

5.20C DUTY OF OWNER TO TENANT LEASING ENTIRE PREMISES AND TO OTHERS ON PREMISES (Approved 5/77)

A. Residential Premises

When a landlord rents (leases) a home to another, he/she has a duty to inform that person of any (natural, artificial, latent — hidden) condition (or defect) that involves an unreasonable risk of bodily harm to other persons lawfully upon the premises. If he/she fails to disclose such condition, he/she is subject to liability for the harm that such condition caused, provided that:

- A) The tenant was unaware of the condition prior to the occurrence of the harm or did not realize the risk created by the condition;
- B) The condition and risk involved were known to the landlord or reasonably discoverable by him/her, and
- C) The landlord had reason to believe that the person to whom he/she rented the premises would not discover the condition or realize the risk created by the condition.

B. Repairs by Landlord of Residential Premises

The landlord also has the duty to repair damages to vital facilities caused by ordinary wear and tear during the terms of the tenancy (lease) when he/she is given

adequate notice of said condition and, in addition, to make such repairs as promised by him/her either by contract or voluntarily.

If he/she fails to make such repairs in a reasonable time after he/she is aware or should be aware of the need for same or fails to make them in a reasonably careful manner, he/she is liable in damages for such breach of duty to the tenant or others lawfully upon the premises if they suffer injury because the landlord's conduct resulted in a condition that created an unreasonable risk of harm.

NOTE TO JUDGE

The June 15, 1973 revision had the following note:

The foregoing is a revision of the charge to give effect to *Marini v. Ireland*, 56 N.J. 130 (1970) to the extent of eliminating any reference to the landlord's or lessor's warranty that premises are fit and suitable for tenants proposed use. *See also, Dwyer v. Skyline Apartments, Inc.*, 123 N.J. Super. 48 (App. Div. 1973).

NOTE ALSO

This Charge applies only to residential premises leased or rented to a tenant for the latter's occupancy. *Marini v. Ireland*, 56 N.J. 130, 144. It does not apply to long-term leases of residential buildings for investment or other than residential purposes of the lessee.

The words landlord, tenants, and rents are used to reflect the more common usage of the words as opposed to lessor, lessee, lease, etc. In

addition, language has been used to include the situation where the landlord has agreed to repair but has not kept the agreement. The words “reasonable time” for the landlord to act consistent with the language contained in *Dwyer v. Skyline Apartments, Inc.*, 123 N.J. Super. 48 (App. Div. 1973), have been added.

C. Non-Residential Land and Buildings

Generally, on the renting or leasing of a building or lands for other than residential purposes, in the absence of a contract to that effect, there is no implied warranty or condition that the premises are fit and suitable for the purpose specified or for the use to which the tenant or lessee proposes to devote them or for any purpose and in such case, the landlord is under no liability for injuries sustained by the tenant or his/her guests or employees, by reason of the unsafe condition of the leased premises. Where, however, a landlord conceals or fails to disclose to his/her tenant any natural or artificial condition involving an unreasonable risk of bodily harm to persons upon the land, he/she is subject to liability for the harm thereby caused to the tenant, and to others upon the land with the consent of the tenant after the tenant has taken possession, if (a) the tenant does not know of the condition or the risk involved, and (b) the landlord knows of the condition and realizes the risk involved and has reason to believe that the tenant will not discover the condition or realize the risk.

D. Repairs by Landlord of Non-Residential Land and Buildings

In the absence of a contractual obligation to repair premises leased for non-residential purposes, the landlord owes no duty to repair the leased premises. In the event that repairs are made, either by contract or voluntarily on the part of the landlord, they must be carried out in a reasonably careful manner and the tenant and others lawfully upon the premises may rely upon the sufficiency of such repairs. Where a landlord negligently makes repairs so undertaken, whether voluntarily or not, he/she is liable in damages for such breach of duty so arising, to the tenant and to others upon the land with the consent of the tenant, if the resulting condition creates an unreasonable risk of harm to persons upon the land.