

Landlord liability and criminal activity

Posted by Sarah Kolvas | Jan 31, 2017



Residential landlords are responsible for the **maintenance and security** of properties they rent or lease to tenants. But are landlords also required to protect tenants from **criminal activity**? Do landlords risk liability for failing to screen prospective tenants for a criminal history or to evict tenants who commit crimes?

We take a look at a notable California Supreme Court decision to explore the duties landlords owe to their tenants to ward off crime and maintain safety standards for all who enter their property.

Landlord duties call for reasonable foreseeability

Consider a landlord who leases a residential property to a tenant. The residential manager suspects the tenant is a member of a local gang engaged in criminal activity, though does not have proof. During their tenancy, a tenant in another unit reports multiple incidents of verbal harassment from the tenant. The landlord does not take action. Later, the tenant is involved in a gun fight on the property with another individual and collaterally shoots a tenant in another unit, injuring them.

The injured tenant seeks compensation from the landlord, claiming the landlord is liable for their injuries since the landlord was aware of inappropriate behavior by the tenant and did not evict the tenant to ensure the safety of fellow residents.

The landlord claims they are not liable since the tenant's past conduct was insufficient in its nature to provide the landlord **reasonable foreseeability** the tenant would engage in gunfire and injure another tenant.

Is the landlord liable for the other tenant's injuries? No! The California Supreme Court ruled the landlord did not have a duty to evict the offending tenant since their behavior and *suspected* criminal associations did not create *reasonable foreseeability* the tenant would engage in gun violence and harm fellow tenants on the property. [**Castaneda v. Olsher** (2007) 41 C4th 1205]

Further, the burden placed on the landlord to evict the tenant — a monetary loss — was deemed greater than the foreseeability of the events causing the neighbor's injury, absolving the landlord of responsibility. Prior harassment of a tenant did not indicate the occurrence of gun related injury.

Defining reasonable foreseeability

To keep tenants and visitors safe from harm, residential landlords are required to use *ordinary care* in managing the condition of their property. [Calif. Civil Code §1714(a)] Landlords need to take safety precautions for unsafe conditions that are **reasonably foreseeable**. This duty to assure the safety of others occurs when:

- prior occurrences exist (such as assault or robbery due to unsafe conditions);
- the unit lacks ordinary security installments, such as adequate door locks and lighting; or
- housing and building codes specify safety measures to be taken by the landlord.

When a reasonably foreseeable danger exists which is known to the landlord and a tenant or visitor is injured on the premises, the landlord is typically liable for the resulting injuries due to their failure to install security features or take security measures to protect others on the property from the risk of an injury from the known danger.

However, the definition of "reasonably foreseeable" is relative to conditions bringing about the injury. Thus, courts apply the standard on a case-by-case basis, determined by the surrounding facts. As pointed out in *Castaneda*, determining reasonable foreseeability requires balancing:

- the **probability of harm** to others; with

- the **burden of duty** imposed on the landlord.

Ultimately, the foreseeability of harm needs to be great enough to justify imposition of a duty on the landlord to implement additional safety measures. When the foreseeability of harm to others on the property from a dangerous situation or condition is small compared to a high burden on the landlord, courts excuse a landlord's inaction.

For example, a property with no prior incidents of crime presents minimal foreseeability of harm to tenants and guests, while employing a security guard places a high burden of costs on the landlord in all but the largest properties. Here, the landlord is not liable for harm to a tenant caused by a crime against them on the property. [**Ann M. v. Pacific Plaza Shopping Center** (1993) 6 C4th 666]

However, when harm can be prevented by simple means, thus placing a low burden of cost on the landlord, a lesser degree of foreseeability of harm is the rule for imposing liability on the landlord.

For example, when a landlord fails to replace a missing window pane on the entry door of a rental unit and a criminal forces their entry through the window, the landlord is liable. Here, replacing the window places a small burden on the landlord to mitigate danger, regardless of how foreseeable the crime was. [**Vasquez v. Residential Investments, Inc.** (2004) 118 CA4th 269]

Other factors considered by courts when determining reasonable foreseeability include:

- any consequences to the community for imposing a duty on the landlord;
- the cost and availability of insurance to cover the risk;
- the degree of certainty a tenant will be harmed;
- the correlation between the landlord's (in)action and the tenant's injuries; and
- the moral blame placed on the landlord for their conduct.

Helpful rules to abide by:

1. When implementing a security feature to minimize crime is fairly simple and of modest cost, a landlord is best advised to follow through with it to reduce their exposure to liability.

2. When recurring criminal or dangerous conduct by a tenant or others creates a high level of foreseeable harm to others, a landlord is best advised to adopt appropriate security measures or remove the offending tenant.

Screening prospective tenants

Castaneda confirms landlords cannot refuse to rent to prospective tenants they suspect of having gang affiliations or who “appear” to be of a type involved in criminal activity.

Such a screening practice encourages arbitrary **housing discrimination** on the basis of race, ethnicity, family composition, gender and appearance — a violation of the California **Fair Employment and Housing Act (FEHA)** and the federal **Fair Housing Act (FHA)** that separately expose the landlord to civil liability. [Calif. Government Code §12900, et seq.; 42 United States Code §3601, et seq.]

Further, landlords are prohibited from enforcing *blanket bans* on applicants based on their having any type of **criminal record**, according to recent guidelines provided by the *U.S. Department of Housing and Urban Development (HUD)*.

Landlords need not seek out criminal records since investigating every tenant imposes a significant burden on the landlord and deprives Californians of housing. Likewise, denying applicants who have any criminal record disproportionately impacts racial minority and low income groups which are convicted and incarcerated at higher rates — a discriminatory effect in violation of fair housing laws.

Thus, landlords who impose blanket bans on applicants with any criminal record are subject to civil penalties and tenant money losses for housing discrimination.

However, landlords may consider a tenant’s criminal history on a case-by-case basis and may exclude tenants with specific types of convictions involving conduct that is inappropriate in a housing complex to ensure the safety of existing tenants — though, again, this exclusion due to a tenant’s criminal convictions for acts endangering others is not mandatory.

To lawfully implement housing restrictions based on criminal history, landlords are required to be able to prove their screening policy justifiably serves a substantial **nondiscriminatory interest**, e.g., when a prospective tenant’s criminal

conviction relates to activity which poses a demonstrable threat to fellow tenants. [24 Code of Federal Regulations §100.500]

Thus, a landlord cannot rely on assumptions that a tenant with a criminal conviction poses a criminal risk to other tenants or their guests. The landlord needs to consider:

- the nature and severity of the activity leading to the conviction; and
- the amount of time that has passed since the crime occurred. [**Green v. Missouri Pacific R.R.** (1975) 523 F.2d 1290]

HUD recommends landlords also consider additional information about a tenant, such as:

- facts and circumstances surrounding the criminal conduct;
- the age of the tenant at the time of the crime;
- the tenant's rental history before and after the conviction; and
- evidence of rehabilitation.

Further, to avoid liability, a landlord needs to apply their screening methodology to all prospective tenants equally.

The takeaway: landlords owe no duty to screen tenants for criminal activity, but may carefully review criminal records of applicants and monitor property conditions to exclude those applicants, tenants and hazards they can show demonstrate a foreseeable risk to their tenants.

Provided By <http://journal.firsttuesday.us/>

Reprinted from **first tuesday** Journal — journal.firsttuesday.us

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