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Liability of a Landlord to the Tenant for Negligence

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LIABILITY OF A LANDLORD TO THE TENANT FOR NEGLIGENCE.

THESIS PRESENTED BY

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CORNELL UNIVERSITY

SCHOOL OF LAW

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LIABILITY OF A LANDLORD TO THE TENANT FOR NEGLIGENCE.

Landlord and tenant describe the relation which subsists between the parties to a contract for the occupation of land or buildings thereon. The relation arises by implication from the use of lands, or is created by express terms by a lease.

Anderson defines landlord as he of whom land is held subject to the rendering of payment of rent or service; or, as one who owns land and tenements which he has rented to another or others. And he defines tenant as one who holds lands, whatever the nature or extent of his interest; or, as one who holds lands by any kind of title, whether for years, for life, or in fee. But these preceding definitions of a tenant are general definitions. The sense in which tenant will here be used is, he who holds lands belonging to another in consideration of paying rent or rendering service to the landlord. Paying rent acknowledges, prima facie, a tenancy, but the mere payment of money by the tenant to the landlord is not evidence of a tenancy of any particular kind, nor even of a tenancy at all, if the payment is referred to any other consideration. A mere lodger may not be regarded as a tenant.
And one may be landlord who is not the owner.

A tenant cannot escape from his obligations by showing that his landlord had no legal title; nor can the landlord escape from his obligations by showing the same thing. The obligations of a tenant to his landlord, and of the landlord to his tenant, are reciprocal; and they depend upon the existence of that relation, and not upon the validity of the landlord's title. (a)

The liability of the landlord to the tenant for negligence arises, in most cases, for injury or damage that has been sustained by reason of the premises being out of repair or in an unsafe condition.

The first requisite in establishing negligence is to show the existence of the duty which is supposed not to have been performed.

Negligence has been defined by Alderson to be, "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do." And Pollock adds to this, "provided, of course, that the party whose conduct is in question is already in a situation that brings him under a

(a) Lindsey v Leighton, 150 Mass. 335.
duty of taking care." Others have said, "Negligence is the absence of such care, prudence, and forethought as under the circumstances duty required should be given or exercised." "Negligence is the absence of care according to the circumstances."

"In every relation of life, and in every position in which one may be placed, some duty is imposed for the benefit of others. The duty may be general and owing to everybody, or it may be particular and owing to a single person only, by reason of his peculiar position." For example, it is a general duty that one owes to others to so use his own property as not to unnecessarily injure or damage others in the enjoyment of their rights of property. And there are certain relations which give rise to certain duties. Thus, an employer owes a duty to his employees to furnish them with reasonably safe tools, a reasonably safe place in which to work, and the necessary number of reasonably safe and competent servants; and if the master fails to furnish these he is liable in case damage or injury arises from such neglect.

There are certain duties that a landlord owes to a tenant, or one leasing property of him, and a failure to perform these duties will, in most cases, give a right of action
against the landlord for damages.

Since the most of the controversies between landlord and tenant, in which negligence is the alleged cause of the injury, arise from cases where some one has been injured by reason of the leased premises being out of repair or not in proper condition, liability for neglecting to properly repair or manage the premises on the landlord's part will be the main point here dealt with.

The general rule is, that where the tenant is permitted to fully examine the condition of the tenement or premises sought to be leased, and any defects existing therein are patent, the rule of caveat emptor applies, and the landlord is exempted from liability for injuries caused by such defects in the building, in the absence of warranty, fraud, deceit, or misrepresentation. (a) The same rule was laid down in O'Brien v Capwell (b). In that case the action was brought by a person in the employ of a tenant on defendant's premises. The plaintiff, a washer-woman, was hanging clothes on the railing of the back piazza of the house, and the piazza, being out of repair, gave way and she fell and broke her arm. The court said: "As between landlord and tenant I think the law is well settled when there is no fraud or false representation

(a) Davidson v Fischer, 11 Col. 533.
(b) 59 Barb. 497.
or deceit and in the absence of an express warranty or covenant to repair, that there is no implied covenant that the demised premises are suitable or fit for occupation, or for the particular use which the tenant intends to make of them, or that they are in a safe condition for use; and that the principal of caveat emptor applies to all contracts for the letting of property, real, personal or mixed, as much as to the contracts of sale, with one or two exceptions which do not apply in this case. The defendant being under no obligation to repair the premises, and their condition being equally as well known to the tenant as to him, there is no basis for an action of negligence, by the tenant, or any servant of his, or person standing in his place, arising out of the fact that they were out of repair."

