

When we start talking about personal injuries, we get into an area that lawyers call “torts.” Whole books have been written on this subject, and many lawyers make a nice living filing lawsuits on behalf of people who have been injured as a result of the “negligent” or “intentional” acts of others. The last several years have seen a great increase in the ways a landlord might be held responsible for injuries caused to a tenant. Landlords are liable for physical injuries caused by faulty premises (a broken stair, for example) and for mental suffering or emotional distress caused by slum conditions, wrongful evictions, invasions of privacy and harassment. A tenant (or, in some situations, a visitor) may even recover against the landlord for maintaining a nuisance, if the premises are substantially below code or abnormally messy or loud tenants are allowed to remain in other units in the building. If you are injured, either physically or mentally, as a result of some act or failure to act of your landlord, you should see a lawyer. (If your injury is worth \$5,000 or less to you, you may want to go to small claims court.)

A. Standard of Care Imposed on Landlords

It used to be that a landlord could put a clause in a lease or rental agreement that freed him from most responsibilities for injuries suffered by a tenant, even if the injury was a direct result of the landlord’s negligence. This is no longer the law, although you still find this sort of unenforceable clause in some leases and rental agreements.¹

Today a landlord is required to refrain from acting “negligently.” Another way of putting it is that he must act reasonably, under the circumstances, with respect to his tenants’ safety and that of their guests (and even some trespassers). But what do these terms mean?

Your landlord’s obligations to keep the property safe—and his liability if you are injured—are driven by what a court will do if you are hurt and file a lawsuit.

Let’s take a look at a typical accident and use it to explain the situation: You suffer a broken ankle when you trip on a loose hallway step that had been the subject of several tenant complaints. If this accident goes to court, a judge will first ask four questions before allowing a jury to decide whether the landlord should be held responsible. In legalese, this is known as establishing whether the landlord owed a “duty of due care” towards the person suing him.

- **Did the landlord have control over the situation?** Was the landlord responsible for the upkeep of the area or facility where the injury occurred?
- **Was it foreseeable?** Could the injury have been anticipated by anyone in the landlord’s position, knowing what the landlord knew?
- **Would correcting the situation have been unfairly burdensome?** Would correcting the defect have placed an undue economic hardship on the landlord?
- **How serious was the risk of probable injury?** Was the risk of probable injury significant?

In our example, a judge would answer these questions in favor of the tenant: Once he knew of the loose step, any landlord would have *foreseen* that an accident was likely; the step was in the common area of the building, over which the landlord had *control*; fixing the step is not a *difficult* or excessively expensive repair job; and the *probable injury* (a broken bone) from falling down a stair is significant.

If the injured tenant gets this far in his lawsuit (having established that the landlord owed him a duty of due care), he will be able to take the case before the jury and argue that there was, in fact, a loose step; that it was the legal cause of his injury (for example, he fell because of the step, not because he was drunk) and that he was really injured and deserves compensation.

So much for our short course in personal injury law. Let’s take a look at some other fact situations to see how the principle of “acting reasonably under the circumstances” is applied.

These examples show that, when applying the four questions—concerning control, likelihood, burden and seriousness—to real situations, *there are no clear-cut answers*.

¹ CC § 1953.

EXAMPLE 1

Lee slipped on a marble that had been dropped in the hallway outside his apartment by another tenant's child just a few minutes earlier. Lee twisted his ankle and lost two weeks' work. Lee will have a difficult time establishing that his landlord acted unreasonably under the circumstances. Although the landlord is responsible for the condition of the common hallways, he obviously does not have complete control over what his tenants negligently leave behind. The likelihood of injury from something a tenant drops is slim (especially assuming the landlord checks the condition of the corridors at regular intervals), and the burden on the landlord to eliminate all possible problems at all times by constant sweeping of the halls is unreasonable. Finally, the seriousness of the likely injury as a result of not sweeping constantly is open to great debate.

**EXAMPLE 2**

James suffered a concussion when he hit his head on an overhead beam in the apartment garage. He had been loading items onto the roof rack of his truck. James will have a difficult time convincing a judge or jury that the landlord should be held responsible for his injury. Although the landlord is, certainly, in charge of the parking garage, he probably won't be held responsible for the relatively unusual activity (loading items onto a truck roof) that led to James' injury. Or, put another way, the likelihood of injury from a low beam is slim,

since most people don't climb on the roof or would normally see the beam and avoid it. As to eliminating the condition that led to the injury, it's highly unlikely a court would expect the landlord to rebuild the garage, but it's possible that a judge might think it reasonable to paint the beams a bright color and post warning signs. After all, injury from low beams is likely to be to the head, which is a serious matter.

NEGLIGENCE, INJURIES AND LAWSUITS

Here are some examples of injuries for which courts have held a landlord liable on the basis of negligence:

- Tenant falls down a staircase due to a defective handrail.
- Tenant trips over a hole in the carpet on a common stairway not properly maintained by the landlord.
- Tenant injured and property damaged by fire resulting from an obviously defective heater or wiring.
- Tenant gets sick from pesticide spray applied to common areas and exterior walls without advance notice.
- Tenant's child is scalded by hot water from a water heater with a broken thermostat.
- Tenant injured when she slips and falls on a puddle of oil-slicked rainwater in the garage.
- Tenant's guest injured when she slipped on the ultra-slick floor wax applied by the landlord's cleaning service prior to move-in.
- Tenant receives electrical burns when attempting to insert the stove's damaged plug into the wall outlet.
- Tenant injured when she slipped and fell on wet grass cuttings left on a common walkway.