130.00
LANDLORD AND TENANT

130.01 Accident 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.

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 accident 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

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 defendant with 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 of porch); 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., 331 Ill.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.2d 1299, 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).

130.02 Accident 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].

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

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.2d 327, 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 of the 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 when defendant'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).

130.03 Accident On Leased Premises--Landlord Undertakes Repairs

A landlord who undertakes to make improvements or repairs upon the leased premises is under a duty to use ordinary care in carrying out the work [even if the landlord was not under a legal obligation to make the improvements or repairs].

Notes on Use

Before this instruction can be given, there must be evidence of affirmative conduct which caused a defect. Saputo v. Fatla, 25 Ill.App.3d 775, 324 N.E.2d 34 (1st Dist.1975) (instruction properly refused where no evidence was presented linking general plumbing repairs with water on the floor of a bathroom); St. Mary's Hospital v. Auburn, 128 Ill.App.3d 747, 471 N.E.2d 584, 84 Ill.Dec. 55 (4th Dist.1984) (no liability in furnace explosion action for failing to inspect furnace where there was no evidence of the negligent performance of work on the furnace). Evidence of affirmative conduct may include a landlord's consistent course of conduct in making repairs, which may establish a duty to maintain plaintiff's premises. Jones v. Chicago Housing Authority, 59 Ill.App.3d 138, 376 N.E.2d 26, 17 Ill.Dec. 133 (1st Dist.1978) (landlord liable for failure to repair window latch where it had consistently made repairs in the past when notified of the need). Thus, failure to act can also impose liability where the landlord's course of conduct in consistently making repairs establishes a duty to maintain plaintiff's premises.

The bracketed material should be used when some point is made during the trial that the landlord undertook to make the repairs without compensation.

Comment

A landlord who undertakes repairs must use ordinary care in carrying them out whether fulfilling a contractual obligation or doing them gratuitously. Roesler v. Liberty Nat. Bank of Chicago, 2 Ill.App.2d 54, 118 N.E.2d 621 (1st Dist.1954); Jordan v. Savage, 88 Ill.App.2d 251, 232 N.E.2d 580 (1st Dist.1967) (plaintiff injured on stairs after landlord inadequately secured a bannister to a deteriorated plaster wall with straight nails); Watts v. Bacon & Van Buskirk Glass Co., 20 Ill.App.2d 164, 155 N.E.2d 333 (3d Dist.1958) (lessor liable for installing plate glass door instead of tempered glass); Sims v. Block, 94 Ill.App.2d 215, 236 N.E.2d 572 (5th Dist.1968) (landlord liable for negligent snow removal in parking lot); Williams v. Alfred N. Koplin & Co., 114 Ill.App.3d 482, 448 N.E.2d 1042, 70 Ill.Dec. 164 (2d Dist.1983) (summary judgment inappropriate where plaintiff alleged her fall was caused by the landlord's voluntarily shoveling a narrow path on a stairway which left a handrail inaccessible).

This duty extends to all those who may reasonably be expected to encounter the improved or repaired property. Brewer v. Bankord, 69 Ill.App.3d 196, 387 N.E.2d 344, 25 Ill.Dec. 688 (2d Dist.1979) (complaint alleging tenant's social guest injured by landlord's negligent repairs stated cause of action).