



How to Help Landlords Avoid High Judgement Habitability Claims

In parts of the U.S., the housing market remains locked in a perpetual impasse between high demand and low inventory of affordable residences.

In heavily populated states such as California and much of the Northeast, soaring rents have led to overcrowding in multifamily dwellings, which can lead to living conditions more conducive to maintenance and habitability concerns such as sewer backups and vermin infestations.

Complicating matters is the rise in corporate ownership of rental properties and the departure of “mom-and-pop” landlords dedicated to maintaining a single location. To take advantage of efficiencies of scale, corporate owners are inclined to spread management and maintenance resources across an array of properties, sometimes resulting in an inability to respond quickly or adequately to reported problems.

This environment has led to an increasing trend of tenants filing habitability lawsuits against current and former landlords, often seeking punitive damages and attorney’s fees (where allowed by contract or statute) in addition to statutory penalties.

In recent years, jury awards and settlements in certain jurisdictions have dramatically increased from \$15,000 to closer to \$50,000 per plaintiff. Juries in more aggravated and higher publicity cases have also issued awards from \$75,000 to more than \$1 million per plaintiff, depending on the severity of the damages demonstrated by the tenants.

The commercial general liability insurance policies covering these claims, however, often contain specific exclusions for coverage of any jury award for attorney’s fees or punitive damages. Thus, creating potentially significant personal exposure for the landlords themselves.

This article will discuss the common causes for habitability claims and how retail agents and brokers can counsel insureds to mitigate risk through proactive property maintenance and detailed recordkeeping.

CONTACT

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

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Warranty of Habitability

While California tends to have some of the most tenant-friendly laws in the country, and correspondingly the highest jury verdicts in findings of breach of habitability laws, most jurisdictions in the country recognize an implied warranty of habitability in every residential lease.

This means that any residential unit must be leased in a condition that meets the standards of local health and safety codes, which address matters such as providing working heaters, screens on windows and smoke detectors; controlling insect and vermin infestations; maintaining walls and countertops; maintaining pipes and electrical wiring, etc.

Federal regulations impose additional requirements on landlords in residential properties, such as addressing lead paint and providing adequate handicap accessibility under the Americans with Disabilities Act.

Habitability Claims and Lawsuits

Depending on the jurisdiction, claims for breach of the warranty of habitability may be either a contract-based claim or, in states where codified into law, may include claims for statutory violations and penalties.

Habitability suits can range from a single individual plaintiff in a single apartment unit to dozens of plaintiffs

residing in dozens of units in a large apartment complex or, in some cases, even class actions.

Most commonly in a habitability suit, the defendants consist of the owner of the residential apartment unit or complex and the property management company charged with the day-to-day maintenance of the property.

Generally, the landlord's insurance policy will provide a defense for the property management company because property management agreements usually require landlords to indemnify them and to list them as an additional insured on the policy.

Addressing a Claim

To make a claim for an uninhabitable apartment, the tenant must notify a landlord of the substandard condition and give them a reasonable time to remedy, or cure, the condition.

It is impossible for a landlord to know many conditions inside an apartment unit unless and until the tenant themselves notify the landlord of the problem, which creates an affirmative obligation on the tenant to advise the landlord of the alleged condition. Thereafter, the landlord must take appropriate steps to rectify the problem.



Limiting Exposures for Habitability Claims

The best defense for landlords in habitability claims is to be proactive in the maintenance of their properties—particularly regular maintenance to roofs, plumbing, electrical systems and pest control treatments—and to keep excellent records of building repairs and ongoing conditions.

While it may not eliminate all potential liability for the landlord, lease agreements should include a clause regarding the tenants' responsibility to keep the unit clean, promptly report any maintenance issues to management, and pay for any damages caused by themselves or their guests.

It is not uncommon for a tenant to have caused or contributed to the conditions of the unit because of substandard cleaning and maintenance practices. For example, this is commonly seen with infestations (which can result from failure to clean) or sewage backups (which can be from tenant-caused clogs to pipes or flushing improper materials down toilets).

The following recordkeeping best practices can help a landlord more effectively fight a habitability lawsuit.



Take photos of vacant units prior to leasing and for any repairs during the tenancy which reference what maintenance was required and whether such maintenance resulted from regular wear and tear or was tenant-caused.



Conduct a pre-move in walkthrough, signed by the tenant, with the tenant noting any existing blemishes and certifying that the tenant moved into a clean and habitable unit.



When maintenance and repairs are necessary, create an inspection report with detailed descriptions and photos of the conditions, both before and after repairs, to document both cause and remedy.

Takeaway

It's not always possible to avoid a tenant claim, but by taking measures to proactively maintain a building, documenting responsiveness to maintenance issues, and retaining records of ongoing living conditions, a landlord can reduce exposure to large judgements and keep insurance premiums down.

The specialists in Amwins' real estate practice have expertise in risk facts and coverage options that can help protect landlords if lawsuits arise. Contact your Amwins broker for assistance on specific accounts.

About the Author

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