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SUPREME COURT  
STATE OF WASHINGTON  
2/25/2019 1:31 PM  
BY SUSAN L. CARLSON  
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No. 96187-5

(Ninth Circuit No. 16-35314)

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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CERTIFICATION FROM THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT IN

SHANNON C. ADAMSON and NICHOLAS ADAMSON,  
Husband and Wife,

*Plaintiffs-Appellees,*

v.

PORT OF BELLINGHAM, a Washington Municipal  
Corporation,

*Defendant-Appellant.*

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**APPELLANT PORT OF BELLINGHAM'S STATEMENT OF  
ADDITIONAL AUTHORITIES**

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On the issue of whether this Court’s decision in *Hughes v. Chehalis School District No. 302*, 61 Wn.2d 222, 377 P.2d 642 (1963), remains good law regarding a nonresidential landlord’s duties to a tenant and the tenant’s invitees (*see Appellees’ Statement of Additional Authorities* (Feb. 25, 2019)<sup>1</sup>), Appellant Port of Bellingham submits the following additional authorities under RAP 10.8:

- WILLIAM B. STOEBUCK & JOHN W. WEAVER, 17 WASH. PRAC., REAL ESTATE § 6.35 (2d ed., updated May 2018) (recognizing that while Washington recognizes an implied warranty of habitability for *residential* tenancies, and *residential* landlords have statutory duties under the Residential Landlord-Tenant Act, ch. 59.18 RCW, “[t]he traditional principles...are still the limit of the landlord’s liability for personal injuries in non-residential tenancies in Washington,” and stating that those “traditional principles” include that a landlord is liable only for injuries caused by “latent conditions, known to him, that he failed to disclose to the tenant or for conditions against which he expressly warranted”).

- DAVID K. DEWOLF & KELLER W. ALLEN, 16A WASH. PRAC., TORT LAW & PRAC. § 18.13 (4th ed., updated Oct. 2018) (recognizing that “[a] landlord has no duty in a nonresidential tenancy to make the premises safe prior to relinquishing possession of the premises to the tenant” and citing *Hughes* for the proposition that a nonresidential landlord’s duty is limited to notifying the tenant of known, latent defects).

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<sup>1</sup> See also *Port of Bellingham’s Opening Brief* at 25-27; *Adamsons’ Brief* at 34-35; *Port of Bellingham’s Reply Brief* at 19-21.

Respectfully submitted this 25th day of February, 2019.

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## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 15<sup>th</sup> day of February, 2019.



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Patti Saiden, Legal Assistant

**17 Wash. Prac., Real Estate § 6.35 (2d ed.)**

Washington Practice Series TM | May 2018 Update

Real Estate: Property Law

William B. Stoebuck<sup>a0</sup>, John W. Weaver<sup>a1</sup>

Chapter 6. Landlord and Tenant

D. Interference with Tenant's Possessory Rights

§ 6.35. Personal injuries to tenant from defective conditions

**West's Key Number Digest**

- West's Key Number Digest, Landlord and Tenant 🔑125
- West's Key Number Digest, Landlord and Tenant 🔑162 to 170

**Legal Encyclopedias**

- C.J.S., Landlord and Tenant §§ 297 to 306
- C.J.S., Landlord and Tenant § 326
- C.J.S., Landlord and Tenant §§ 417(1) to 444

There are many, many cases in which tenants or their invitees have sought to recover against landlords for personal injuries caused by defective conditions on the leased premises.<sup>1</sup> Since this is not a treatise on the law of torts, we will attempt to summarize only certain limited classes of such cases. First, we will discuss only those cases in which the tenant, and not a third person on the premises, was the plaintiff. Second, we will not get into questions that are more properly a part of tort law, such as definitions of negligence, contributory negligence, and assumption of risk; *i.e.*, we will deal only with how the landlord-tenant relationship peculiarly bears upon liability. In the present section, we will cover only those cases in which liability allegedly flowed from a defective condition of the leased premises that existed when the lease was made and those cases in which liability was predicated upon the landlord's failure to maintain areas off the leased premises, such as common areas, that were within the landlord's control. Cases in which liability was predicated upon the landlord's failure to repair, or negligent repairs to, the leased premises will be included within the subject of repairs in sections 6.38 and 6.39.

