

VIRGINIA RESIDENTIAL LANDLORD AND TENANT ACT: PROVIDES NO RIGHT OF ACTION IN TORT AGAINST LANDLORDS

Under Virginia common law, a landlord has a duty to use ordinary care to maintain in a reasonably safe condition any part of leased premises that is reserved for the common use of all tenants, such as stairwells in an apartment building. However, a landlord has no duty to maintain in a safe condition any part of the leased premises that is in the exclusive control of a tenant. See, for example, *Oliver v. Cashin*, 192 Va. 540 (1951). Therefore, as long as the landlord did not fraudulently or knowingly conceal a known defect from the tenant, under Virginia law the tenant cannot maintain a negligence action against the landlord for personal injuries suffered as a result of a defective condition upon the premises.

In April of 2007, the Virginia Supreme Court, in a case of first impression, had the opportunity to decide whether the Virginia Residential Landlord Tenant Act (“VRLTA”) abrogated the common law rule so as to give tenants a private cause of action in tort against landlords. In the case of *Isbell v. Commercial Investment Associates, Inc.*, 273 Va. 605 (2007), the plaintiff, Rosco Isbell, was injured when he fell down a set of stairs which were located within the leased premises and which were under Isbell’s exclusive control. Isbell claimed that the stairs were “worn and slippery” and that the landlord, in failing to keep the stairs in good condition, violated the VRLTA which requires a landlord to “comply with the requirements of applicable building and housing codes materially affecting health and safety” and to “make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. . .” Virginia Code §55-248.13(A)(1) and (2). The plaintiff further tried to argue that the VRLTA abrogated the common law and created a cause of action in tort allowing a tenant to recover against a landlord for personal injuries sustained as a result of the landlord’s violation of the duties imposed under the

VRLTA.

The Court disagreed with Isbell pointing out that nowhere in the Act is there express language creating such a cause of action. Rather, a close examination of the Act’s language shows an intent for the Act to govern contractual relationships between landlords and tenants only. In support of this conclusion, the Court pointed out that the remedies provided by the Act for a violation of the landlord’s duties set forth therein, are more akin to those available for a breach of contract action than for a personal injury action. Moreover, the General Assembly limited all remedies to the actual tenant, i.e., the person in contractual privity with the landlord - not any guests or invitees.

However, since the Virginia Supreme Court’s decision in *Isbell*, at least one Circuit Court judge has held that a provision contained in a lease whereby the landlord voluntarily agrees to maintain the premises in compliance with building and housing codes materially affecting health and safety, can form the basis for a personal injury action. This is so even though a violation of the same



requirements under the VRLTA cannot form the basis for a personal injury action. In the case of Brooks v. Hunt, a lead poisoning case, Judge Markow of the Richmond Circuit Court dismissed the plaintiff's cause of action against the landlord for a violation of the VRLTA but ruled that the plaintiff could maintain a personal injury action against the landlord based upon a breach of the lease. Judge Markow stated that under the lease, "the landlord has assumed responsibilities to the tenant beyond its common law duties."

Although this case is certainly a set-back for landlords

after the positive ruling in Isbell, it remains to be seen whether the Virginia Supreme Court will agree with Judge Markow's decision. In fact, his decision seems to be contrary to some of the plain language in Isbell. In coming to its ultimate conclusion in Isbell, the Virginia Supreme Court reiterated the common law rule in situations where landlords covenant to repair the premises but fail to do so. In such a situation the landlord is liable only "to an action for the breach of covenant, in which recovery is limited to the costs of repairs and any loss of use suffered by the tenant after the lapse of a reasonable time from giving the notice in which to make repairs."

Arguably, since the only duty imposed upon a landlord to maintain the premises in a fit and habitable condition is by virtue of the lease, then a violation of that duty is nothing more than a breach of contract under which damages for personal injuries are not recoverable.



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