

Morrison Mahoney LLP

## LEGAL Dimensions

By William Joseph Flanagan, Partner, and Amy B. Parker, Associate, Boston Office

### Implied Warranty of Habitability in Personal Injury Actions: Massachusetts Courts Recognize a Negligence Standard

The Supreme Judicial Court made news recently when it set new precedent for the imposition of strict liability for violations of the state building code upon owners of commercial buildings. **Sheehan v. Weaver**, 467 Mass. 734 (2014).

Although **Sheehan** is a significant decision concerning ch. 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: that is, 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 guard-rail brought suit against the landlord on multiple grounds, including negligence and breach of the implied warranty of habitability. Justice Kerman of the Northeast Housing Court instructed the jury that a finding of negligence was required in order to support the warranty claim.

The jury returned a verdict finding the landlord liable on the negligence claim but not liable on the warranty claim.

The Housing Court denied the defendant's motion to have the verdict set aside, but noted that the verdict was indeed inconsistent. Justice Kerman's opinion included a careful examination of case law in Massachusetts and in other jurisdictions, and concluded 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).

In other words, in order to prevail on the breach of warranty claim, the plaintiff was required to prove that the landlord knew or should have known of the defect.

#### Development of the Implied Warranty of Habitability

It is well-established in Massachusetts that an implied warranty of habitability exists in every residential lease that the premises be fit for human habitation. This "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 which 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 for Breach of the Warranty

The issue of whether notice to the landlord 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 plaintiff 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 the defect is required when the tenant is seeking economic damages, as opposed to tort-based damages, has

been settled.

The Supreme Judicial Court has recognized that strict liability may be imposed in an action where 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, indicate 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).

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 majority of courts in other states have imposed a negligence standard in such situations.

As discussed by Judge Kerman of the Northeast Housing Court in **Sheehan**, there has been an almost a “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, courts in these jurisdictions have ruled 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 T. L. R. 413, 425-31 (2010) (discussing approach of majority of jurisdictions which reject strict liability for personal injuries and examining the decisions of Massachusetts courts which imply a “hybrid contract-tort” theory of recovery for personal injury actions).

The Supreme Judicial Court’s acknowledgement of the majority rule is an indication that Massachusetts will eventually fall in line with those 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. ■