Under traditional common law rules, the landlord has quite limited liability for injuries caused by defective conditions that existed on the premises at the commencement of the term. His liability for injuries exists to the extent he is liable to the tenant for the conditions themselves. Since, under influence of the doctrine of *caveat emptor*, previously discussed,

the landlord was liable only for latent conditions, known to him, that he failed to disclose to the tenant or for conditions against which he expressly warranted, he was traditionally liable to the tenant in Washington and elsewhere only for injuries caused by those defective conditions. There being no implied warranty of fitness, tort liability could not be based upon breach of such a warranty.<sup>2</sup> If, however, the landlord is liable to the tenant for defects existing at the beginning of the term on the latent-defect theory, then the landlord may be liable for personal injury to the tenant caused by that defect during the term.<sup>3</sup> As is implicit in the latent-defect theory, the defect must have been one that was not disclosed or visible to the tenant.<sup>4</sup> Also, the stated Washington position is that, under the latent-defect theory, the landlord must actually know of the defect, not that, as in some states, the landlord may be charged with what a reasonable inspection would have shown.<sup>5</sup> However, in one case a landlord was charged with constructive knowledge of a defect that he would have discovered if he had made repairs he was supposed to make near the defect.<sup>6</sup> The traditional principles stated in this paragraph are still the limit of the landlord's liability for personal injuries in non-residential tenancies in Washington.

Now, of course, Washington recognizes an implied warranty of habitability for residential tenancies under *Foisy v. Wyman*.<sup>7</sup> And the Residential Landlord-Tenant Act also imposes upon the landlord a statutory duty to have premises that are subject to the Act in a condition fit for human habitation at the commencement of the term, as well as so to maintain them during the term.<sup>8</sup> One could argue that the judge-made and statutory duty to maintain in habitable condition relates only to liability for maintenance and should not be the basis for further liability for personal injuries. But, since Washington is one of those states in which a landlord may be liable for personal injuries caused by his breach of a repair clause contained in a lease, by analogy it should follow that if breach of a similar duty imposed by law causes injury to the tenant, the landlord should be liable for the injury on some basis. That indeed is the position the court of appeals took in *Lincoln v. Farnkoff*.<sup>9</sup> However, the court of appeals, in remanding to a trial court, instructed that there had to be, not only a finding that the landlord breached the duty of habitability, but also a finding that the breach was negligent. In other words, there is no strict liability. This is in accord with the overwhelming weight of authority in the 10 or 12 states that have decisions on the question.<sup>10</sup> We should keep in mind, too, that a duty to keep residential premises in "habitable" condition is not as broad as a covenant to make all kinds of repairs; it reaches to only those defects that make premises uninhabitable.

Two seemingly inconsistent decisions (three if we count the two appeals in one of them), all rendered by different panels of Division 3 of the Washington State Court of appeals, create much confusion about landlords' liability to tenant for personal injuries, based upon violations of the Residential Landlord-Tenant Act. The January 2001 decision in *Dexheimer v. CDS, Inc.*,<sup>11</sup> written by Judge Sweeney for Panel 8, contains a clear, flat holding that a tenant may not receive monetary damages based upon injuries caused by a landlord's breach of repair duties required by RCWA 59.18.060 of the Residential Landlord-Tenant Act (RLTA). The court's reasoning, that the remedies provided for tenants within the RLTA were exclusive and that therefore tenants could not receive "money damages," seemed to preclude any personal injury recovery based upon landlords' violations of the Act. Further, the court overruled ("abrogated," the court said) its prior decision in *Lincoln v. Farnkoff*,<sup>12</sup> which had permitted such a recovery. But in June 2001, Panel 1 of Division 3 handed down *Lian v. Stalick*,<sup>13</sup> an opinion that, if it is not contrary to *Dexheimer*, certainly reaches a contrary result upon essentially similar facts. The opinion was written by A.C.J. Brown, with Judge Kato concurring and Judge Sweeney, who wrote *Dexheimer*, dissenting. Facts accepted by the court were that the landlord failed to repair some outside steps, that this failure was a violation of RCWA 59.18.060 of the RLTA, and that the disrepairs injured the plaintiff tenant. Apparently the trial judge awarded the plaintiff damages without specifically finding that the defendant was "negligent" in failing to repair.

