

5.20D DUTY OF OWNER OF MULTI-FAMILY HOUSE TO TENANTS AND OTHERS (Approved 5/97)

NOTE TO JUDGE

There are a variety of legal theories for claiming negligence by the landlord to a tenant or his/her guests. The following charges address the most common theories in the case law and are not intended to be exhaustive.

A. Areas Over Which Landlord Retains Control (In or Out of Tenant's Premises)

In this case, plaintiff *[name]* alleges that he/she was injured on property under the control of defendant *[name]*, the landlord. The plaintiff *[name]* contends that the landlord was negligent by failing to exercise reasonable care in maintaining the property.¹ A landlord has a duty² to inspect/maintain/repair all parts of the property under the landlord's control,³ including the common areas and the

¹ Construction of the lease to determine whether the landlord retained control of the portion of property where plaintiff was injured is ordinarily a matter for the court. *Cf. Michaels v. Brookchester, Inc.*, 26 N.J. 379, 384-85 (1958). However, where the meaning of the lease is uncertain or ambiguous and depends on other evidence in aid of interpretation, the meaning of doubtful provisions should be left to the jury. 26 N.J. at 387-88. *See also, Monohan v. Baime*, 125 N.J.L. 280 (E&A 1940).

² The existence of a landlord's duty in the particular circumstances is a question of law to be decided by the judge. *Anderson v. Sammy Redd & Assoc.*, 278 N.J. Super. 50, 56 (App. Div. 1994), *certif. denied*, 139 N.J. 441 (1995).

³ In appropriate circumstances, the landlord's duty may encompass the proper installation and maintenance installation and maintenance of all equipment on the property, including equipment within the tenant's premises. *Anderson v. Sammy Redd & Assoc.*, 278 N.J. Super. at 55.

premises within the tenant's apartment. This duty requires the landlord to exercise reasonable care to guard against foreseeable dangers arising from the use of the property.⁴

However, a landlord's duty to inspect/maintain/repair the property is not absolute. The landlord is not an insurer for the safety of his/her/its tenants. The duty to exercise reasonable care means that the landlord must maintain the property in a reasonably safe condition for the use and enjoyment of the tenants and their guests.⁵

Plaintiff alleges that the landlord was negligent because he/she/it failed to exercise reasonable care by *[briefly state the nature of plaintiff's claim]*.⁶

1. Where Plaintiff Relies on Violation of Statute or Regulation (insert the following paragraph)

Plaintiff further claims that the landlord was negligent because defendant *[name]* violated a statute/regulation.⁷ Plaintiff claims the landlord violated the

⁴ See e.g., *Anderson*, 278 N.J. at 54 (negligent installation and maintenance of window screen in tenant's apartment); *Terrey v. Sheridan Gardens, Inc.*, 163 N.J. Super. 404 (App. Div. 1978) (exterior steps and handrail from apartment to street). In *Anderson*, the Appellate Division provides several other examples of the landlord's duties to tenants and the public. *Id.* at 55.

⁵ *Anderson v. Sammy Redd & Assoc.*, 278 N.J. Super. at 54.

⁶ See No. 1, below, where plaintiff relies on the violation of a statute or regulation.

⁷ Under the Hotel and Multiple Dwelling Act, N.J.S.A. 55:13A-1 *et seq.*, the Commissioner of the Department of Community Affairs is required to issue regulations to ensure that any hotel or motel dwelling, as defined in N.J.S.A. 55:13A-3 of the Act, will be constructed and maintained

following statutory/regulatory responsibilities to furnish habitable residential premises.

[Insert description of statute or regulation.]

Statutory and regulatory responsibilities establish a standard of conduct for landlords. If the defendant violated any statute/regulation, the violation may be considered by you as evidence of defendant's negligence.⁸ However, such violations are not conclusive on the issue of the defendant's negligence, and you

in a manner that protects the health, safety and welfare of the occupants and the public. *N.J.S.A. 55:13A-7*. These regulatory duties have been promulgated in *N.J.A.C. 5:10-6 to 27*. In addition, the Legislature has codified certain specific duties of landlords/owners in statutes. *See e.g., N.J.S.A. 55:13A-7.1* (Duty to provide smoke detectors or smoke alarms in conformance with regulations of the Commissioner of the Department of Community Affairs); *N.J.S.A. 55:13-7.13* (Duty to provide child protection window guards upon written request of tenant).

In an action to establish civil liability against a landlord, it is appropriate to consider the landlord's statutory and administrative responsibilities to establish a standard of conduct for landlords. However, while such violations may be considered as evidence of negligence, they are not conclusive on the issue of negligence. *Trentacost v. Brussel*, 82 *N.J.* 214, 231 (1980); *Anderson v. Sammy Redd & Assoc.*, 278 *N.J. Super.* at 56; *Ellis v. Caprice*, 96 *N.J. Super.* 539, 553 (App. Div. 1967).

