repair, it is the landlord's responsibility to make the necessary repairs. The landlord can bill the tenant for the cost of repair, or if the lease provides for it, charge the cost to the tenant as additional rent. Id.

The court added some interesting language to its analysis: "[a]nd if the application of §19 to commercial landlords does … allow commercial tenants to shirk their responsibilities under a lease, commercial landlords may petition the Legislature to limit §19 to residential landlords, as the Legislature has done in many other statutes." Id. So if you think this duty is unfair, it may be time to contact your state representative and senator. Until the Legislature acts, though, we can help you draft leases with your commercial tenants that enable you to charge the cost of repairs to your tenants as additional rent, or guide you with any other landlord-tenant issues.

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Samantha P. McDonald
P: 508.459.8026
F: 508.459.8326
E: smcdonald@fletchertilton.com