Division 3 remanded *Lian v. Stalick* to the trial court for "clarification of the court's liability theory ...." Division 3 supplied the "liability theory" by specifically adopting Restatement (Second) of Property, section 17.6 (1977), which says in pertinent part that a landlord may be liable to a tenant and others on the leased premises for personal injuries "if he

has failed to exercise reasonable care to repair a condition ... in violation of: ... (2) a duty created by statute ....” The majority opinion apparently attempted to avoid a conflict with *Dexheimer* by saying this would make the landlord liable, not (directly?) under RCWA 59.18.060, but upon “a tort action for personal injuries.” Of course Judge Sweeney found the two decisions in conflict. While section 17.6 of the Restatement does seem to be catching on in the courts nationally and perhaps is the rule that should be adopted,<sup>14</sup> the decision in *Lian v. Stalick* created certainly a confusing situation in Washington and an apparent conflict within the same division of the court of appeals. Upon remand, the trial court held the landlord was liable, as Division 3 had essentially directed. In the appeal to Division 3 after remand, Panel 10 affirmed in an opinion written by Judge Kurtz, with judges Brown and Kato concurring.<sup>15</sup> The theoretical basis for the opinion remained murky, but apparently the court's position was that the landlord's liability arose, not under RCWA 59.18.060, but under Restatement (Second) of Property, section 17.6. Just so. And, if we take the landlord's breach of RCWA 59.18.060 out of the case, are we to suppose liability would still exist under section 17.6 alone?

Division 3's 2003 decision in *Tucker v. Hayford*<sup>16</sup> finally clarified the status of *Dexheimer v. C.D.S., Inc.* in that division. The opinion, written by Judge Sweeney, who wrote the opinion in *Dexheimer*, holds that injuries to a tenant from drinking contaminated well water on the leased premises was a breach of the requirement of the Residential Landlord-Tenant Act, RCWA 59.18.060, that a landlord keep premises fit for human habitation. Judge Sweeney's opinion for the court clearly repudiates *Dexheimer* with this simple phrase, “We were wrong.”<sup>17</sup> It would still help clarify Washington law if the State Supreme Court would render a clear decision on the important question of landlords' liability for injuries to tenants caused by breach of the “habitability” provisions of RCWA 59.18.060.

Division II seems to have adopted the views of Division III in *Lian II* in *Martini v. Post*<sup>17.50</sup> and has adopted Restatement section 17.6 as far as it applies to tenants. The case involved allegation of breach of common law duty, and the Residential Landlord Tenant Act, and the Tacoma Municipal Code.

In many personal injury suits against landlords, tenants (and other persons) complain of injuries that occur on, or are caused by conditions that exist on areas that are under the landlord's control and near to, but outside, the leased premises. These are often common areas, such as hallways, stairways, walkways, and driveways, or they may also be other nearby premises that the landlord possesses or controls. Most often the injury occurred on the outside areas, as when the plaintiff slipped and fell there, but sometimes the impact is felt on the tenant's leased premises, as when a broken water pipe on the landlord's premises floods the tenant's premises. Lawsuits that arise in this way are fundamentally different from the suits discussed previously in this section, in which the injury is allegedly caused by a condition within the leased premises. Liability, if any, is not predicated upon the breach of any duty the landlord may have to maintain the leased premises, but rather upon the landlord's failure to maintain his own premises in reasonably safe condition. It is, in fact, quite coincidental that the plaintiff happens to be the defendant's tenant, for the landlord would be just as liable to third persons, such as the tenant's guest or the owner of neighboring land, who happened to be upon the landlord's premises and was injured there.<sup>18</sup>

