



LEGAL EASE

BY: **KEN KREMS, ESQ.,
SHAFVEL & KREMS**

**FLOOD OR MIRACLE:
WHICH WILL HAPPEN
NEXT?**

In 1980, as the United States defeated the Soviet Union in hockey at the Lake Placid Olympics, sportscaster Al Michaels exclaimed, "Do you believe in miracles?"

It seems that some landlords do believe in miracles, at least when it comes to fixing defects in tenants' apartments. Some managers apparently think that the defects will, miraculously, cure themselves, or if not, that the tenants' will simply forget that the problems ever existed.

There are right ways and wrong ways to respond to tenants complaints. A case decided in Massachusetts Northeast Housing Court in March 1996 illustrates how landlords should not deal with complaints regarding defects in an apartment.

The tenant lived on a lower floor in a high-rise building. The problem she had was that there were repeated floods of waste through her kitchen sink. These floods occurred five times over a 2 1/2 year period. After each flood the tenant would call the management office, and a maintenance worker would come out and pump the backup from the kitchen sink into the bathroom tub, and then wet vacuum, mop and clean the carpets and floors. The worker would then place exhaust fans in the apartment to remove the foul odors which lasted several days.

The tenant suffered psychological problems because of the floods. After the fourth flood she started withholding rent and sent a demand letter to the landlord. The landlord's response was to commence an eviction proceeding. It was not until after the fifth flood that the landlord relocated the tenant to an apartment on a higher floor, where she had no more floods. Other tenants on lower floors had also experienced flooding.

The landlord argued that the floods were caused by the tenant's misuse of the garbage disposal or dishwasher. However, the Court found that the cause was related to the particular design of the buildings plumbing system and the maintenance of the system, and that prevention of the floods was within the landlord's control. Following the precedent set by a 1982 Massachusetts Supreme Judicial Court decision in a similar repeated flooding case, the Court here found the landlord liable for negligence, breach of lease and habitability, breach of quiet enjoy-

ment, infliction of emotional distress, and violation of the Consumer Protection Act. With a 100% rent abatement for each month in which the flooding occurred and double damages under the Consumer Protection Act, the Court awarded the tenant over \$60,000 plus attorneys fees.

What did the landlord do wrong in this case? After the first or second flood, the cause of the flooding should have been identified and fixed. Apparently nothing was ever done to address the cause of the flooding, and simply cleaning the apartment afterwards was not sufficient. If there was a question as to how to cure the problem, the tenant should have been relocated to another unit sooner, rather than later.

Moreover, when the tenant sent the demand letter the landlord could have minimized its damages and its own attorney's fees by making some type of settlement offer. Finally, the landlord should have realized that, while miracles may happen occasionally, they rarely occur in the field of landlord-tenant law.