So in the case of Bowe v. Hunking. The defendant here leased his house to the plaintiff. In the house was a back stairway and plaintiff's wife in coming down said stairway broke through one step and thereby received such injuries as caused her death. It seems that the stairway was not well lighted and that the step which gave way was known to defendant to be defective, in that the tread was at each end sawed almost off, but defendant had stepped on it before

(a) 135 Mass. 380.
letting the house to the plaintiff and it did not break with the defendant. Plaintiff had examined the rooms of the house before hiring it, but did not go over the stairs in question. In an action to recover damages against the landlord for negligently leaving the defective step in such condition, the court said: "The plaintiff could not recover: for there was no implied warranty in the letting of the house that it was reasonably fit for use, and there was no actual fraud or misrepresentation, and the only ground on which the action could be maintained is, that it was the duty of the defendant to inform the plaintiff of the defective condition of the staircase. This duty, if it existed, was one imposed by law and not by contract. There was no evidence sufficient to warrant a finding that defendant intentionally concealed the defect from the tenant. The saw cuts in the step might have been visible to any one who examined the step and if the saw cuts, visible on the surface, were such as to put a reasonable man upon inquiry, it was the tenant's fault that he did not examine into it. If the tenant, before hiring, is permitted to examine the premises, the rule of caveat emptor applies and the law is unusually strict in exempting the landlord from liability for injuries arising from defects,
when there is no warranty and no actual deceit."

Is some of the earlier English decisions it seems to have been held that there was in a lease of a house an implied condition that it was fit for safe and comfortable occupancy, but these cases must be regarded as overruled, and it is now established that there is no implied warranty in leasing premises or tenements that they are fit for habitation or that they will remain fit, during the tenancy for the purpose for which they were leased. Therefore, the tenant has no remedy against the landlord for suffering the premises to get out of repair, unless the landlord has specifically agreed to keep the premises in repair, or is guilty of fraud or concealment.

Some courts have said that a different rule existed in case the house leased was a furnished house. In the case of Ingalls v Hobbs,(a) this different rule was upheld. Here defendant hired the premises of the plaintiff for a season as a furnished house, provided with beds, mattresses, matting, curtains, chairs, kitchen utensils etc., which were apparently in good condition, and when the defendant took possession it was found to be more or less infected with bugs, so that defendant contended that it was unfit for habitation and gave

(a) 156 Mass. 348.
it up and declined to occupy it. This action being to recover rent of the defendant, the jury found for the defendant. The plaintiff appealed. The court said: "It is a well-settled rule that one who lets an unfurnished building to be occupied as a dwelling house does not impliedly agree that it is fit for habitation; but there are good reasons why a different rule should apply to one who hires a furnished room or house, and one who lets for a short term a house provided with all furnishings and appointments for immediate residence may be supposed to contract in reference to a well-understood purpose of the hirer to use it as a habitation. An important part of what the hirer pays for is the opportunity to enjoy it without delay, and without the expense of preparing it for use. It is often impossible for one to determine upon inspection whether the house and its appointments are fit for the use for which they are immediately wanted, and the doctrine of caveat emptor which is ordinarily applicable to a lessee of real estate, would often work injustice if applied in cases of this kind. It would be unreasonable to hold, under such circumstances, that the landlord does not impliedly agree that what he is letting is a house suitable for occupation in its condition at the time." But the New York courts do not
seem to uphold this different rule as applied to furnished houses. In Franklin v Brown, (a) it was held that where the defendant hired a furnished house the landlord could not be held to have impliedly agreed that the premises were reasonably fit for habitation. And in Chadwick v Woodward, (b) it was said that the fact that a house was furnished does not seem to make any difference or to change the general rule.

In some localities it has been thought that the rule caveat emptor did not apply to the drain or plumbing and the tenant did not take the risk of defective drain or plumbing about the leased premises; but in Chadwick v Woodward the court said, "It would seem from the number of cases which come before the courts for determination that plumbing is deemed exceptional in its character. The roof may leak, the plastering give way, the doors and windows be broken, and other misfortunes incident to housekeeping may occur, and no claim is made that an eviction has been established or a right of action has accrued against the landlord for the tenant's ill health; but if a pipe becomes filled up by neglect or otherwise, or the solder becomes loosened or the pipe itself becomes deranged, or the main sewer is in such condition as to empty the trap, the tenant for some reason claims that a