For the landlord to be liable on the basis we are now discussing, the area on which the injury occurred or was caused must be within the landlord's, not the plaintiff tenant's, control. By way of examples, a private balcony that was part of the tenant's premises has been held to be within the tenant's control,<sup>19</sup> and a skylight over the tenant's apartment has been held to be within the landlord's control.<sup>20</sup> When injuries occur upon common areas, the landlord is liable for injuries that are caused by the landlord's negligent acts upon, or negligent maintenance of, such areas.<sup>21</sup> For similar negligence, the landlord may be liable for conditions that originate upon common areas and cause injury upon the tenant's leased premises, as by falling plaster or running water that “invades” the tenant's premises.<sup>22</sup> The Residential Landlord-Tenant Act imposes a duty on landlords to keep common areas reasonably clean, sanitary, and safe.<sup>23</sup> It is also possible for a landlord to be liable for failing to control the acts of another tenant on nearby premises if the landlord is found to have

a duty of control.<sup>24</sup> We cannot review the principles of tort law, but it may be said as a general proposition that the landlord may raise the usual defenses to negligence, such as assumption of risk.<sup>25</sup>

Some older Washington decisions limited the landlord's liability for injuries on common areas with the rule that landlords had no duty to remove natural accumulations of ice and snow.<sup>26</sup> However, these decisions were overruled in 1975, so that the landlord's duty to keep common areas reasonably safe now includes a duty to remove known accumulations of ice and snow.<sup>27</sup> As to landlords' liability for injuries outside common areas, *i.e.*, upon adjacent public areas such as sidewalks and streets, the landlord has no common law liability to tenants or third persons unless he has either caused the dangerous condition or has exercised some control over a preexisting dangerous condition.<sup>28</sup> Aside from possible local ordinances requiring landowners to remove accumulations of ice and snow from adjacent sidewalks, a landlord has no liability for injuries from such accumulations unless the landlord has either caused the accumulation (*e.g.*, water from a downspout) or has attempted but failed to remedy the condition.<sup>29</sup>

In an attempt to limit liability to tenants, landlords often insert exculpatory clauses in leases. Such clauses were always narrowly interpreted against the landlord.<sup>30</sup> In keeping with a trend in American law, Washington has now declared such clauses unenforceable in a residential lease on public policy grounds. They were outlawed first in 1967 in leases of publicly owned housing.<sup>31</sup> In 1971, *McCutcheon v. United Homes Corporation*<sup>32</sup> held exculpatory clauses void in all residential leases. *McCutcheon* expressly left open the questions whether such clauses were enforceable in residential leases if bargained for in return for reduced rent and in all non-residential leases. However, as to leases governed by the Residential Landlord-Tenant Act, the Act expressly forbids exculpatory clauses and prohibits the parties from bargaining for them.<sup>33</sup> Technically, there is the possibility they are still enforceable if bargained for in return for reduced rent in leases of those few kinds of residential tenancies that are not covered by the Residential Act. However, even with those few residential leases, it is questionable if they would be enforced, in view of *Foisy v. Wyman*'s refusal to allow the implied warranty of habitability to be bargained away for reduced rent.<sup>34</sup> In non-residential leases, it seems probable that exculpatory clauses will continue to be enforceable, because the public policy considerations that caused them to be outlawed in residential leases would not seem to apply.

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#### Footnotes

- 1 In *Coleman v. Hoffman*, 115 Wn.App. 853, 64 P.3d 65 (Div. 2, 2003), where there was a dispute over whether the defendant, who had possession of the premises, was the "landlord," the court held that a person in possession of a common area where an injury occurs has the same duty of care for third persons' safety as a landlord has.
- 2 *Teglo v. Porter*, 65 Wn.2d 772, 399 P.2d 519 (1965) (dictum); *Taylor v. Stimson*, 52 Wn.2d 278, 324 P.2d 1070 (1958). See *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994), reversing 69 Wn.App. 570, 849 P.2d 676 (1993) (landlord not liable for injuries to third person caused by tiger tenant kept on leased premises; not defect of premises).
- 3 *Thomas v. Housing Auth.*, 71 Wn.2d 69, 426 P.2d 836 (1967); *Flannery v. Nelson*, 59 Wn.2d 120, 366 P.2d 329 (1961).

