

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Statutory Duty Applies to Tenant's Guest

By Mark F. Masters

In *Bechtelheimer v. Yousif*, unpublished decision of the Michigan Court of Appeals, the Court held that the duties created by the landlord tenant statute (MCL 554.139) applied to a guest of a residential tenant. Therefore, the Defendant landlord could not avail himself of the open and obvious defense.

Plaintiff was a social guest of the tenant of a single-family residential home owned by Defendant. Plaintiff testified that, as he was entering the home, his foot became lodged under the raised threshold of the front door. Plaintiff's complaint alleged that the threshold of the front door was defective, and that Defendant had notice of the defect and "failed to repair, replace or maintain" the threshold in a safe manner within a reasonable period of time. Plaintiff presented evidence suggesting that the tenant, Robert Gray, informed Defendant of a problem with the threshold several months before the incident occurred in the context of mediating a dispute between Gray and Defendant concerning rent and repairs. Gray testified that the threshold would "pop up frequently."

Defendant raised the open and obvious defense, among others, to try and defeat Plaintiff's claim. Plaintiff relied on MCL 554.139, which states:

- (1) In every lease or license of residential premises, the lessor or licensor covenants:
 - (a) That the premises and all common areas are fit for the use intended by the parties.
 - (b) *To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety*

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This case is perhaps the first word from the appellate courts on the issue of whether a guest of a residential tenant is entitled to the protections afforded residential tenants under MCL 554.139.

Fortunately, *Bechtelheimer* is unpublished and therefore not binding on trial courts nor subsequent panels of the Michigan Court of Appeals. Strangely, there was very little analysis on why MCL 554.139 should apply to tenants, and there seemed to be little argument raised by Defendant in this regard.

This continues to be a highly contested issue by counsels for plaintiffs and defendants. Ultimately, it will be decided by the Michigan Supreme Court. Until then, any analysis of a case involving an injured guest of a residential tenant should consider the possible application of MCL 554.139 and the possibility of the inapplicability of the open and obvious defense.

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laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants willful or irresponsible conduct or lack of conduct.

- (2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.
- (3) The provisions of this section shall be liberally construed . . . [Emphasis added.]

Plaintiff argued that the statutory duties could not be defeated by the common law open and obvious defense. Defendant argued that the statutory duty applied only to a tenant and not a guest. The Court relied on *Crawford v Palomar*, 7 Mich App 21 (1967), which involved a similar argument by a defendant in a personal injury case sounding in another landlord tenant statute (MCL 125.471), and held:

"We see no reason to make any distinction between the tenant and his guest in this regard. The statute imposes a duty in favor of anyone lawfully on the premises.' A different result is not warranted here."

Therefore, Defendant was not entitled to assert the open and obvious defense to defeat the claims brought by a guest of Defendant's tenant.

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