

EXTENT OF LANDLORD DUTY TO PROTECT TENANTS AGAINST CRIMINAL ACTS OF THIRD PARTIES

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A common issue that arises in the context of landlord-tenant relationships is the extent to which a landlord owes a duty to protect tenants and invitees against the criminal acts of third parties. Recently, in *Davis v. Regency Lane, LLC*, No. 1747, Sept. Term 2019 (Md. Ct. Spec. App. Jan. 28, 2021), the Court of Special Appeals revisited this issue in a reported opinion. The *Davis* case involved a wrongful death action against an apartment building owner, Regency Lane, LLC, brought by the estates of two teenagers who were shot and killed by an unknown assailant outside an apartment building in the parking lot. Plaintiffs alleged that Regency negligently failed to exercise reasonable care in providing adequate security measures on the premises to protect the tenants and invitees from foreseeable criminal activity. Through the course of discovery, Plaintiffs failed to provide any evidence regarding the circumstances of the shooting. The Circuit Court for Prince George's County granted Regency's motion for summary judgment, finding that Plaintiffs had failed to identify a dangerous physical condition that existed, that the shooting was a result of that condition, or that past criminal activities alerted Regency to the foreseeability of the deadly shootings. The Plaintiffs appealed.

In its discussion, the *Davis* court provided a summary of the duty owed. Generally, a landlord has no special duty to protect tenants against crimes perpetrated by third parties on the premises. The landlord does have a duty, however, to exercise reasonable care, under the circumstances, in areas within the landlord's control, such as common areas. If the landlord knows, or should know, of criminal activity against persons or property in the common areas, he has a duty to take reasonable measures, in view of the existing circumstances, to eliminate the conditions contributing to the criminal activity. The duty in that situation is to provide reasonable security measures to eliminate foreseeable harm.

For a landlord to have a duty to provide reasonable security measures, two things must be shown. First, a landlord must have the **knowledge** or should have knowledge based on the circumstances, that criminal activity on the premises has created a dangerous condition. Once a landlord has the requisite knowledge, the landlord must take reasonable measures to eliminate the condition contributing to the criminal activity. Second, the particular harm must be

foreseeable, i.e., a landlord of ordinary intelligence, based on the nature or past criminal activity, should have foreseen the harm suffered. If the harm is not the type that would be associated with the known criminal activity on the premises, there is no duty to take measures to eliminate that harm.

The court found that there were sufficient facts in the record to support the finding that Regency had knowledge of criminal activity, and that the shootings were a foreseeable harm of that criminal activity. Therefore, Regency owed a duty to the decedents to take reasonable security measures to eliminate that harm. The court noted, however, that the appellants had not shown that a dangerous condition contributed to the shooting. The court held that “where appellants produced no evidence regarding the circumstances of the shooting, appellants could not meet their burden to show that any failure by Regency to satisfy its duty to take reasonable security measures was the **proximate cause** of the shooting.” The court explained that where the breach of duty is the failure of a landlord to provide security measures against known criminal activity, proximate cause will be found if “the breach enhanced the likelihood of the particular activity.”

In its analysis, the court acknowledged that proximate cause ordinarily is a question of fact. However, the court explained that when plaintiffs fail to meet their burden of showing a viable theory of causation in a negligence case, summary judgment is proper. The court again emphasized that appellants produced no evidence regarding the circumstances of the shooting, how it occurred, or what precipitated it. As such, there was no evidence to support a finding that extra security measures could have prevented the shooting. The court explained that proof of causation could not be based on mere speculation. Based on this lack of evidence, the court determined that appellants failed to show that inadequate security measures caused the decedents’ deaths. Accordingly, there was no triable issue of material fact to present to a jury on the issue of proximate cause. Therefore the circuit court properly granted summary judgment in favor of Regency.