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Landlord's Duty to Prevent Harm Tested Again

BY PAUL C. BAUER • SEPTEMBER 11, 2015

The Massachusetts Court of Appeals has again reviewed the issue of a landlord's duty to prevent harm. In [Carine Belizaire v. Deborah A. Furr](#) (September 11, 2015), the court examined a landlord's liability where a victim was shot and killed at the landlord's property. The court concluded that the plaintiff, administratrix of the victim's estate, could not establish the essential elements of a negligence claim and therefore upheld the lower court's ruling for the landlord. Read the entire Court of Appeals opinion [HERE](#).

The court reiterates the general standard that "For the defendant '[t]o be liable for negligent conduct, [she] must have failed to discharge a duty of care owed to the [victim], harm must have been reasonably foreseeable, and the breach or negligence must have been the proximate or legal cause of the [victim's] injury.'" For landlords, there are important best practices for managing rental property that we can take from this case.

- Always create a lease or tenancy with a written document. In *Belizaire v. Furr*, the landlord did not have a written lease. A tenancy limits the landlord's control over the property and "substantially increases the plaintiff's burden in establishing that the [landlord] owed the victim a duty to protect against the criminal acts of third parties". It is possible to establish an oral lease, but it is best to put the issue to rest with a written lease. This lease should provide for the payment of rent and should provide the tenant with the sole right to occupy the unit (subject to landlord access rights).
- Provide in that lease that criminal acts are grounds for termination of the lease and eviction from the property. The court noted that liability has been imposed on landlords where a person legally on the premises is attacked, and the owner or landlord knew of or should have known of both the previous attacks and the potential for a recurrence and failed to take measures to make the premises safer. In *Belizaire v. Furr*, there was no history of criminal or violent acts occurring in the unit or with respect to the occupant. If there is such a history, a landlord will need the legal right to remove the risk by removing the tenant.
- Landlords should actively manage their property. If a violent event occurs on the property, a landlord should take immediate steps to make the property safer. Note, however, that there are specific eviction and other protections

for victims of domestic violence.

Belizaire v. Furrs serves as a reminder that landlords should in all occupancy arrangements use a written lease and actively manage the property so that they can rebut a claim that a violent act on the property was foreseeable.