- 4 Peterson v. Betts, 24 Wn.2d 376, 165 P.2d 95 (1946).
- 5 Taylor v. Stimson, 52 Wn.2d 278, 324 P.2d 1070 (1958); Conradi v. Arnold, 34 Wn.2d 730, 209 P.2d 491 (1949).
- 6 Johnson v. Dye, 131 Wash. 637, 230 P. 625 (1924). See also Thomas v. Housing Auth., 71 Wn.2d 69, 426 P.2d 836 (1967), and Bidlake v. Youell, Inc., 51 Wn.2d 59, 315 P.2d 644 (1957), decisions in which the court somewhat stretched the rule of actual knowledge.
- 7 Foisy v. Wyman, 83 Wn.2d 22, 515 P.2d 160 (1973).
- 8 RCWA 59.18.060.
- 9 Lincoln v. Farnkoff, 26 Wn.App. 717, 613 P.2d 1212 (1980). See also O'Brien v. Detty, 19 Wn.App. 620, 576 P.2d 1334 (1978).
- 10 Annot., 48 A.L.R.4th 644 (1986), reports decisions on the question from 11 states, including Washington. California is the only state that is listed as having adopted a rule of strict liability.
- 11 Dexheimer v. CDS, Inc., 104 Wn.App. 464, 17 P.3d 641 (Div. 3, 2001).
- 12 Lincoln v. Farnkoff, 26 Wn.App. 717, 613 P.2d 1212 (1980).
- 13 Lian v. Stalick, 106 Wn.App. 811, 25 P.3d 467 (Div. 3, 2001).
- 14 See W. Stoebeck & D. Whitman, Law of Property § 6.49 (3d ed. 2000).
- 15 Lian v. Stalick, 115 Wn.App. 590, 62 P.3d 933 (2003).
- 16 Tucker v. Hayford, 118 Wn.App. 246, 75 P.3d 980 (Div. 3, 2003).
- 17 118 Wn.App. 246–47, 75 P.3d 981 (Div. 3, 2003).
- 17.50 Martini v. Post, 313 P.3d 473 (Wash. Ct. App. Div. 2 2013).
- 18 See Gildesgard v. Pacific Warehouse Co., 55 Wn.2d 870, 350 P.2d 1016 (1960); Moohr v. Victoria Investment Co., 144 Wash. 387, 258 P. 43 (1927); Sjogren v. Properties of the Pacific Northwest, LLC, 118 Wn.App. 144, 75 P.3d 592 (Div. 2, 2003) (tenant's guest). Cf. McMann v. Benton County, 88 Wn.App. 737, 946 P.2d 1183 (Div. 3, 1997) (landlord has no duty to protect tenant from dangers on adjacent land owned by another person).
- 19 Larson v. Eldridge, 153 Wash. 23, 279 P. 120 (1929).
- 20 Leuch v. Dessert, 137 Wash. 293, 242 P. 14 (1926).
- 21 Mucsi v. Graoch Associates Limited Partnership, 144 Wn.2d 847, 31 P.3d 684 (2001) (landlord must use reasonable care to keep all common areas free of ice and snow); Geise v. Lee, 84 Wn.2d 866, 529 P.2d 1054 (1975); Kennett v. Yates, 41 Wn.2d 558, 250 P.2d 962 (1952); Coleman v. Hoffman, 115 Wn.App. 853, 64 P.3d 65 (Div. 2, 2003) (negligent maintenance of balcony outside apartment).
- 22 Magerstaedt v. Eric Co., 64 Wn.2d 298, 391 P.2d 533 (1964).
- 23 RCWA 59.18.060(3).
- 24 Martindale Clothing Co. v. Spokane & Eastern Trust Co., 79 Wash. 643, 140 P. 909 (1914).
- 25 Dehn v. Kohout, 54 Wn.2d 611, 343 P.2d 883 (1959). See also Sjogren v. Properties of the Pacific Northwest, LLC, 118 Wn.App. 144, 75 P.3d 592 (Div. 2, 2003), holding that, while landlords are not generally liable for injuries from dangers that are open and obvious, they may be liable if they should anticipate the harm despite such obviousness.
- 26 Schedler v. Wagner, 37 Wn.2d 612, 225 P.2d 213 (1950), opinion adhered to on rehearing 37 Wn.2d 612, 230 P.2d 600 (1951); Oerter v. Ziegler, 59 Wash. 421, 109 P. 1058 (1910).
- 27 See Geise v. Lee, 84 Wn.2d 866, 529 P.2d 1054 (1975).
- 28 Minahan v. Western Washington Fair Ass'n, 117 Wn.App. 881, 73 P.3d 1019 (2003) (landlord not liable when plaintiff injured by drunk driver on adjacent street).
- 29 Nadeau v. Roeder, 139 Wash. 648, 247 P. 951 (1926); Minahan v. Western Washington Fair Ass'n, 117 Wn.App. 881, 73 P.3d 1019 (2003) (dictum); Sorenson v. Keith Uddenberg, Inc., 65 Wn.App. 474, 828 P.2d 650 (1992). See also Brown v. MacPherson's, Inc., 86 Wn.2d 293, 545 P.2d 13 (1975).
- 30 See Feigenbaum v. Brink, 66 Wn.2d 125, 401 P.2d 642 (1965).
- 31 Thomas v. Housing Auth., 71 Wn.2d 69, 426 P.2d 836 (1967).
- 32 McCutcheon v. United Homes Corporation, 79 Wn.2d 443, 486 P.2d 1093 (1971).
- 33 RCWA 59.18.230, -.260.
- 34 83 Wn.2d 22, 515 P.2d 160 (1973).

