



### ***Court Rules that Implied Warranty of Habitability Does Not Extend to Tenant's Guest***

**From the Desk of Kyle Riley:** Under common law in Washington, landowners may be liable for failure to maintain a safe and habitable premises. But where the landlord owns a house that is occupied by a tenant, does the landlord owe a duty to exercise reasonable care so to ensure the deck does not pose an unreasonable risk of harm to the tenant's guests? Read on to find out.

**Claims Pointer:** In this premises liability suit, the Washington Court of Appeals determined that because the deck was not a common area, the landlord was not deemed to be a possessor, and as such, did not owe the tenant's guest a duty to maintain the deck in a reasonably safe condition. The court also held that the implied warranty of habitability extends only to tenants and has not been adopted in the context of the tenants' guests and other entrants. This case identifies a critical difference between the duty a landlord owes to tenants and the duty they owe to guests of tenants.

#### ***Phillips v Greco, 75911-6-1, Washington Court of Appeals Div. I (May 7, 2018) (unpublished)***

Just as Donna Phillips (hereinafter "Plaintiff") left her boyfriend's home, she realized that she had forgotten her cell phone. Plaintiff walked to the back of the house but when she placed her foot on the step leading to the deck, the step broke, causing her leg to fall through the broken step. Kathleen Greco (hereinafter "Defendant") owned the house, and rented the main house to Plaintiff's boyfriend and his roommate. The house also contained a mother-in-law unit, which was rented by different tenants under a separate lease agreement. Plaintiff's boyfriend and his roommate had exclusive access to the deck, and tenants of the mother-in-law unit did not have access to the deck. As a result of injuries stemming from the fall, Plaintiff filed suit against the landlord. Defendant responded with a motion for summary judgment, which the trial court granted. Plaintiff appealed the trial court's decision to grant summary judgment.

The Washington Court of Appeals first considered whether Defendant breached a duty owed to Plaintiff on the basis that the deck was considered a common area. According to the court, while a landlord has a duty to maintain the common areas of the premises in a reasonably safe condition, the landlord does not have a duty to "repair noncommon areas absent an express covenant to repair." Going into more detail, the court explained that a "possessor of land" owes a duty to exercise reasonable care to discover conditions that pose an unreasonable risk of harm to invitees. However, a landlord is not deemed to be a "possessor" of noncommon areas. Turning to the case at hand, the court noted that Plaintiff's boyfriend possessed the entire house, which included the deck. The court found that while Defendant was an owner of the house, she was not the possessor of the deck because the deck was not a common area. As the tenants, Plaintiff's boyfriend and his roommate were possessors of the deck. As a result, the court determined that Defendant did not owe Plaintiff a duty of care.



**Kyle D. Riley**

kdr@smithfreed.com

**Phone:** 206.576.7575  
**Fax:** 206.576.7580  
www.smithfreed.com

**Washington Office**  
1215 4th Ave, Suite 900  
Seattle, WA98161





Plaintiff also argued that Defendant owed her an implied warranty of habitability. Washington courts have upheld a landowner's liability by relying on the Restatement (Second) of Property § 17.6 (Am. Law Inst. 1977), which provides that a landlord is liable for physical harm to tenants and their guests for harm caused by:

a dangerous condition existing before or arising after the tenant has taken possession, if [the landlord] has failed to exercise reasonable care to repair the condition and the existence of the condition is in violation of:

- (1) an implied warranty of habitability; or
- (2) a duty created by statute or administrative regulation.

(emphasis added). The court however pointed out that Washington has only adopted section 17.6 in negligence suits brought by a tenant against the landlord. The court looked to a previous Washington Court of Appeals decision which noted that "section 17.6 has not been adopted in the context of nontenants." Because Plaintiff offered no legal authority that extended section 17.6's implied warranty of habitability to anyone other than tenants, the court concluded that the implied warranty of habitability did not extend to Plaintiff. As a result, the Washington Court of Appeals upheld the trial court's dismissal of Plaintiff's claims.

**NOTE:** This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

View full opinion at <https://www.courts.wa.gov/opinions/pdf/759116.pdf>

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**Kyle D. Riley**

kdr@smithfreed.com

**Phone:** 206.576.7575  
**Fax:** 206.576.7580  
[www.smithfreed.com](http://www.smithfreed.com)

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