**Landmark Litigation Regarding Indoor Environmental Hazards**

Several important court cases have addressed a tenant’s right to a healthy home, as well as landlord liability when renting homes containing indoor environmental health hazards.” We analyze two cases that support tenants’ rights to healthy housing. At the federal level, the United States Court of Appeals for the 8th Circuit found that city codes related to indoor environmental hazards may be discriminatory under the Fair Housing Act if they are over-enforced against landlords who rent predominately to low-income, minority tenants. Washington State has also taken measures to advance tenants’ rights to healthy homes. In 2007, the Washington Supreme Court determined that a city ordinance requiring inspection of rental units did not violate tenants’ and residents’ right to privacy and due process.

Furthermore, landlord liability may differ from state-to-state, depending on each state’s regulations regarding indoor environmental toxins. In Illinois, we discuss three cases addressing landlord liability under warranty of habitability and tortious negligence. In 1972, the Illinois Supreme Court determined that landlords have a duty to repair rental properties, as such properties must be in habitable condition. In 1989, before the enactment of lead laws in Illinois, the Illinois Appellate Court ruled that landlords were only required to inform tenants of dangerous levels of lead paint in the home if they knew or had reason to know there was lead paint. However, in 2006, after the enactment of federal lead laws, the Illinois Appellate Court ruled that a landlord is liable for injury caused to a tenant’s child due to lead poisoning, whether or not the landlord knew about the dangerous lead in the home.

1. Federal Case Law

**Gallagher v. Magner**

*Result: A City’s Enforcement of its Housing Code May Violate the Fair Housing Act if Such Enforcement Disproportionately Impacts Low-Income, Minority Tenants*

United States Court of Appeals - 8th Circuit 2010

The City of Minneapolis enacted the Property Maintenance Code (“Housing Code”), which set minimum maintenance standards for residential properties. From 2002-2005, the City increased enforcement of the Housing Code specifically in rental units. Inspectors responded to tenants’ complaints, made proactive “sweeps” to identify Housing Code violations, and were instructed to “code to the max.” Ultimately, the City sought to put more pressure on the property owners to cure the defects.

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Lessors, with multiple violations for substandard conditions who leased to low-income, minority households, sued the City of Minneapolis, alleging that the manner in which the city enforced the Housing Code was discriminatory and in violation of Fair Housing Act (FHA). The FHA prohibits property owners and municipalities from blocking or impeding the provision of housing on the basis of race, color, religion, sex, familial status, or national origin. 42 U.S.C. § 3604(a)–(b).

Ultimately, the court found in favor of the Lessors’ on the FHA claim, stating that the violation was not the Housing Code itself, but how the City enforced it. The City's aggressive enforcement of the housing code burdened lessors' rental businesses, which indirectly burdened their tenants, as the overall quantity of affordable housing decreased. Furthermore, demographic evidence proved that African-Americans made up a disproportionate percentage of households in the City that relied on low-income housing. Therefore, it was reasonable to infer that racial minorities were disproportionately affected by the City's practices. Gallagher v. Magner, 619 F.3d 823 (8th Cir. 2010)

2. Illinois Case Law

Jack Spring, Inc. v. Little

Result: There is an Implied Warranty of Habitability in All Residential Leases in Illinois that Requires all Rental Units to be in a Safe and Habitable Condition

Illinois Supreme Court 1972

This case arose from multiple cases in which landlords sued tenants, who withheld rent due to the inhabitability of the rental units. These cases were consolidated and the Illinois Supreme Court considered whether there is an implied warranty of habitability in residential lease agreements. The landlords argued that there is no implied covenant to repair rental units imposed on landlords and the tenants’ duty to pay rent is independent of the condition of the home. The tenants argued that their obligation to pay rent was interdependent with the landlord’s obligation to maintain and repair the premises.

The court looked to Javins v. First National Realty Corporation, in which the court found that when a tenant signs a lease for a specified period of time, there is an expectation that the apartment will be fit for habitation for that time. Based on that reasoning, the Illinois Supreme Court held that when there is an oral or written lease, there is an implied warranty of habitability requiring landlords to keep their rental property in good repair and in compliance with applicable building codes.

Jack Spring, Inc. v. Little, 280 N.E.2d 208, 208-23 (1972)


Garcia v. Jiminez

Result: Prior to the Enactment of Lead Safe Laws, a Landlord is not Liable for Lead Poisoning and Injury Resulting from the Presence of Cracked and Chipping Paint in a Rental Unit if he did not have Knowledge of the Dangerous Condition

Illinois Appellate Court 1989
A young child living in a rental property ate paint chips and thereafter became lead poisoned. The court found that the landlord could not reasonably foresee that the child would become lead poisoned, and develop permanent neurological damage, as a result of the cracked paint chips. Therefore, the landlord is not liable for the injuries.

This case, however, was decided before lead laws were prevalent, and no lead disclosure was required at that time. Garcia v. Jiminez, 184 Ill. App. 3d 107 (1989).

**Price ex rel. Massey v. Hickory Point Bank & Trust**

*Result: Following the Enactment of Lead Safe Laws, a Landlord’s Violation of Lead Laws Supports a Finding of Negligence when a Child is Lead-Poisoned*

*Illinois Appellate Court 2006*

Tenants claimed that their children suffered from lead poisoning after renting a house from the landlord. The complaint claimed that the landlord was negligent for violating the city's municipal code and federal regulations on unsafe amounts of lead in the home.

The trial court found for the landlords, finding that they had no knowledge that the premises contained lead-based paint, nor did they knowingly violate the municipal code or federal regulations. However, the tenants appealed. The appellate court found for the tenants, concluding that whether the defendant knew he was violating code was irrelevant because the existence of a violation by itself is evidence of negligence.


### 3. Washington State Case Law

**City of Pasco v. Shaw**

*Result: Requiring Inspection to Determine Compliance with the Housing Code does not Violate the Washington State Constitution*

*Supreme Court of Washington, 2007*

Pasco, Washington enacted a city ordinance, whereby landlords are required to be licensed and recertified every two years to rent properties. To become licensed and recertified, landlords are required to present an inspection certificate showing compliance with health and safety standards. In addition, tenants can be evicted if they refuse inspection.

A landlord who failed inspection and did not qualify for a license, as well as a tenant who refused inspection, challenged the ordinance based on state and federal constitutional privacy concerns. However, because the landlord hires the inspector and determines when the unit will be inspected, in accordance with the tenant, the court decided that the program does not violate the state or federal constitution’s privacy rights. The landlord and the tenant also challenged the ordinance for being vague and violating due process. However, the court did not interpret the ordinance to be vague. On the contrary, the ordinance outlines who qualifies as an inspector and
when the inspections must be completed. Therefore, the court found that the ordinance neither violated the rights of the landlord nor the tenant and upheld the ordinance. City of Pasco v. Shaw, 166 P.3d 1157 (Wash. 2007).

**Failed Legislation in Response to Pasco v. Shaw**

After the Pasco v. Shaw ruling, the rental housing industry introduced SB 5495 and HB 1296 to overturn the court’s decision. While it was ultimately unsuccessful, the legislation would have prohibited local governments from requiring a landlord to hire a third party inspector. Additionally, legislators introduced SB 6459 in another effort to overturn Pasco. Also unsuccessful, it would have required probable cause civil search warrants to perform a rental housing inspection.