

# Implied warranty of habitability in PI actions

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The Supreme Judicial Court recently set new precedent with respect to the imposition of strict liability for violations of the state building code on owners of commercial buildings.

In the process, the court also determined that G.L.c. 143, §51 does not apply to mixed-use residential commercial buildings. *Sheehan v. Weaver*, 467 Mass. 734 (2014).

Although *Sheehan* is a significant decision with respect to G.L.c. 143, §51, the lower court's opinion in the case is noteworthy for bringing to light another issue in the context of landlord-tenant law: the standard of care to be applied in actions for personal injury arising under the implied warranty of habitability.

In *Sheehan*, a tenant who was injured when he fell through a porch guardrail brought suit against the landlord on multiple grounds, including negligence and breach of the implied warranty of habitability.

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Northeast Housing Court Judge David D. Kerman instructed the jury that a finding of negligence was required in order to support the warranty claim. Yet, the jury returned a verdict finding the landlord liable on the negligence claim but not liable on the warranty claim.

Kerman denied the defendant's motion to have the verdict set aside, but noted that the verdict was indeed inconsistent. His ruling included a careful examination of case law in Massachusetts and in other jurisdictions, concluding that the development of premises liability has pointed toward imposing a negligence standard in personal injury cases arising under the implied warranty of habitability. *Sheehan v. Weaver*, No. 08-CV-0135 (N.E. Housing Ct., Feb. 10, 2012), *aff'd in part, rev'd in part on other grounds*, 467 Mass. 734 (2014).

## Development of implied warranty of habitability

It is well-established in Massachusetts that an implied warranty of habitability exists in every lease for residential property, requiring that the premises be fit for human habitation.

That "means that at the inception of the rental there are no latent (or patent) defects in facilities vital to the use of the premises for residential purposes and that these essential facilities will remain during the entire term in a condition which makes the property livable." *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184, 199 (1973).

In the rental of a dwelling unit, an implied agreement exists by the landlord "that the rented unit complies with the minimum standards prescribed by building and sanitary codes and that the landlord will do

whatever those codes require for compliance" during the rental period. *Crowell v. McCaffrey*, 377 Mass. 443, 451 (1979).

The court first decided that a breach of the warranty carries with it liability for personal injury damages in *Crowell*, 377 Mass. at 451.

While a condition that "may endanger or materially impair the health or safety and well-being of an occupant" is sufficient to violate the warranty of habitability, not every condition that results in physical injury falls within the warranty.

Rather, the condition must relate to the provision of physical facilities essential to the use of the premises. See, e.g., *Lynch v. James*, 44 Mass. App. Ct. 448, 449-51 (1998) (holding that landlord's failure to install window stops or guards, which resulted in injury, was not violation of warranty of habitability because such items were not vital to the use of the leased premises); *Spaulding v. Young*, 32 Mass. App. Ct. 624, 627 (1992) (finding that improperly installed kitchen cabinets that fell and injured tenant did not amount to breach of the warranty because the cabinets did not have a "direct and significant bearing on habitability").

## Requirement of notice

The issue of whether notice is required to find a breach of the warranty of habitability in personal injury claims has not been squarely addressed by Massachusetts appellate courts, and the decisions have left room for debate between the plaintiffs' and defense bars.

In cases involving damages for personal injuries, there is no question that notice of an unsafe condition is necessary for a plaintiff to prevail under a theory of negligence.

See *Young v. Garwacki*, 380 Mass. 162, 170-71 (1980) (holding that a landlord may only be liable for those defects of which he has notice and a reasonable opportunity to repair).

The issue of whether notice of a condition that amounts to a breach of the warranty is required when the tenant is seeking economic damages, as opposed to tort-based damages, has been settled. The SJC has recognized that strict liability may be imposed in an action in which a tenant seeks rent abatement for the landlord's breach of the warranty. *Berman & Sons, Inc. v. Jefferson*, 379 Mass. 196, 202-03 (1979).

Examination of multiple decisions concerning personal injuries and breach of the warranty, however, indicates that a requirement of notice is appropriate in such actions. See, e.g., *Scott v. Garfield*, 454 Mass. 790, 796 & n.8 (2009) (distinguishing the standard for breach of warranty of habitability in action for economic damages versus action for personal injuries); *Simon v. Solomon*, 385 Mass. 91, 96 (1982) (observing that a landlord who has failed to exercise reasonable care in maintenance of a dwelling may be liable for resulting personal injuries); *Crowell v. McCaffrey*, 377 Mass. 443, 451 (1979) (noting that the Restatement prescribes a negligence standard in breach of warranty actions for personal injury); *Fletcher v. Littleton*, 68 Mass. App. Ct. 22, 25 (2007) (rejecting assertion that "the implied warranty of habitability gives rise to liability of resulting injuries without further proof of negligence"); *Sheehan v. Weaver*, No. 08-CV-0135 (N.E. Housing Ct. Feb. 10, 2012) (instructing that negligence must be shown in order to recover for personal injuries under the warranty of habitability), *aff'd in part, rev'd in part on other grounds*, 467 Mass. 734 (2014); but see *Ruiz v. Pelson*

*Realty Trust*, 2001 WL 810347, at \*4 (Mass. Super. Ct. 2001) (court remained unconvinced that a negligence standard should be applied to actions for personal injuries related to breach of the warranty of habitability).

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Although the court in *Crowell* held that an action for personal injuries may be maintained under the warranty, it declined to address whether notice to the landlord of a code violation arising after the time for letting was required for breach of warranty.

Instead, the court found that, by the exercise of reasonable care, the landlord could have discovered the violations and brought the premises into compliance. Because there was evidence of negligence, the court did not need to determine whether a strict liability standard applied.

It is noteworthy, however, that the court in *Crowell* observed that the Restatement prescribes a negligence standard. Specifically, Section 17.6 of the Restatement (Second) Of Property Landlord & Tenant provides:

"[a] landlord is subject to liability for physical harm caused to the tenant and others upon the leased property with the consent of the tenant or his subtenant by a dangerous condition existing before or arising after the tenant has taken possession, if he has failed to exercise reasonable

care to repair the condition and the existence of the condition is in violation of: (1) an implied warranty of habitability; or (2) a duty created by statute or administrative regulation."

Comment c of §17.6 further provides that the landlord is subject to liability "only for conditions of which he is aware, or of which he could have known in the exercise of reasonable care."

As discussed by Judge Kerman in *Sheehan*, there has been an almost "universal rejection" of strict premises liability in personal injury actions arising under the implied warranty of habitability in other jurisdictions.

Indeed, a majority of jurisdictions have rejected the imposition of liability for personal injuries for breach of warranty of habitability due to the contractual nature of the action; rather, these jurisdictions find that tort actions are better-suited to address personal injury claims. See Melissa T. Lonegrass, "Convergence in Contort: Landlord Liability for Defective Premises in Comparative Perspective," 85 TUL. L. REV. 413, 425-31 (2010) (discussing approach of majority of jurisdictions that rejects strict liability for personal injuries and examining the decisions of Massachusetts courts that imply a "hybrid contract-tort" theory of recovery for personal injury actions).

The SJC's acknowledgement of the Restatement's position is an indication that Massachusetts will eventually fall in line with the majority of other jurisdictions on the issue of whether notice is required in actions for personal injury — that is, a landlord cannot be liable for breach of the warranty of habitability for injuries caused by defective conditions of which he was not, nor reasonably could have been, aware.

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