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## 16A Wash. Prac., Tort Law And Practice § 18:13 (4th ed.)

Washington Practice Series TM | October 2018 Update

### Tort Law And Practice

David K. DeWolf,<sup>a0</sup>, Keller W. Allen<sup>a1</sup>

### Chapter 18. Premises Liability

#### A. Commentary

#### § 18:13. Landlord liability—Nonresidential tenancies

A landlord has no duty in a nonresidential tenancy to make the premises safe prior to relinquishing possession of the premises to the tenant.<sup>1</sup> There is also no duty of the landlord to keep the premises in repair after relinquishing possession of the nonresidential premises to the tenant.<sup>2</sup> A landlord owes no greater duty to invitees or guests of the tenant than the duty owed to the tenant.<sup>3</sup>

In nonresidential tenancies, a landlord has a duty to notify the tenant of a latent or obscure defect on the premises if the landlord has actual knowledge of the defect.<sup>4</sup> This rule also applies to the guests of tenants.<sup>5</sup> This duty is limited, however, to disclosure of those defects the tenant has no knowledge of, and is not likely to discover by reasonably careful inspection. For example, a boathouse that lacked ventilation was held to have been an open and obvious danger, such that the lessor of the boathouse had no duty to install such ventilation.<sup>6</sup> Consequently the landlord was found not liable for the death of the boathouse lessee and his guest who were overcome by carbon monoxide fumes that had accumulated from a running engine in the enclosed boathouse.<sup>7</sup>

A nonresidential landlord has a duty to use ordinary care to keep common areas used by tenants in a reasonably safe condition.<sup>8</sup> This duty applies to areas such as stairs, hallways, and sidewalks. The duty to use reasonable care to keep common areas in a safe condition includes the removal of natural accumulations of snow and ice.<sup>9</sup> This is in contrast to the duty of a residential landlord; the Washington Supreme Court found invalid a clause in a lease of a multiple dwelling complex that exempted the landlord from negligence in maintaining a stairway.<sup>10</sup>

An exception to the requirement that the landlord have knowledge of a latent or obscure defect before a duty to disclose will exist is when the landlord has promised to put and keep the premises in repair.<sup>11</sup> If the landlord has made such a promise, he has a duty to make a reasonable inspection of the premises for latent or obscure defects before relinquishing possession.<sup>12</sup> The landlord has a duty to either correct or notify the tenant of any defect that should have been discovered by the inspection. This duty is limited to those defects the tenant has no knowledge of and could not discover by making a reasonable inspection.<sup>13</sup>

Washington courts have held that a tenant can hold a landlord liable for harm when (1) there are latent or hidden defects in the leasehold (2) that existed at the creation of the lease (3) of which the landlord had actual knowledge (4) and of which the landlord did not inform the tenant.<sup>14</sup> Thus, in instances where dangerous conditions are created by the tenant's activity after the commencement of the lease, the landlord is not liable.<sup>15</sup> However, while the general rule requires only disclosure of known dangers to the tenant, an exception applies where the landlord knows that the tenant plans to use

the property for a purpose that involves admission to the public, and knows that the tenant will admit the public before the property is put in safe condition. In such circumstances, the landlord owes an affirmative duty to use reasonable care to discover conditions that involve an unreasonable risk of harm to potential visitors.<sup>16</sup>