⁸ The preceding two sentences should be omitted when the judge determines, as a matter of law, that the landlord violated any statute or regulation. In those circumstances, the jury should be instructed as follows:

In this case, the defendant violated *[insert description of statute or regulation landlord violated]*. In considering the defendant's liability for the plaintiff's injury, you may consider the landlord's violation of such a statute/regulation as evidence of defendant's negligence.

The instruction should be appropriately modified in those circumstances where one or more violations have been established as a matter of law, but there is a factual issue as to other violations.

are to consider all the evidence and circumstances to reach your decision on whether the defendant was negligent in this case.

2. Use the following language when appropriate:

The landlord's duty to exercise reasonable care cannot be delegated or transferred to others. The landlord may not relieve himself/herself/itself of that duty by hiring an employee/independent contractor to perform the maintenance or repairs. In other words, if an employee/independent contractor of the defendant *[name]* failed to exercise reasonable care in maintaining or repairing the property, the defendant *[name]* is still liable for any injuries to the tenant or his/her guests.⁹

3. Where There is a Factual Issue as to Landlord's Actual or Constructive Notice of Defect¹⁰

Defendant *[name]* claims that he/she/it was not negligent in this case because he/she/it had no knowledge of the defect that caused plaintiff's injury.

⁹ *De Los Santos v. Saddlehill, Inc.*, 211 N.J. Super. 253, 261-63 (App. Div. 1986), certif. denied, 107 N.J. 101 (1987). See also *Port Auth. v. Honeywell Prot. Serv.*, 222 N.J. Super. 11, 21 (App. Div. 1987); *Gill v. Krassner*, 11 N.J. Super. 10 (App. Div. 1950).

¹⁰ Since the landlord's duty is not to insure the safety of the tenants, but only to exercise reasonable care, a landlord is liable only for injuries caused by defects of which the landlord had actual or constructive knowledge. *Dwyer v. Skyline Apartments, Inc.*, 123 N.J. Super. 48, 52-3 (App. Div. 1973), *aff'd o.b.*, 63 N.J. 577 (1973). This instruction should not be given when there is no factual dispute as to the landlord's notice or when the judge determines, as a matter of law, that the landlord had actual or constructive knowledge of the defect. For example, there is an exception to the requirement of actual or constructive notice of latent defects when the landlord created the defective condition. *Id.* at 53. See also, *Mikrut v. Pellow*, 65 N.J. Super. 14, 17 (App. Div. 1961).

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The landlord is only liable for injuries to a tenant/guest by reason of defects of which the landlord knew or should have known before the accident. A landlord should have known of the defect, if the defect was discoverable by the landlord through a reasonable inspection of the premises.¹¹

In other words, for defendant to be liable for plaintiff's injury, plaintiff must establish (1) that the property was in a defective condition; (2) that the existence of the defective condition was known or should have been known by the landlord before the plaintiff's injury; (3) that the landlord, after he/she/it knew or should have known of the defect, failed to act reasonably under the circumstances; and (4) that the landlord's negligence was a proximate cause of the plaintiff's injury.¹² On the other hand, if you find either that the defect was not known or reasonably discoverable by the defendant; that the landlord acted reasonably under the circumstances after he/she/it knew or should have known of the defect; or that the landlord's conduct was not a proximate cause of the plaintiff's injury, then you should find for defendant *[name]*.

If the landlord was negligent and such negligence was a proximate cause of the plaintiff's injury, then the defendant *[name]* is liable for the injury. On the

¹¹ *Dwyer v. Skyline Apartments, Inc.*, 123 N.J. Super. at 51; *Terrey v. Sheridan Gardens, Inc.*, 163 N.J. Super. at 410.

¹² *Dwyer v. Skyline Apartments, Inc.*, 123 N.J. Super. at 52.

other hand, if the defendant *[name]* was not negligent or the defendant's negligence was not a proximate cause of the plaintiff's injury, then the defendant is not liable.

B. Facilities or Equipment Provided by Landlord (In or Out of Tenant's Premises)

In this case, plaintiff *[name]* alleges that the defendant *[name]* was negligent in maintaining (or repairing) equipment/systems/facilities provided by the landlord for the common use and benefit of all the tenants and that defendant's negligence was a proximate cause of plaintiff's injury. A landlord has a duty to maintain (or repair) the equipment/systems/facilities in or out of a tenant's apartment/premises¹³ that are an integral part of equipment/systems/facilities under the landlord's control.¹⁴ This duty requires the exercise of reasonable care to guard against dangers arising from the installation/maintenance/operation of the equipment/system/facilities.

