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Landlord Responsible for Tenant Being Caught With Pants Down

Alan Nochumson

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In *Brito v. MAC International Inc.*, the Philadelphia County Court of Common Pleas sent the proverbial warning shot to all landlords in the city by holding a landlord responsible for negligently failing to evict a sexual pervert who was causing physical and emotional distress to neighboring tenants.

In *Brito*, all of the leases in the apartment building contained the following clause: "B. No disturbance to others. The tenant will not do anything to disturb other tenants." The leases also contained two other provisions: "Tenant agrees not to conduct illegal activities on the property," and "tenant's family and guests agree to obey all laws and rules that apply to tenant." Finally, these leases uniformly provided that, if the tenant failed to comply with the cited provisions, he could be evicted from the leased premises.

On several occasions, an individual who resided at the apartment complex located in Northeast Philadelphia was caught by neighboring tenants performing sexually deviant acts in public portions of the apartment building. The individual had a history of arrests and convictions for sexually deviant behavior and was not even a tenant in the apartment complex, but was living there in his late mother's apartment under the original lease.

After receiving notice from the tenants of the sexually deviant behavior, the landlord took no action to remove the individual from the apartment complex. The tenants eventually requested that they be moved to another building or another apartment in the building away from the individual's apartment. At first they were told by the landlord that there would soon be another apartment available, but that apartment was eventually rented to another person. The tenants soon discovered that there were many other apartments available but none were offered to them. As a result, the tenants elected to vacate from their apartment.

Soon thereafter, the tenants filed suit against the landlord pursuant to a negligence theory. After a jury trial, a verdict and damage award was entered in favor of the tenants in the respective amounts \$539,000 and \$40,000. After the landlord's motion for post-verdict relief was denied, it appealed the jury verdict and award to the Superior Court of Pennsylvania.

The trial court then issued an opinion for the appeal. In the opinion, the trial court focused on whether the prima facie elements of the negligence claim were established. In doing so, the trial court relied upon the following provisions of the *Restatement (Second) of Torts*.

Section 360 provides: "A possessor of land who leases a part thereof and retains in his own control any other part which the lessee is entitled to use as appurtenant to the part leased to him, is subject to liability to his lessee and others lawfully upon the land with the consent of the lessee or a sublessee for physical harm caused by a dangerous condition upon that part of the land retained in the lessor's control, if the lessor by the exercise of reasonable care could have discovered the condition and the unreasonable risk involved therein and could have made the condition safe."

Section 302B provides: "An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm even though such conduct is criminal."

Section 448, which provides: "The act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime."

Section 449 provides: "If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby."

After taking these provisions of the *Restatement* into account, the trial court concluded that the tenants sustained their burden of proving that the landlord was negligent and that the negligence was a substantial factor in causing the harm suffered by them, based upon the following evidence presented at trial: The landlord was on notice that the individual and his stepfather were not tenants in the building; the individual committed the sexual deviant acts that victimized the tenants; the landlord took responsibility to keep the building safe but took totally inadequate steps to do so; the landlord took no reasonable steps to identify the sexual perpetrator; even after the individual was identified, the landlord took no steps to evict him from the building; the tenants were deprived of the quiet enjoyment of their apartment; the tenants were constructively evicted from their apartment; and the tenants both suffered physical, emotional and monetary damages as a result of the landlord's negligence.

LESSONS LEARNED

Although the factual scenario presented in *Brito* is on the more extreme side, landlords should not lose sight of the underlying rationale behind the trial court's ruling. A liberal reading of *Brito* would suggest that landlords must protect their tenants from tortious conduct being committed by third parties in the apartment building.

In order to counteract the effects of the trial court's ruling in *Brito*, landlords should establish a written protocol for addressing tenant complaints and train their agents and employees accordingly. By establishing a complaint process with rigid guidelines and procedures, landlords will clearly reduce the likelihood of being pinned with a six-figure judgment, as was the case in *Brito*.

Alan Nochumson is the sole shareholder of *Nochumson P.C.*, where he specializes in real estate, litigation, employment and labor, and land use and zoning. Nochumson regularly speaks at and writes for trade and professional associations, local universities, and adult education programs on issues commonly confronted by businesses, individuals, and professionals. Nochumson is also president of *Bear Abstract Services*, where he offers comprehensive title insurance, title examination and closing services for transactions ranging from simple residential agreements of sale to complex commercial projects. He may be reached by telephone at 215-399-1346 or by e-mail at anochumson@nochumson.com.