A landlord who makes improvements or repairs upon the rented premises during a tenancy has a duty to use ordinary care in carrying out the work. This duty exists even if the landlord was not under a legal obligation to make the improvements or repairs.<sup>17</sup>

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#### Footnotes

- 1 WPI 130.04) (see §§ 18:22 et seq., *infra*); *Martini v. Post*, 178 Wash. App. 153, 313 P.3d 473 (Div. 2 2013) (trial judge erroneously dismissed wrongful death claim where plaintiff presented evidence that landlord breached duty to repair).
- 2 WPI 130.04 (see §§ 18:22 et seq., *infra*).
- 3 *Brunton v. Ellensburg Washington Lodge No. 1102 of Benev. and Protective Order of Elks*, 73 Wash. App. 891, 872 P.2d 47 (Div. 3 1994) (trial court erroneously dismissed claim brought by wedding guest who fell and was injured at reception held at rented Elks Lodge); *Frobig v. Gordon*, 124 Wash. 2d 732, 881 P.2d 226 (1994).
- 4 WPI 130.00; *Hughes v. Chehalis School Dist. No. 302*, 61 Wash. 2d 222, 377 P.2d 642 (1963).
- 5 *Brunton v. Ellensburg Washington Lodge No. 1102 of Benev. and Protective Order of Elks*, 73 Wash. App. 891, 872 P.2d 47 (Div. 3 1994), citing *Fitchett v. Buchanan*, 2 Wash. App. 965, 472 P.2d 623 (Div. 2 1970).
- 6 *Charlton v. Day Island Marina, Inc.*, 46 Wash. App. 784, 732 P.2d 1008 (Div. 2 1987), opinion modified on denial of reconsideration, (Mar. 9, 1987).
- 7 *Charlton v. Day Island Marina, Inc.*, 46 Wash. App. 784, 732 P.2d 1008 (Div. 2 1987), opinion modified on denial of reconsideration, (Mar. 9, 1987).
- 8 WPI 130.02 (see §§ 18:22 et seq., *infra*); *McCutcheon v. United Homes Corp.*, 79 Wash. 2d 443, 486 P.2d 1093 (1971).
- 9 *Hvolboll v. Wolff Co.*, 347 P.3d 476 (Wash. Ct. App. Div. 3 2015) (trial court properly found that tenant had assumed the risk of slippery snow berm); *Leonard v. Pay'n Save Drug Stores, Inc.*, 75 Wash. App. 445, 880 P.2d 61 (Div. 2 1994) (customer of drug store injured herself by slipping and falling on snow on store's privately owned sidewalk leading from store to parking lot); *Geise v. Lee*, 84 Wash. 2d 866, 529 P.2d 1054 (1975).
- 10 *McCutcheon v. United Homes Corp.*, 79 Wash. 2d 443, 486 P.2d 1093 (1971).
- 11 WPI 130.01.01 (see §§ 18:22 et seq., *infra*).
- 12 WPI 130.01.01 (see §§ 18:22 et seq., *infra*).
- 13 WPI 130.01.01 (see §§ 18:22 et seq., *infra*).
- 14 *Martini v. Post*, 178 Wash. App. 153, 313 P.3d 473 (Div. 2 2013) (trial judge properly granted summary judgment as common law defect theory where plaintiff's decedent was aware of defect in the premises); *Frobig v. Gordon*, 124 Wash. 2d 732, 881 P.2d 226 (1994) (invitee brought suit against landlord for mauling by tenant's tiger which caused injury to tenant's invitee) (citing *Younger v. U.S.*, 662 F.2d 580 (9th Cir. 1981)).
- 15 *Frobig v. Gordon*, 124 Wash. 2d 732, 881 P.2d 226 (1994).

- 16 Brunton v. Ellensburg Washington Lodge No. 1102 of Benev. and Protective Order of Elks, 73 Wash. App. 891, 872 P.2d 47 (Div. 3 1994) (trial court erroneously dismissed claim brought by wedding guest who fell and was injured at reception held at rented Elks Lodge).
- 17 WPI 130.03 (see §§ 18:22 et seq., infra); Rossiter v. Moore, 59 Wash. 2d 722, 370 P.2d 250 (1962).

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