(a) 113 N.Y. 110.
(b) 13 Abbott's N.C. 441.
different rule applies. Now, if the tenant elects to hire a house which empties into a sewer, with ramifications throughout his sleeping apartments, he does so with all the liabilities that such election engenders, and with full knowledge that no plumber has yet been able to keep out the gas or prevent the smell. The repairs of a sewer pipe are no different from the repair of a window or a door, and the distinguishing injury arising from such neglect is not only incidental and remote, but as a matter of fact is the result of the tenant's own election. He hired the premises with full knowledge of these connections, and the landlord was not chargeable with such consequential injuries as may arise from any defect that time and use produce. Under such circumstances, smells, and even sickness, are not only not extraordinary but are inevitable, and I fail to see how this furnishes any ground of action against the landlord." And unless circumstances show a different understanding between the parties, a statement by the landlord that the plumbing is in good order, is not to be regarded as the assertion of a fact but merely as the expression of opinion.(a)

Also in the case of Bertie v Flagg,(b) a similar doctrine was laid down. Here defendant was owner and landlord of a

(a)Coulson v Whiting, 14 Abbott's N.C. 60
(b)161 Mass. 504.
house occupied by the plaintiff's intestate as tenant at will; and in the course of making other repairs, defendant discovered that the drain was in bad condition and needed certain repairs. Defendant neglected to repair the drain and covered it up and did not inform the plaintiff's intestate of its condition. Defendant was under no legal obligation to repair the premises. The plaintiff's intestate, being ignorant of the condition of the drain, contracted typhoid fever and died. Defendant did not misrepresent the condition of the drain to the plaintiff's intestate, and did not attempt to repair the drain. It was argued that it was defendant's duty to disclose to plaintiff's intestate the condition of the drain. But the courts said: "This defect was an ordinary defect in the drain in use on the premises, and the danger was the ordinary danger from that source. It was discovered in the course of a tenancy at will. We are of opinion that the landlord was under no obligation to repair it, and if we are to take it that plaintiff was ignorant of the defect as well as of the failure to repair it, notwithstanding the allegation that defendant 'refused' to make the necessary repairs, we are of opinion that he was under no obligation to disclose it."
Where a person has exclusive control of certain premises the general rule is that he is responsible for what transpires thereon. Thus, in Wolf v Kilpatrick, (a) it was held that a landlord out of possession is not responsible for an after occurring nuisance unless in some manner he is in fault for its creation or continuance. And in Kalis v Shattuck, (b) it was held that a landlord of premises, in exclusive possession and control of a tenant, is not liable to a third person for injury caused by the fall of an awning intended solely as a protection against sun and rain, the fall having been occasioned by the tenant's negligent conduct in permitting a crowd of people to stand upon it. But a landlord may be liable for injury caused by a nuisance that existed at the time of making the lease; as, for example, where a building falls and injures the tenant or others by reason of its being constructed of inferior and poor materials.

Where leased premises harmless in themselves, become dangerous merely by the manner of their use by a tenant in possession, the landlord is not liable for injuries arising from such use. Neither is the landlord liable for injury to his tenant's guest, arising from such a danger as is created.

(a) 101 N.Y. 146.
(b) 69 Cal. 593.
by the negligence of the tenant only. (a)

And the landlord is not liable for injuries to the property of a person lawfully upon the premises, resulting from a neglect to keep them in repair; And this is so although, by his covenant, he is bound to make all ordinary repairs. The covenant does not give a right to, or impose a liability in favor of, a stranger. (b)

Statutes may compel a landlord to make certain repairs and a failure to repair in such a case would make the landlord liable for injury resulting from such neglect. Thus, where the law required a landlord to furnish suitable fire escapes and to keep them in repair he was held liable to the tenant for all damage resulting to the tenant, without negligence on the part of the tenant, from the use of such fire escapes. (c)

But where a visitor calling on a tenant is injured through a defect in the hall not demised to the tenant, the landlord has the same measure of liability towards visitors for negligence as toward the tenant himself, because the use of the hall and staircase for the purpose of enjoying such visits and calls is by necessary implication, where not expressly provided for, within the reasonable intent of the

(a) Eyre v Jordan, 111 Mo. 424.
(b) Clancy v Byrne, 56 N.Y. 129.
(c) Willy v Mullody, 6 Abbott's N.C. 37.
demise of the rooms. To hold the landlord liable for not repairing the hallway, it is necessary to show that he had neglected to repair it after having knowledge or notice of its dangerous condition, or an equivalent to notice, such as an unreasonable omission to ascertain the condition of the stairs. (a)

When the landlord has leased premises, he parts with control over them and with possession that control passes to the tenant, and if any defects arise, or want of repair, or the premises are allowed to get into such a condition as that they become dangerous during the demise, it is the duty of the tenant to take such steps as will prevent injury. The liability arising from the control of premises is illustrated in that class of cases where contractors build houses. If the premises are completely given over to the contractor, he will be responsible to one injured during the progress of the work. If, on the other hand, the owner retains supervision and the building goes on under his direction, as he is in control of the premises, his responsibility continues. (b)

So that where the landlord retains possession and control of part of the building, he is liable for injuries resulting to a tenant from the negligent use of the premises.

