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Warranty of Habitability Does Not Apply to Condominiums Despite Recent Court Decision to the Contrary

Stephen Lasser · Wednesday, April 10th, 2019

Pursuant to the statute New York Real Property Law § 235-b enacted in 1975, every residential lease contains an implied warranty of habitability ("WOH"). This statutory WOH guaranties residential tenants that there will not be conditions in their apartments which are dangerous, hazardous or detrimental to their life, health or safety. Over time, New York courts started awarding rent abatements to residential tenants based on the WOH if there were defective conditions in their apartments, and today this is standard operating procedure in the residential landlord-tenant parts of New York courts. In fact, this abatement concept is so entrenched that the amount of a rent abatement that may be awarded by a court is fairly predictable based on the defective condition and the length of time it existed.

Even though cooperative shareholders are home owners and not residential tenants in the traditional sense, New York courts have ruled that the WOH is still applicable, which is not surprising because technically cooperative shareholders are residential tenants under proprietary leases with the cooperative corporations in which they are shareholders. As a result, if a cooperative shareholder has a water leak or other maintenance condition in his or her apartment, which is the cooperative corporation's responsibility to address and it is not properly addressed, the shareholder may be entitled to withhold rent/maintenance or obtain a retroactive abatement pursuant to the statutory WOH.

It is also not surprising that New York condominium unit owners have tried to imitate cooperative shareholders by trying to invoke the WOH and withholding common charge payments when they have maintenance and repair issues in their apartment units, which they believe are their condominium associations' responsibility to address. This theory was first tested in 1993 by a condominium unit owner who was suffering from water leaks into his unit in the seminal case Frisch v. Bellmarc. The appellate court in Frisch v. Bellmarc rejected the argument that the condominium unit owner could withhold the payment of common charges or be eligible for a common charge abatement based on a breach of the statutory WOH because condominium unit owners own their units pursuant to a deed, and are not governed by a residential lease.

Since the appellate court precedent set by Frisch v. Bellmarc in 1993, literally hundreds of condominium unit owners and the attorneys who represent them have still tried to argue that the WOH should apply to condominium unit owners. And based on my firm's research, every single time this argument has been raised, it has been properly rejected by judges based on Frisch v. Bellmarc and a large body of case law that has dutifully followed this appellate court precedent.

However, recently a Manhattan lower court judge in the case Lincoln v. Residences at Worldwide Plaza ruled that a condominium unit owner, who lost the use of his terrace for seven months because the condominium used his terrace as a staging area for Local Law 11 facade work, was entitled to a common charge abatement due to the condominium's breach of the statutory WOH. Our firm did not represent either of the parties in this lawsuit, but some of our condominium clients have inquired about this decision and asked "if there is no lease how could the court rule that the condominium defendant was liable for a common charge abatement based on a breach of the statutory WOH?" And "if a condominium cannot evict a unit owner because there is no lease and no landlord-tenant relationship, how can a condominium unit owner be given the benefit of being able to withhold common charges based on the statutory WOH?" The simple answers to these questions is that the judge misapplied the law and reached the wrong result.

Sometimes when judges rule on a case they emphasize certain facts of the case in order to make the case fit the facts of case law precedent that previously ruled in a way that he or she believe would be proper in the case currently before them. The judge's ruling in Lincoln v. Residences at Worldwide Plaza took judicial discretion a step further and a step too far, and applied the facts to case law precedent applicable to cooperatives where the statutory WOH is applicable, even though the case before her involved a condominium unit without a lease.

This is an unfortunate result for the defendant condominium as well as all other condominiums because now other unit owners and their attorneys may look to this case and incorrectly believe that the WOH is applicable to them. The good news is that because this is a lower court decision it technically has no precedential value, and other judges should decline to follow this decision and should continue to deny common charge abatements for alleged breaches of the WOH, based on a plain reading of New York Real Property Law § 235-b and the appellate court precedent interpreting this statute established by Frisch v Bellmarc.

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