

LEGAL EASE

BY: KENNETH A. KREMS, ESQ., SHAEVEL & KREMS



TENANT SECURITY: HOW SERIOUSLY DO YOU TAKE IT?

With crime occurring all around housing developments, landlords today must be concerned with security issues. Providing safe and secure housing for tenants should be a top priority.

In 1994 the Massachusetts Supreme Judicial Court stated that while residential landlords are not guarantors of the safety of their tenants, they do have a duty to protect tenants from foreseeable risks of harm from intruders. Moreover, landlords should be in compliance with the state sanitary code and building code with respect to security issues. Two cases decided at the trial court level in 1995 deal with these

issues. In one, the landlord was held to have no liability; in the other, the landlord was found to be grossly negligent.

The first case was decided by the judge of the Hampden Housing Court. A tenant of a six-unit apartment building in Springfield was abducted from the building's parking lot one evening and assaulted. The tenant sued the landlord, claiming that the amount of lighting in the parking lot was insufficient to deter criminals.

The court examined a residential landlord's duty to provide parking lot lighting, and found that no statute or regulation imposed such a duty on

landlords. A landlord would be contractually bound to provide lighting if a promise to do so was made in a lease, but the tenant's lease had no such provision. There could also be an implied obligation to provide lighting if there had been lighting in the parking lot at the time that the tenant moved in, but lighting had apparently never been provided. The Court stated that a landlord might have had a duty to provide light if there was a foreseeable risk of this type of crime at this location. The evidence, however, was that there had been no criminal activity on the premises prior to this incident, no tenants had complained about security, and there had not been any unusual crime problems in the area. Based upon all of the evidence, the Court dismissed the tenant's claim against the landlord.

The second case was decided by a jury in Suffolk County. The tenant's young son started a small fire with a cigarette lighter, and the fire spread quickly through the apartment. The tenant was unable to get her two children and two other children who were in the apartment out of the apartment quickly. Ultimately, one of her children died in the fire.

The reason why the tenant could not exit the basement apartment quickly enough was that the apartment's only door had a lock on it that required a key to open it from the inside as well as the outside. Such locks have been banned from use in apartments for many years, and the tenant had complained to the landlord about the lock. The tenant was unable to open the door with the smoke billowing around her. In addition, she tried to break the kitchen window to get out, but could not because there was plexiglass over it. The jury awarded the tenant compensatory and punitive damages against the defendant management company that, with interest, totaled over \$2.5 million.

What can you as a manager do to keep your tenants safe and minimize your liability? Make safety and security issues a top priority. Inspect and maintain your buildings with safety in mind, and make sure the doors, locks, windows, intercoms and fire systems are up-to-date and in good working order. Respond to tenant security complaints quickly. If you have assumed a particular duty or provided a specific service, such as a security guard in the lobby or good lighting in the parking lot, you may be at risk if you later withdraw that service. Finally, if there is a specific, foreseeable danger that you know about, take steps to minimize it, if possible. Being careful can make you feel more secure when it comes to tenant security.