(a) Henkel v Murr, 31 Hun 23.
(b) Shindelbock v Moon, 32 Ohio St. 264.
so controlled by him. This is further illustrated in the case of Jones v Freidenburg & Co.,(a) Two rooms were situated on the fifth floor of a building and had a bath-room and water-closet appurtenant to both. One of the rooms was rented to a tenant and was in his exclusive possession; the other was not, but remained in the control of the landlord, although he allowed the tenant to carry the key to the door which opened into a hallway, common both to the occupied and unoccupied room. Damages accrued to the tenant on the floor beneath by the careless use of the bath-room. Held, that the landlord was liable for the injury and damage. The court in this case laid down the following rules:-

First, "Where a tenant on the lower floor is injured by the flowing of water from the bath tubs and water fixtures situated above, he has a right of action against the landlord if the overflow results from their improper construction, and his liability exists without reference to the occupation of the upper apartment by another tenant."

Second, "If the construction be skillfully planned and safely executed against overflow, and the upper apartments are rented to, and in the exclusive possession and control of, a tenant, then the landlord is not liable and the person

(a) 66 Ga. 505.
damaged must look to his co-tenant for his losses, if he can fix negligence upon him."

Third, "Where the upper rooms are not rented to, nor in the exclusive control of, a tenant, but both landlord and tenant have the right of possession, and neither the exclusive right, then the landlord is liable to the tenant below."

"The landlord must see to it that he does not imperil the safety of the property of his tenants by entrusting to another the control and management of business that requires diligence; if he does, and damage ensues, he will not be permitted to reply that because it was not his own personal act, he is not to be held responsible."

And in Tousey v Roberts, (a) a landlord was held liable for the acts of his agent where the agent, in charge of a passenger elevator which the landlord assumed to operate for the benefit of his tenants, managed the elevator in such a careless manner as to injure the plaintiff.

But where the landlord contracted with builders to make alterations in the upper story of the building and in doing so the work was negligently done, but without fault and against the wish and advice of the landlord, by means of which a tenant's place of business was injured by dust and rain, the

(a) 114 N.Y. 312.
landlord was held not liable for the damage done by these employees. (a)

After a lease has been executed, a parol promise of the landlord to repair is void for want of consideration. This was so held in Libbey v Talford, (b) Here defendant leased a store to the plaintiff by parol. At the time of hiring, the store was in good condition but afterwards became out of repair and the plaintiff notified the landlord of the fact and the landlord promised to repair the store, but failed to do so, and in consequence of the want of repair the plaintiff's goods were damaged. The court said: "In the absence of any special agreement, the tenant takes the risk of the future condition of the leased premises. In the present case it does not appear that there was any agreement, when the contract was entered into that the landlord should keep the premises in repair. By law the duty to repair devolved upon the tenant. The landlord, being under no legal obligation to make repairs, promised the tenant, who was under such obligation, to make them. The promise was without consideration. It was no part of the original agreement. The action can't be maintained."

But where a landlord upon being solicited by the tenant

(a) Morton v Thurber, 85 N.Y. 550.
(b) 43 Me. 316.
to have an out-house repaired, gratuitously undertook to make repairs, and negligently and unskillfully performed the work, whereby the tenant's wife was subsequently injured, the landlord was held liable for the injury. The landlord assumed to make the repairs and in so doing was obliged to perform in a careful and safe manner, and if he did not he is liable in damages resulting from such failure. It was argued in the case that upon a gratuitous undertaking of this nature the defendant could only be held responsible for bad faith or for gross negligence, but the court said: "In assuming to make repairs at the request of the tenant he must be considered as professing to have requisite skill as a mechanic, and as undertaking to select and furnish the kind and quality of materials appropriate to the accomplishment of the desired object.............The true question was, whether the defendant had discharged the duty which he had assumed."

