

An elderly man leased a barn to his neighbor for a term of three years. The neighbor took possession of the barn and used it for his farming purposes. The lease made the elderly man responsible for structural repairs to the barn, unless they were made necessary by actions of the neighbor.

One year later, the elderly man conveyed the barn and its associated land to his granddaughter "subject to the lease to my neighbor." The neighbor paid the next month's rent to the granddaughter. The next day a portion of an exterior wall of the barn collapsed because of rot in the interior structure of the wall. The wall had appeared to be sound, but a competent engineer, on inspection, would have discovered its condition. Neither the granddaughter nor the neighbor had the barn inspected by an engineer. The neighbor was injured as a result of the collapse of the wall.

The elderly man had known that the wall was dangerously weakened by rot and needed immediate repairs when the neighbor took possession but had not told the neighbor or his granddaughter. There is no applicable statute.

The neighbor brought an appropriate action against the elderly man to recover damages for the injuries he sustained. The granddaughter was not a party.

Which of the following is the most appropriate comment concerning the outcome of this action?

- A. The neighbor should lose, because he failed to inspect the barn.
- B. The neighbor should lose, because the granddaughter assumed all of the elderly man's obligations by reason of the neighbor's attornment to her.
- C. The neighbor should recover, because the elderly man knew of the danger but did not warn the neighbor.
- D. The neighbor should recover, because there is privity between lessor and lessee and it cannot be broken unilaterally.

Explanation:

Dangerous conditions on land

(landlord's duties)

Warn tenant of known latent (hidden) defects on land

Safely perform repairs

Ensure common areas are in safe condition

Maintain areas necessary for safe use of land (eg, walls, roof)

Keep land in good repair (lease provision required)

Protect entrants from dangerous condition on land leased for public purpose

Landlords have **no duty to warn** tenants about **dangerous conditions** on the premises **unless** those conditions are latent. Dangerous **latent defects** are conditions that:

the landlord **knows, or should know**, pose an unreasonable risk of physical harm

exist when the **tenant takes possession** *and*

could not be discovered by the tenant's reasonable inspection.

A landlord who breaches this duty is **liable** for **physical harm caused by the condition**—even after the landlord conveys the leased property to another.

Here, the elderly man knew that the barn wall was dangerously weakened by rot when the neighbor took possession. Since the neighbor's inspection of the barn would not have revealed the rot (only an engineer would have found it), the man had a duty to warn the neighbor about the wall. The man failed to do so and is therefore liable for the neighbor's injuries—even after conveying the barn to his granddaughter.

(Choice A) The neighbor's failure to inspect the barn is of no consequence because he could not have discovered the defect upon inspection.

(Choice B) Attornment occurs when a tenant accepts a new landlord in place of an old one. However, the new landlord does not become liable for dangerous latent defects until he/she has had a reasonable opportunity to discover and take effective precautions against them. Here, just one day had passed since the barn was conveyed to the granddaughter, so she had no reasonable opportunity to discover the defect.

(Choice D) There is privity of contract (shared interest under the lease) and privity of estate (successive rights to possess the property) between a lessor and lessee. Privity of estate can be broken unilaterally when either party conveys his/her entire interest under the lease, but privity of contract cannot. And though privity may create a duty, the neighbor cannot recover unless he also shows that duty was breached.

Educational objective:

A landlord must warn a tenant about dangerous latent conditions that (1) the landlord knows, or should know, pose an unreasonable risk of physical harm, (2) exist when the tenant takes possession, and (3) could not be discovered by reasonable inspection.

References

Restatement (Second) of Property § 17.1, cmt. l (Am. Law Inst. 1977) (landlord's liability for latent defects following a transfer of the landlord's interest).

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