130.00

LANDLORD AND TENANT

130.01 Incident On Leased Premises--Latent Defect

If a landlord either knows about an existing defect on the premises which is not readily apparent, or knows of facts and circumstances which would indicate that there is such a defect, then he must tell his tenant about it [before the tenant moves in] [at the time of the letting]. However, a landlord need not warn his tenant about a defect which the tenant could have discovered by a reasonable inspection.

Heading, Notes on Use, and Comment revised February 2023.

Notes on Use

If there is no dispute as to the fact the landlord knew about the defect, use the following in lieu of the first sentence: "Usually a landlord must warn his tenant about defects in the premises which are not readily apparent."

This instruction is not intended for use when the incident occurs on that part of the premises reserved for use by all the tenants, such as hallways or stairs. In that case, IPI 130.02 should be used.

Do not use this instruction where the plaintiff is a small child. *See* Rahn v. Beurskens, 66 Ill.App.2d 423, 213 N.E.2d 301 (4th Dist.1966).

Comment

As of July 1, 2023, the Illinois Legislature amended certain statutes replacing "accident" with "crash" to clarify that not all crashes are accidental. Crash encompasses all types of motor vehicle impacts and collisions, including, but not limited to, an impact or collision caused by negligence, willful and wanton conduct, or an intentional act. P.A. 102-0982. The IPI Committee recommends use of the term "collision" or "incident" in lieu of the term "crash."

A landlord must tell a tenant of a defect on the premises about which he knows or, from facts known to him, should know, and which could not be discovered by the tenant after a reasonable inspection. Mercer v. Meinel, 290 Ill. 395, 401; 125 N.E. 288, 290 (1919) (it was proper to direct a verdict when there was no evidence "that the defendant knew or from any fact or circumstance ought to have known" of an improperly vented exhaust from water heater in bathroom); Borggard v. Gale, 205 Ill. 511, 514; 68 N.E. 1063, 1064 (1903) (verdict for defendantwith regard to an obvious hole in the floor affirmed); Sunasack v. Morey, 196 Ill. 569, 63 N.E. 1039 (1902) (it was error in effect to dismiss a complaint that alleged sickness was from sewer gas, the presence of which was known to the landlord and not known to the tenant); Hamilton v. Baugh, 335 Ill.App. 346, 82 N.E.2d 196 (4th Dist.1948) (plaintiffs did not prove that defendant landlord had knowledge of the rotted condition of the privy into the vault of which they fell); Taylor v. Geroff, 347 Ill.App. 55, 59; 106 N.E.2d 210, 212 (4th Dist.1952) (landlord had no actual knowledge of defects that made furnace explode and therefore was entitled to the directed verdict); Garcia v. Jiminez, 184

Ill.App.3d 107, 539 N.E.2d 1356, 132 Ill.Dec. 550 (2d Dist.1989) (verdict for defendant proper where jury could find from evidence that defendant did not and should not have known that the paint plaintiff's child ingested was peeling or contained lead); Kordig v. Northern Const. Co., 18 Ill.App.2d 48, 151 N.E.2d 470 (1st Dist.1958) (absence of extra handrail on stairway not a concealed or latent defect); Cromwell v. Allen, 151 Ill.App. 404 (4th Dist.1909) (no liability where defendant had no knowledge of rotted condition ofporch); Shields v. J.H. Dole Co., 186 Ill.App. 250 (2d Dist.1914) (no liability for injury to tenant's servant where landlord and tenant both had knowledge of the defective condition of the building); Soibel v. Oconto Co., 299 Ill.App. 518, 20 N.E.2d 309 (1st Dist.1939) (no evidence that landlord knew or should have known of rotted floor); Elbers v. Standard Oil Co., 331Ill.App. 207, 72 N.E.2d 874 (1st Dist.1947) (lack of oil in hydraulic lift not a latent defect); Farmer v. Alton Bldg. & Loan Ass'n, 294 Ill.App. 206, 13 N.E.2d 652 (4th Dist.1938) (jury question as to whether a cesspool covering was defective and whether defendant knew or should have known about the defect); Clerken v. Cohen, 315 Ill.App. 222, 42 N.E.2d 846 (1st Dist.1942) (lack of gutters which caused ice to form not a latent defect); Sollars v. Blayney, 31 Ill.App.2d 341, 176 N.E.2d 477 (3d Dist.1961) (judgment for plaintiff proper where evidence showed landlord knew of defect in roof which caused puddle on plaintiff's floor); Murphy v. Messerschmidt, 41 Ill.App.3d 659, 355 N.E.2d 78 (5th Dist.1976), *aff'd*, 68 Ill.2d 79, 368 N.E.2d1299, 11 Ill.Dec. 553 (1977) (texture of stairs not latent defect where fall was caused by severe rain); Webster v. Heim, 80 Ill.App.3d 315, 399 N.E.2d 690, 35 Ill.Dec. 624 (3d Dist.1980) (a single exit, lack of fire doors and provision of combustible furniture to other tenants were not latent defects).

A landlord has no duty, however, to notify a tenant of defects discovered after the time of letting. Long v. Joseph Schlitz Brewing Co., 214 Ill.App. 517 (1st Dist.1919).