

OREGON LAW UPDATE

Landlord-Tenant Relationship Does Not Defeat Oregon Tort Claims Act Immunity

case in point...

From the desk of Bob Smith: Under Oregon statutory law, residential landlords have a duty to their tenants to maintain their properties in a habitable condition, including maintaining the common areas in good repair. This is in addition to the common law doctrine that landlords must make their property reasonably safe for their business invitees, and that duty requires possessors to exercise due care to discover conditions on the premises that create an unreasonable risk of harm to invitees or warn them of the risk so as to enable them to avoid the harm. However, if the residential landlord is a public agency, then a tort claim against the landlord can be barred under the Oregon Tort Claims Act (“OTCA”).

Claims Pointer: Under the OTCA, public bodies are immune from liability for any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused. This duty must be in tort, and not contract. The mere existence of a contractual relationship between the parties does not negate the immunity as the alleged breach must be from a contractual duty. Otherwise, the public body is granted immunity from liability under the OTCA.

Jenkins v. Portland Hous. Auth., 260 Or. App. 26 (2013)

Plaintiff (“Jenkins”) rented an apartment in a public housing complex operated by defendant Housing Authority of Portland (HAP). In July 2009, as Jenkins was walking to her apartment through a common hallway of her building, she slipped and fell in a puddle of water that had leaked from a broken washing machine in a nearby laundry room, resulting in injuries to her foot and ankle. She brought this action against HAP, seeking damages under the habitability provisions of the Oregon Residential Landlord and Tenant Act (ORLTA) as well as a violation of the rental agreement.

The parties filed cross-motions for summary judgment on the question of liability. The trial court determined that HAP, as a public body, had discretionary immunity under the OTCA, which states that every public body is immune from liability for “[a]ny claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused,” and was therefore immune from liability for the plaintiff’s injury. Based on this determination, the trial court judge granted HAP’s motion for summary judgment and dismissed Jenkins’ motion as moot.

Jenkins appealed; asserting that the trial court erred in applying the OTCA to her claim because a claim brought under the ORLTA arises from a rental agreement, a contract, and therefore is not a tort claim for the purposes of the OTCA. Jenkins argued

that under Oregon law, there is an exception to the OTCA for torts involving a breach of a duty from contract and that the landlord-tenant relationship between Jenkins and HAP was created in contract under the rental agreement.

The Court of Appeals stated that for purposes of the OTCA, as a general rule, any breach of a legal duty resulting in damages, other than those created by contract, is a tort, whether that duty is imposed by the common law or by statute. However, the court went on to rule that a duty arising from contract as used under the OTCA is a duty created by the contract itself, and not a duty imposed by common law or statute. For purposes of the OTCA, Oregon case law has made a distinction between tort claims that arise in the course of a contractual relationship and those claims that arise from the breach of some express or implied term in the underlying contract itself.

Here, Jenkins’ claim was not based on any duty that arose from an express or implied term of the rental contract itself. Rather, Jenkins’ claim was based on the breach of statutory duties that arise from the landlord-tenant relationship. Under the ORLTA, landlords are subject to habitability requirements regardless of whether the parties manifest any intention of agreement to those terms. This duty is imposed by statute and is independent of the terms of a rental agreement. HAP’s duty to plaintiff arose from the ORLTA, and not from the rental agreement itself. Therefore, the Court of Appeals affirmed the trial court’s determination that Jenkins’ claim under the ORLTA is a tort claim subject to the OTCA.



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