

# Negligent Tenants Leave Room for Exposed Landlords

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The transference of possession and control associated with a lease should absolve a landlord of liability related to the activities of the premises.

However, this is not always the case.

When considering general premises liability law, it is axiomatic “that landowners owe a general duty to invitees (1) to use reasonable care to maintain their premises in a reasonably safe condition and (2) to warn the invitee of any concealed dangers that the owner knows or should know about, which are unknown to the invitee and cannot be discovered by the invitee through due care,” *Morales v. Weil* (Fla. 3d DCA 2010). Furthermore, it is well established that the individual in actual possession and control is responsible for preventing anyone he or she knows to be threatening from entering the premises. That applies to the property owner, an agent, tenant, contractor or other possessor.

The cornerstone of premises liability cases that involve third-party criminal acts is the foreseeability of these particular acts. More specifically, a landowner has no duty to protect an invitee on its premises from criminal attack by a person over whom the landowner has no control, unless the criminal attack is reasonably foreseeable. In the 1981 case *Highlands Insurance v. Gilday*, the Fourth District Court of Appeal held that in order to hold a landowner responsible for protecting an invitee from criminal acts of a third party, a plaintiff-invitee must prove that the landowner had actual or constructive knowledge of prior similar criminal

acts committed upon invitees. Furthermore, a landlord may be liable when he has undertaken this duty to protect tenants from foreseeable criminal contact.

## Case Examples

In practice, these claims take the form of negligent security actions when tenants and/or their invitees are injured on the premises. In *Paterson v. Deeb*, the First District Court of Appeal held a landlord liable when a tenant was sexually assaulted in her unit by a trespasser. Among other reasons, the court opined that this particular crime was foreseeable because the premises was in a high-crime area where prior sexual assaults occurred. In the 2005 case *T.W. v. Regal Trace*, the Fourth District Court of Appeal considered a similar issue. That case involved a minor being sexually assaulted by a tenant in a different unit. The landlord knew about a prior similar incident but did not notify the tenants. Summary judgment in favor of the landlord was reversed, as the landlord’s awareness of this activity made the crime foreseeable.

When the foreseeability standard is not met, courts may side with the landowner. In *Ameijeiras v. Metropolitan Dade County* (Fla. 3d DCA 1988), the plaintiff was shot during an attempted robbery on a jogging trail. But no evidence was established that the county knew or should have known the existence of any violent crime, so the court held that the attack was not reasonably foreseeable as a matter of law. Additionally, the existence of a premises in a high-crime area is not alone sufficient enough

to put the landowner on constructive notice of a particular risk. In *Menendez v. Palms West Condominium Association* (Fla. 1st DCA, 1999), a tenant was shot in the head after opening his door. Along with other arguments, the plaintiff alleged that the apartment's location in a high-crime area made this shooting foreseeable. However, the court ruled that no duty to protect the tenant from a criminal act existed because there was no evidence any specific person had actual or constructive knowledge of any fact that would make the sudden attack against the tenant reasonably foreseeable.

It cannot be ignored that "the duty to protect others from injury resulting from a dangerous condition on the premises rests on the right to control access to the property," *Welch v. Complete Care* (Fla. 2d DCA 2002). Therefore, it is a fundamental principle of premises liability that the duty to use reasonable care and to warn exists only by those that are in possession

and control of the premises. This duty is usually in the hands of the tenant, who is in possession and control. For instance, if a landlord completely surrenders both possession and control of the premises to a tenant, the landlord will not be held liable for injuries sustained by third parties since the duty to protect third parties from injuries incurred on the premises rests on the party who has the right of possession, custody and control.



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