130.02 Incident On Premises Reserved For Common Use

A landlord must use ordinary care to keep the [stairs, hallway, etc.] in a reasonably safe condition [for the purpose for which the [stairs, hallway, etc.] were reasonably intended].

Heading and Comment revised February 2023.

Notes on Use

This instruction is applicable where there is more than one living unit in the building and there are premises reserved for common use. The blanks should be filled in with items used in common, such as stairs, hallway, etc.

The bracketed phrase should be used where there is a dispute as to whether the premises were being used for a purpose for which they were reasonably intended. The phrase may not be appropriate in the case of a minor using the premises for purposes other than those for which the premises were reasonably intended. Kahn v. James Burton Co., 5 Ill.2d 614, 126 N.E.2d 836 (1955); Smith v. Springman Lumber Co., 41 Ill.App.2d 403, 191 N.E.2d 256 (4th Dist.1963) (verdict in favor of minor tenant proper where it was foreseeable that children would play on dangerous, unused fuel oil tank stored in side yard); Rahn v. Beurskens, 66 Ill.App.2d 423, 213 N.E.2d 301 (4th Dist.1966) (jury question as to whether it was foreseeable that a minor tenant might grasp a defective electrical wire while simultaneously grasping a water faucet); Drell v. American Nat. Bank & Trust Co., 57 Ill.App.2d 129, 207 N.E.2d 101 (1st Dist.1965) (owner of apartment building liable when empty oxygen tank stored in passageway was upset by tug of dog's leash tied to tank, injuring minor plaintiff).

The fact that a minor may be trespassing on a landlord's property is not a defense. Schranz v. Halley, 114 Ill.App.3d 159, 448 N.E.2d 601, 69 Ill.Dec. 883 (3d Dist.1983) (instruction improper which implied that if the jury found that the minor plaintiff, who was injured when she leaned against a defective railing and fell to the ground, was trespassing, she could not recover).

IPI 120.04 should be used in a case involving a minor whose rights are governed by the doctrine in the Kahn case. *See* Comment to IPI 120.04.

Comment

See Comment to IPI 130.01 regarding the use of "accident."

The landlord must use ordinary care to keep the premises reserved for common use reasonably safe. Durkin v. Lewitz, 3 Ill.App.2d 481, 123 N.E.2d 151 (1st Dist.1954) (it was negligent to permit ice to form on a second floor landing as a result of defective gutter);

Stevenson v. Byrne, 3 Ill.App.2d 43, 48, 120 N.E.2d 377, 379-380 (1st Dist.1954) (plaintiff fell because of a hole in the vestibule floor). Liability extends to injuries on the leased premises caused by negligence in maintaining the common premises. Ciskoski v. Michalsen, 19 Ill.App.2d327, 152 N.E.2d 479 (1st Dist.1958) (blocked chimney caused asphyxiation from fumes of gas heater); Mangan v. F.C. Pilgrim & Co., 32 Ill.App.3d 563, 336 N.E.2d 374 (1st Dist.1975) (building's infestation with mice caused plaintiff to encounter a mouse in her apartment, become frightened, and fall). This duty of the landlord does not go beyond maintaining the common premises for the uses for which they were reasonably intended. If the tenant puts the common premises to a different use, the landlord's duty ceases. McGinnis v. Berven, 16 Ill.App. 354, 356 (1st Dist.1885) (mandatory instructions were erroneous which did not limit use of a second story porch to its intended purposes where the porch gave way under the load of seven people and an ash box weighing one ton).

The landlord has no duty to remove natural accumulations of snow or ice regardless ofthe length of time which passes after the accumulation. Foster v. George J. Cyrus & Co., 2 Ill.App.3d 274, 276 N.E.2d 38 (1st Dist.1971) (rejecting dicta in Durkin, *supra*, indicating otherwise).

Liability may be incurred, however, when snow or ice is not produced or accumulated from natural causes, but as a result of artificial causes or in any unnatural way, or whendefendant's own use of the area concerned created the condition, and whether the condition has been there long enough to charge the responsible party with notice and knowledge of the dangerous condition. Bakeman v. Sears, Roebuck & Co., 16 Ill.App.3d 1065, 307 N.E.2d 449 (2d Dist.1974); Cupp v. Nelson, 5 Ill.App.3d 37, 282 N.E.2d 513 (1st Dist.1972) (error to grant new trial where jury found defendant negligent in spreading salt on some but not all of the icy steps upon which plaintiff fell); Webb v. Morgan, 176 Ill.App.3d 378, 531 N.E.2d 36, 125 Ill.Dec. 857 (5th Dist.1988) (verdict for plaintiff proper where jury could determine that an icy parking lot upon which plaintiff fell was the product of an unnatural accumulation caused by water running off snowbanks onto a common parking area and freezing); Lapidus v. Hahn, 115 Ill.App.3d 795, 450 N.E.2d 824, 71 Ill.Dec. 136 (1st Dist.1983) (ice formed because of defective roof was an unnatural accumulation).

The mere sprinkling of salt on a stairway, which may cause ice to melt, although it later refreezes, is not the kind of act which aggravates a natural condition and leads to a landlord's liability. Lewis v. W. F. Smith & Co., 71 Ill.App.3d 1032, 390 N.E.2d 39, 28 Ill.Dec. 57 (1st Dist.1979). A custom of gratuitous snow and ice removal does not give rise to a duty to continue to remove natural accumulations of snow or ice. Chisolm v. Stephens, 47 Ill.App.3d 999, 365 N.E.2d 80, 7 Ill.Dec. 795 (1st Dist.1977).