



COURT RULING MAY SIGNIFICANTLY LIMIT PREMISES LIABILITY CLAIMS AGAINST LANDLORDS

Anyone who has the potential to handle a premises liability case in Michigan against a landlord has been waiting for Michigan's Supreme Court to issue an opinion in the *Allison v A.E.W. Capital Management* case since the appeal last year. Well, the decision is out, and it bodes well for residential landlords.

When the Supreme Court accepted the appeal, it did so by an order directing the parties to answer three questions: (1) whether parking lots were "common areas" under MCL § 554.139(1)(a), (2) whether the duty imposed by MCL § 554.139(1)(a) to keep the "premises" and "common areas" fit for their intended use applies to natural accumulations of ice and snow, and (3) whether the duty imposed by MCL § 554.139(1)(b) to keep the "premises" in reasonable repair applies to natural accumulations of ice and snow.

The court concluded that parking lots were common areas and that a landlord's duty to keep the premises and common areas fit for their intended use applied to natural accumulations of ice and snow. However, the court ruled that ice and snow was not subject to the landlord's duty to keep the premises in reasonable repair.

Confused? How is that a victory for the landlord? Well, let's break this down, and demonstrate how, although it does not *appear* to be a home run for the defense, it is almost a grand slam!

First, let's look at the duties imposed by the statute. There are two subsections of the statute that impose a duty upon the landlord. MCL § 554.139(1)(a) imposes a duty upon the landlord to keep the common areas and premises fit for their intended use. MCL § 554.139(1)(b) imposes a duty upon the landlord to keep the premises in reasonable repair. The distinction is that one subsection applies to "common areas" and the "premises," while the other subsection only applies to the "premises."

The court defined common areas as any area that the landlord retains control of and is shared by two or more tenants. Therefore, parking lots are "common areas" under the statute.

Additionally, the court's ruling also addressed the definition of "premises," but rather than set forth a clear unambiguous definition, it simply concluded that "common areas" were not part of the premises, and despite dictionary definitions of the word premises, as used in the statute, premises has a special meaning, which we can reasonably conclude to be an area not under the landlord's control and not a common area—the apartment itself. Therefore, it was an easy task for the court to conclude that ice and snow on the parking lot did not constitute a violation of a landlord's duty to keep the premises in reasonable repair.

Second, despite the court concluding that a landlord's duty to keep the premises and common areas fit for

their intended use applied to natural accumulations of ice and snow, the court concluded that the parking lot was fit as a *matter of law* for its intended use even though it was completely covered with one to two inches of snow. Crucial to this ruling was the interpretation of the “intended use” of the parking lot. Although the lower courts held that “intended use” of a parking lot meant that people had to be able to walk safely across the parking lot, the Supreme Court concluded that the intended use of a parking lot is to park cars, and so long as the tenant has reasonable access in and out of the parking lot, it is fit for its intended use.

Third, the court further limited the application of the statute to any claim made under MCL § 554.139. That is, although there was a previous unpublished Michigan Court of Appeals decision on the issue of to whom the statute applies, the Supreme Court stated that the protections of the statute only apply to tenants.

Fourth, and somewhat unexpectedly, the court pronounced that the duties imposed by the statute are simply imbedded into the lease between the landlord and tenant. Therefore, any breach of the duties imposed by the statute allow the plaintiff to recover only those damages resulting from a breach of contract, which do not typically allow for recovery of pain and suffering or other non-economic damages.

So where do we go from here? In favor of the landlords, we can expect to rely upon the *Allison* decision to wipe out many premises liability cases at apartment complexes. Additionally, the language of the opinion that limits the duties in favor of only the tenants, as well as the language regarding the conclusion that a breach of the statute limits a plaintiff only to breach of contract damages should significantly limit claims made under the statute.

In fact, although there is wiggle room for the plaintiff’s bar to claim that their particular accumulation of ice and snow triggered “exigent circumstances,” or that the statute was otherwise violated, the limitation of damages to simply contract damages should substantially reduce the amount of claims under the statute.

Ultimately, landlords may want to take this opportunity to amend their leases to include language limiting damages or otherwise waiving liability, as it appears that the *Allison* decision, which will allow for these amendments, without violating Michigan’s Truth In Renting Act.