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Real Estate Alert

The Wisconsin Supreme Court's Next Landlord/Tenant Conundrum: Are Some Residential Lease Provisions That Make Tenants Liable For Damages Void?

On October 1, 2009, the Wisconsin Supreme Court granted a petition for review in a case that will have significant impact on the rights of residential landlords and tenants. In *Maryland Arms Limited Partnership v. Connell*, 2009 WI App 87, ___ Wis. 2d ___, 769 N.W.2d 145, a divided Court of Appeals held that a landlord was obligated to pay for repairs caused by a fire because the fire did not start as a result of the negligence or misuse of the tenant. Importantly, the Court decided that a lease provision that made the tenant liable “for all damage” that was “in any way caused by the acts of” the tenant was void.

Squarely at issue in *Maryland Arms* is whether landlord and tenant may contractually provide for tenant liability where the tenant is not negligent in causing damage to a residential rental unit. Under current Wisconsin law based on the *Maryland Arms* Court of Appeals decision, the answer is **NO**.

Cari Connell’s (“Connell”) rental unit suffered \$8,000 in damage from a fire that started in her apartment as she slept, caused by her hair dryer. Connell did not previously know of any defect in the hair dryer, and she did nothing more than plug the dryer in and leave it plugged in. The parties both agreed that Connell was not negligent. The landlord nonetheless sued Connell and her mother (who guaranteed the lease) to recover damages based on the terms of the lease. Wis. Stat. § 704.07 governs the duties of landlords and tenants with regard to damages incurred during the term of a residential tenancy and provides that any agreement in a lease purporting to waive the requirements of the statute is void. The statute also provides that “[i]f the premises are damaged by the negligence or improper use of the premises by the tenant, the tenant must repair the damage and restore the appearance of the premises by redecorating.” The collision of this statute and the catch-all liability provision in Connell’s lease is the crux of the case.

The circuit court held that the terms of the lease controlled and ruled that Connell’s hair dryer “caused” the fire, thus she was required to pay for the resulting damages. Connell appealed and asserted that both the lease and Wis. Stat. § 704.07 require that she must have been negligent in connection with the fire to impose liability. The Court of Appeals found in favor of Connell and reversed the circuit court’s decision. Specifically, the Court of Appeals majority held that the lease provision requiring payment of damages “in any way caused by the acts of” the tenant was void in light of Wis. Stat. § 704.07(1). Judge Fine dissented from the decision and viewed the majority’s ruling as “bizarre” in light of the parties’ lease terms, criticizing the rationale that “no landlord and tenant *can ever* agree that the tenant will be responsible for damages caused by the tenant, unless the landlord is able to prove that the tenant was negligent.”





The Wisconsin Supreme Court will hear oral argument in this case on January 6, 2010, and will issue its decision during the 2009-2010 term.

For more information, please contact one of the authors of this alert or your Michael Best attorney.

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