

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Good News for Landlords: Statutory Duties Not Owed to Guests of Tenants

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The Michigan Supreme Court recently held that the statutory duties owed to tenants by landlords under MCL 554.139 do not extend to guests of tenants or other visitors. In *Mullen v Zerfas*, Mich (2007), Defendant appealed from the lower court's denial of her motion for summary disposition in which it was held that the statutory duties owed to tenants extend to their guests as well.

The Supreme Court found that the Court of Appeals erred in holding that MCL 554.139 established a duty on the part of the landlords to guests of tenants. The Supreme Court reasoned that the covenants created by the statute only established duties of a landlord to a tenant. "By the terms of the statute, the duties exist between the contracting parties."

The Supreme Court held that landlords do not have a duty under MCL 554.139 to social guests of tenants. The case was remanded to the circuit court to be decided under the common law premises liability principles.

Of note, in *O'Donnell v. Garasic*, 259 Mich App 569 (2003), the Court of Appeals held that MCLA 554.139 established a general duty on the part of owners of leased residential property. Specifically, that those statutory

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In Michigan, the open and obvious defense cannot be used to defend against statutory violations, such as a violation of MCLA 554.139 (the Landlord Tenant Act). Until now, this included claims of statutory violations brought by guests of tenants and other visitors to the property.

In light of this recent decision by the Michigan Supreme Court, the statutory duties under MCL 554.139 are not applicable to guests of tenants, or any other non-tenant. Therefore, non-tenant claimants who are injured on the property may only pursue common law liability claims, which are subject to the open and obvious defense

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duties applied not only to tenants, but also to anyone else legally on the premises, such as guests of tenants. However, the Michigan Supreme Court has now ruled that the Court of Appeals erred in *O'Donnell*, and has reversed that decision.

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