



## THE INTERPLAY BETWEEN TENANT POSSESSION AND LANDLORD CONTROL

**W**hat responsibilities do landlords have when a tenant's employee is injured while operating equipment within the leased premises? Can a landlord avoid responsibility for injuries to that employee simply because the tenant has exclusive possession of the leased premises?

A landlord's liability for injuries occurring within a leased property depends on several factors: the status of the injured party, which includes invitees and trespassers; the condition of the leased premises; the activities of the landlord and those of the tenant and/or the tenant's invitees; and the degree of landlord control of the leased premises.

### A CASE IN POINT

Recently, in the case of *Adamson v. Port of Bellingham*, the Supreme Court of Washington affirmed the legal proposition that a landlord is liable for injuries to a tenant's employee that occurred due to an equipment defect within the leased premises—even though the leased premises were in

the tenant's possession. The Port of Bellingham, Washington, the landlord in this case, leased a portion of the Bellingham Cruise Terminal (BCT) to the Alaska Marine Highway System. The lease granted the tenant exclusive possession of BCT offices and warehouses and the right to use a passenger ramp.

The ramp, which was maintained and repaired by the landlord, was operated from time to time by the tenant's employees. When the ramp was lowered in place, locking pins were inserted so that the steel cables on the pulley system would not hold all of the weight of the ramp. However, the pulley system could continue to unspool the wires while the locking pins were in place, creating slack in the cables. If slack was created and the locking pins were removed, the passenger ramp would fall until it caught on the wire.

At one point, while operating the passenger ramp, the locking pins were not in place and the tenant's employee was seriously injured. The plaintiff sued the landlord for negligence and sought damages.

The duty of care a landlord owes to a person

The duty of care a landlord owes to a person on leased premises **depends on the person's status as either an invitee, a licensee or a trespasser.**

on leased premises depends on the person's status as either an invitee, a licensee or a trespasser. The highest standard of care is owed to an invitee. In this case, the District Court determined that the plaintiff, the tenant's employee, was an invitee.

The District Court noted that the landlord was in the best position to minimize any safety risks by installing an interlock

system. It would have taken 15 minutes to install and cost less than \$1,000. This failure was determined to be a breach by the landlord of both its duty to the tenant's employee and its promise to perform repairs under the lease. The jury awarded the plaintiff in excess of \$16 million.

The Supreme Court of Washington affirmed the District Court's decision. The Supreme Court's decision was focused on lease provisions pertaining to who had control over the leased premises.

While the tenant had possession, the landlord nonetheless retained continued access to conduct maintenance and repairs; had unilateral authority to make changes to the property (whereas the tenant had to

get permission to make repairs); and had reserved the ability to repair and maintain the property. (The tenant had no such obligation.) Thus, in the language of the decision, the landlord had the "requisite ability and authority to reduce the risk of harm to entrants such that it was still in control of the property and, as a result, did not absolve the landlord of liability."

### **SAFETY FIRST**

Landlords that do not have sufficient control over leased premises do not have a general duty to protect invitees, visitors or tenants. When determining control, a court may look at rights that are attributed to ownership (e.g., the power and right to admit or exclude individuals



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*Adamson v. Port of Bellingham* decision:

**The landlord had the “requisite ability and authority to reduce the risk of harm to entrants such that it was still in control of the property and, as a result, did not absolve the landlord of liability.”**

from the leased premises); occupancy; control; or special use of the premises. The general assumption is that the person with the most control “of the property is in the best position to identify and prevent harm to others.”

When it comes to life safety and emergency matters, a key takeaway from *Adamson* is the need for landlords to understand the difference between possession and control. A landlord’s relinquishment of possession does not relieve it of its duty to assure that safety risks are minimized or eliminated, even though they retain control of the leased premises.

Ramps, ladders, elevators and other life safety equipment for ingress and egress can cause injury to the infrequent or one-time user, especially in the event of an emergency. The responsibility is on the landlord to identify and rectify safety risks with the equipment it owns and allow tenants to use and, when appropriate, provide explicit notice to tenants of potential risks.

In addition, to avoid the tragic circumstances that occurred in the *Adamson* case, landlords and property managers should consider programs to educate tenants and their invitees on how to handle equipment within the premises. This can range from equipment use to safe and orderly evacuation protocol. ■

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