

Don't pay for tenant mistakes

How to make sure you can recover damages caused by tenant negligence

Imagine that you are a landlord, and your tenant's 3-year-old daughter is playing with matches and starts a fire, causing more than \$20,000 in damages to your property. Is your tenant liable for the fire damage caused by his or her negligence?

"The answer is no, unless there is an express and unequivocal agreement by the tenant to be liable to the lessor or the lessor's insurer in tort for negligently caused fire damage to the premises," says Mark Masters, senior partner with Secretst Wardle.

Without an agreement, the tenant has no duty that would support a negligence claim for such damages, according to the Michigan Court of Appeals. In 1986, the court ruled in *New Hampshire Insurance v. Labombard* that a tenant was not liable for fire damages.

Smart Business spoke with Masters about landlord/tenant relationships and how a landlord can keep from getting burned.



Mark Masters
Senior partner
Secretst Wardle

How does the Michigan Court of Appeals case affect the landlord/tenant relationship?

This case and its progeny have set the boundaries for a tenant's liability to a landlord when a loss occurs as a result of the tenant's negligence. In *Labombard*, after the defendant tenant's daughter started a fire, rendering the apartment uninhabitable, the plaintiff insurance company sought damages based on the tenant's negligence.

The court examined the rental agreement, which suggested this liability was not contemplated by the parties and evidenced the mutual expectation that the landlord would obtain fire 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."

Because the agreement did not contain an express and unequivocal clause holding the tenant liable to the landlord and/or fire insurer in tort for negligently caused fire damage, the tenant had no duty that would support a negligence claim for such damages. So, if the lease agreement does not contain 'express and unequivocal' language regarding a tenant's liability for damages caused as a result of his or her own negligence, the landlord has no cause of action to recover these damages.

What type of negligence does the ruling affect?

The *Labombard* ruling has been adopted by the U.S. District Court for the Eastern District of Michigan and extended by the

Emergency Medical Service, (1991), the lease agreement was silent regarding, among other things, who was to obtain fire insurance or how the risk was to be allocated.

Following a fire that occurred as a result of the tenant's negligence, damage to the real property was covered by a policy secured by the landlord. It did not cover, however, damage to personal property or lost profits. The court held that the landlord was entitled to damages to personal property and lost profits if it could be shown that the damages were due to the tenant's negligence.

In light of the ruling in *Antoon*, it appears that a landlord is entitled to recover against a tenant for damages to the landlord's personal property and lost rental profits caused by the tenant's negligence, although the *Labombard* rule would preclude the landlord from recovering for damages to the real property.

How can a landlord avoid Labombard?

The only discussion distinguishing a set of circumstances from the *Labombard* rule can be found in another Michigan Court of Appeals case, *Stefani v. Capital Tire*, (1988). In *Stefani*, a tenant appealed a jury verdict awarding the landlord damages following the destruction of the landlord's building by fire, which the tenant conceded it negligently caused. The lease agreement contained the following provision: *Tenant shall keep the premises fully insured against fire and casualty and plate glass damage.* In *Stefani*, the lease was not silent on fire insurance. The tenant agreed to pay all premiums for insurance against loss by fire and to keep the premises fully insured against fire damage. The tenant could not reasonably believe that a portion of its rental payment was allocated to fire insurance premiums.

The court concluded that the lease was 'clear and unambiguous' regarding defendant's duty to obtain fire insurance, and it was of no consequence that defendant did not expressly assume liability for damages caused by negligence. To avoid court battles and semantic debate, it is crucial that the lease agreement contain the express and unequivocal language discussed in *Labombard* and, more specifically, the key language as suggested in *Stefani*: *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 may sleep easier at night. <<

Michigan Court of Appeals to include other types of damage to property, aside from fire loss, caused by the tenant's negligence. In *The Milbrand Company v. Lumbermens Mutual Insurance Co., et. al.*, (1989), a section of the roof of the leased premises collapsed, and the landlord sought damages from tenants alleging they were negligent in allowing snow and ice to accumulate on the roof in violation of the lease provisions. The lease required tenants to obtain insurance on the premises for loss from fire or other casualty in an amount not less than 80 percent of the replacement cost. Also, if defendants failed to adequately insure the premises, the plaintiff could obtain insurance and charge defendants the cost of the insurance as additional rent. The plaintiff sued for negligence, arguing that insurance proceeds did not cover the entire loss and defendants were responsible for the balance.

The court, applying the logic in *Labombard*, held that the lease agreement placed the duty on the landlord to ensure that the building was adequately insured against casualty loss, and the duty of the tenants was to merely cover the cost of the insurance.

What damages are covered?

The Michigan Court of Appeals has declined to extend *Labombard* to preclude a tenant's liability for all damages occasioned by the tenant's negligence. In *Antoon v. Community*

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