

SPECIAL DUTY OWED BY A LANDLORD TO TENANTS

Fact Pattern:

At the time Miss Smith rented an apartment from X Corporation, there was a doorman on duty 24 hours a day, an employee at the front desk observing the use of the elevators, and two garage attendants regulating who entered the building from the garage. Five years later, no doorman was present, the front desk was no longer attended, and the garage was left virtually unguarded. There was an increased number of criminal assaults against the tenants occurring in the common hallways of the building. Miss Smith and others had repeatedly informed X Corporation of these attacks, but nothing was done. A female

tenant was attacked in the hallway near Miss Smith's apartment, and two months later, Miss Smith was attacked in the same hallway. She sued, contending that X Corporation was liable for not providing adequate security measures.

Question:

Should a landlord have a duty to take steps to protect tenants from foreseeable criminal acts committed by third parties?

Rule

A landlord is responsible for maintaining the common areas of his property so as to minimize tenant exposure to an unreasonable risk of criminal attack.

Discussion

As a general rule, a private person does not have a duty to protect another from a criminal attack by a third person. However, the rationale of the general rule exonerating a third party from any duty to protect another from a criminal attack has no applicability to the landlord-tenant relationship in multiple dwelling houses. The landlord is no insurer of his tenants' safety, but he certainly is no bystander. The landlord is the only party with control over the common areas of the property. Therefore he, and not the tenants is in a position to take necessary protective



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steps. The landlord is not an insurer of the tenant's safety, but he is obligated to minimize the risk of foreseeable harm. Here, the landlord has notice of repeated criminal assaults and robberies, has notice that these crimes occurred in the portion of the premises exclusively within his control, has every reason to expect like crimes to happen again, and has the exclusive power to take preventive action, it does not seem unfair to place upon the landlord a duty to take those steps which are within his power to minimize the predictable risk to his tenants. Given the clear foreseeability of the attack and the lack of reasonable protective measures, the X Corporation was negligent.

