



landowners' alert

DEFENSE STRATEGIES FOR PROPERTY OWNERS AND MANAGERS

8.10.04

Attention Landlords: Stop Paying for Your Tenant's Mistakes

By Jennifer M. Jenkins

Imagine you are a landlord, and your tenant's three-year-old daughter is playing with matches and starts a fire, causing over \$20,000 in damage to your property. Is your tenant liable for the fire damage caused by his or her own negligence? The answer is no, unless there is an express and unequivocal agreement by a tenant to be liable to the lessor or the lessor's insurer in tort for negligently caused fire damage to the premises. Absent such an agreement, the tenant has no duty to the lessor or insurer to support a negligence claim for such damages. This exact set of circumstances was addressed by the Michigan Court of Appeals in *New Hampshire Insurance v Labombard*, 155 Mich. App. 369; 399 N.W.2d 527 (1986), the first case of its kind in Michigan.

In *New Hampshire Insurance*, the court held that “[a] tenant may reasonably expect that his or her rental payments will be used to cover the lessor's ordinary and necessary expenses, including fire insurance premiums.” If the lease agreement does not contain “express and unequivocal” language regarding a tenant's liability to the landlord for damages caused as a result of his or her own negligence, the landlord has absolutely no cause of action in tort against the tenant to recover for these damages. The *New Hampshire Insurance* ruling has been adopted by the United States District Court for the Eastern District of Michigan¹ and has been extended by the Michigan Court of Appeals to include commercial leases² and guests in hotels³.

It is crucial, therefore, that the lease agreements between a tenant and landlord contain the express and unequivocal language discussed in *New Hampshire Insurance*. More specifically, the key language to be placed into a rental agreement in order to avoid any issues which may arise pursuant to *New Hampshire Insurance* is very short, simple and to the point:

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Tenant shall be liable for any and all damages caused by his or her own negligence.

With this language in a lease agreement, a landlord will be able to sleep easier at night, even if his tenant's three-year-old daughter is playing with matches (unless the landlord lives on-site).

¹ See *Allstate Insurance Co. v Kanellos*, 1994 U.D. Dist. LEXIS 8281 (1994)

² See *Reliance Insurance Co. v East-Lind Heat Treat, Inc.*, 175 Mich. App. 452; 438 N.W.2d. 648 (1989)

³ *Wausau Underwriters Insurance Co. v Crook*, 183 Mich. App. 462; 455 N.W.2d 309 (1989)

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