¹³The landlord's responsibility over portions of the tenant's apartment or dwelling often arises when there are systems or facilities inside and outside of the apartment or dwelling over which the landlord retained control (*e.g.*, water pipes, heating pipes, plumbing fixtures, electrical equipment or other similar equipment or facilities). *Coleman v. Steinberg*, 54 N.J. 58, 63 (1969); *Michaels v. Brookchester, Inc.*, 26 N.J. at 385.

¹⁴The existence of a landlord's duty is a question of law to be decided by the judge. *Anderson v. Sammy Redd & Assoc.*, 278 N.J. Super. at 56.

However, a landlord's duty to maintain (or repair) the equipment/facilities/systems is not absolute. The landlord is not an insurer of the safety of his/her/its/ tenants. The duty to exercise reasonable care means that the landlord must maintain the equipment/systems/facilities in a reasonably safe condition for the use and enjoyment of the tenants and their guests.¹⁵

Plaintiff alleges that the landlord was negligent because he/she/it failed to exercise reasonable care by *[briefly state nature of plaintiff's claim]*.¹⁶

If the landlord was negligent and such negligence was a proximate cause of the plaintiff's injury, then the defendant *[name]* is liable for the injury. On the other hand, if the defendant *[name]* was not negligent or defendant's negligence was not a proximate cause of the plaintiff's injury, then the defendant is not liable.

C. Landlord's Duty Arising from Covenant to Repair¹⁷

In this case, plaintiff *[name]* alleges that defendant *[name]* was negligent in performing his/her/its contractual obligation to make repairs and that defendant's

¹⁵ See subsection A footnote 2, where an independent contractor or employee of the landlord is claimed to have been negligent.

¹⁶ See subsection A footnote 1, where there is a claim of violation of a statute or regulation and subsection A footnote 3, where notice is an issue.

¹⁷ The liability arising from the negligent breach of a covenant to repair is distinct from the liability arising from a breach of the duty relating to the landlord's retained control over leased property. *Michaels v. Brookchester, Inc.*, 26 N.J. at 384.

negligence was the proximate cause of plaintiff's injury.¹⁸ Where the lease (or other contractual obligation) requires the landlord to make repairs of the leased premises (or to keep the premises in repair), the landlord has a duty to exercise reasonable care in determining what repairs, if any, are necessary. He must make reasonable inspections of the premises to determine whether repairs are needed. He also has a duty to exercise reasonable care in making repairs (or having those repairs made).¹⁹ The landlord's duty to exercise reasonable care does not mean that he/she/it guarantees by such an agreement that the leased premises will never become in need of repairs.

Plaintiff alleges that the landlord was negligent because he/she/it failed to fulfill his/her/its agreement to repair by *[briefly state nature of plaintiff's claim]*.

If the landlord was negligent in performing his/her/its obligations under the contractual agreement to make repairs and such negligence was a proximate cause of plaintiff *[name]* injury, then the defendant *[name]* is liable for the injury. On the other hand, if the defendant *[name]* was not negligent in performing his/her/its obligations under the contractual agreement to make repairs or the defendant's

¹⁸ The construction of the lease to determine whether the landlord entered into a covenant to repair is ordinarily a matter for the court unless the lease provisions are uncertain or ambiguous. *See* note 1, *supra*.

¹⁹ *See* subsection A footnote 2, when an independent contractor or employee of the landlord is claimed to have been negligent, subsection A footnote 1, when violation of a statute or regulation is alleged and subsection A footnote 3, when notice is an issue.

negligence was not a proximate cause of the plaintiff's injury, then the defendant is not liable.

D. Landlord's Duty Arising from Voluntary Repairs to Correct a Defective Condition

In this case, plaintiff *[name]* alleges that defendant *[name]* was negligent in making repairs he/she/it voluntarily undertook on the premises and that defendant's negligence was a proximate cause of plaintiff's injury.

When a landlord voluntarily undertakes to repair defects on the leased premises, either for compensation or no compensation, the landlord has a duty to perform the work in a reasonably careful manner and the landlord is liable in damages if he/she/it is negligent in making such repairs.²⁰

In determining whether the defendant was negligent in this case, you should consider whether the premises were made more dangerous by the repairs voluntarily made by the landlord and whether the tenant was misled into relying upon the sufficiency of the repairs to his/her detriment.²¹

If the landlord was negligent in making the voluntary repairs and such negligence was a proximate cause of the plaintiff *[name]* injury, then the defendant *[name]* is liable for the injury. On the other hand, if the defendant *[name]* was not

²⁰ *Bauer v. 141-149 Cedar Lane Holding Co.*, 24 N.J. 139, 145 (1957).

²¹ *Bauer*, 24 N.J. at 149. Add subsection A footnote 1, 2 and 3 as appropriate.

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negligent in making the repairs or the defendant's negligence was not a proximate cause of the plaintiff's injury, then the defendant is not liable.