The landlord in leasing property is in duty bound to notify the tenant of any defects or dangerous places about the premises if the tenant by reasonable inspection of the premises could not have discovered such defects. Thus, where a landlord lets a house knowing that the timbers of the privy floor were rotten and unsafe, when the tenant could not by
reasonable inspection have seen its condition, but conceals the fact from the tenant, and the tenant is injured by the defect, the landlord is liable therefor. In that case the court said: "It was the landlord's duty to disclose his knowledge, because it would be an inevitable source of danger to the occupants of the premises if not apprised of the fact. This case is not like the cases cited, where the premises were defective or dangerous, but unknown to the lessor, who is not bound to repair and in such cases not responsible for injuries to third persons. They lack the ingredient of knowledge, and the culpable neglect in disclosing it, about tenements or premises whose dangerous character could not be known by ordinary care and whose use necessarily places the occupant in peril."(a)

And in Minor v Sharon,(b) it was held that the owner of a dwelling house, who, knowing that it is so infected with the small-pox as to endanger the health of the occupant, leases it, for the purpose of habitation, without disclosing the fact to one who is ignorant of its condition, and who, without contributory negligence on his part, by reason of the state of the house is attacked by the disease, is liable for damages caused by such failure to notify.

(a) Coke v Gutkese, 30 Ky. 593.
(b) 112 Mass. 477.
A tenant, however, is not as a rule bound to make permanent repairs unless he has agreed to do so. Thus, in Bold v O'Brien,(a) it was held that in the absence of an agreement to do so, a tenant of part of a building is not bound to make general repairs, and if the landlord fails to make them and the building falls or otherwise is permitted to become ruinous, and the tenant is injured thereby, the landlord is liable to him for such damage as he sustains. A tenant for years is generally bound to make only ordinary repairs; as, to keep the premises "wind and water tight". And if the landlord negligently suffers a chimney upon the demised premises to remain in such a ruinous condition, that by its fall it causes injury to the tenant's property, he is liable in damages. The repairing of a chimney being regarded as work of such a permanent and substantial nature as not to devolve upon the tenant.(b) But the landlord should have notice of the necessity of repair, in order to hold him liable.

A landlord who has covenanted to repair, but who has not been notified by the tenant to do so, is not liable for injuries sustained from the defective condition of the premises, by a stranger who enters at the invitation of the tenant.(c)

(a) 12 Daly 60.
(b) Eagle v Swayze, 2 Daly 40.
(c) Pleon v Staff, 9 Mo. App. 300.
Certain persons may assume the duty of the landlord, and if they do so, they are liable for negligence as if they were the actual owner or landlord. Thus, where an executor, not being compelled to go into control of leased premises belonging to the estate, does go into control of the premises, he assumes the responsibility of the landlord, and is liable for injuries to a tenant arising from neglect to keep the common stairways of a tenement house in repair, even though he had no power to make such repairs at the expense of the estate. (a)

Continued possession of the premises by the tenant, even though he complained of their condition, is a waiver of any claim for damages arising from the failure to repair. When the landlord has agreed to repair before the tenant moves in, and does not, the tenant should withdraw, or move in and make the repairs himself. (b)

And a landlord who, while engaged in repairing a building, by raising its floors, deprives the tenant of the use of the property through the building's falling during the progress of the work, is liable to the tenant for his injuries, irrespective of the question of negligence. The defendant

(a) Donahue v. Kendall, 50 Super. Ct. 386.
(b) Chadwick v. Woodward, 13 Abbott's N.C. 441
had the right to repair, in this case; but if he forcibly dis
possessed the plaintiff and destroyed his property he will
not be excused.(a)

Briefly stated, the landlord's duties and liability to
the tenant are these: In leasing a house or premises, if
there is no hidden defect or danger about the premises, the
tenant takes the premises for better or for worse, if he had
an opportunity to inspect the premises before hiring. But if
there is some hidden defect or danger about the premises that
could not be ascertained by reasonable inspection, then the
landlord is bound to disclose such defects to the tenant, and
is liable for a failure to disclose in such a case. The
landlord is liable of course for injuries arising out of his
misrepresentations or deceit. And if the landlord retains
possession of any part of the premises, he must see that no
injury arises to the tenants by reason of his negligent man-
age ment of that part of the premises. The landlord is not
obliged to make repairs, unless he has agreed to do so, and
even then he must have notice of such needed repairs in order
to hold him liable for damages thus caused. Any duty that
the law lays upon the landlord he must observe, else the ten-
ant, in most cases, may hold him liable for injuries sustained
(a) Butler v Cushing, 46 Hun 521.
by reason of such neglect. If the landlord undertakes to make repairs he must do so in a careful and safe manner; he must carefully perform the duty that he has thus assumed.

THE END.