July 2016
MPT-1 Library:
In re Whirley

Excerpts from Franklin Civil Code

Franklin Civil Code § 540 – Requirement of Tenantability

The lessor of a building intended for human occupation must put it into a condition fit for such occupation and repair all subsequent conditions that render it untenantable.

Franklin Civil Code § 541 – Untenantable Dwellings

A dwelling shall be deemed untenantable for purposes of Section 540 if it lacks any of the following:

(1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.

(2) Plumbing or gas facilities . . . maintained in good working order.

(3) Heating facilities . . . maintained in good working order.

. . .

(7) Electrical lighting, wiring, and equipment . . . maintained in good working order.

(8) Floors, stairways, and railings maintained in good repair.

(9) Interior spaces free from insect or vermin infestation.

Franklin Civil Code § 542 – Tenant's Remedies for Untenantable Dwellings

(a) If a landlord neglects to repair conditions that render a premises untenantable within a reasonable time after receiving written notice from the tenant of the conditions, for each condition, the tenant may:

(1) if the cost of such repairs does not exceed one month's rent of the premises, make repairs and deduct the cost of repairs from the rent when due;

(2) if the cost of repairs exceeds one month's rent, make repairs and sue the landlord for the cost of repairs;

(3) vacate the premises, in which case the tenant shall be discharged from further payment of rent or performance of other conditions as of the date of vacating the premises; or

(4) withhold a portion or all of the rent until the landlord makes the relevant repairs, except that the tenant may only withhold an appropriate portion of the rent if the conditions substantially threaten the tenant's health and safety.

(b) If the exercise of any of these remedies leads to an eviction action, a justified use of the remedies provided in (a)(1)–(4) in this section is an affirmative defense and may shape the tenant's relief in the event it is determined that the landlord has breached Section 540.

(c) For the purposes of this section, if a tenant makes repairs more than 30 days after giving notice to the landlord, the tenant is presumed to have acted after a reasonable time. A tenant may make repairs after shorter notice if the circumstances require shorter notice.

(d) The tenant's remedies under subsection (a) shall not be available if the condition was caused by the violation of Section 543.

(e) The remedies provided by this section are in addition to any other remedy provided by this chapter, the rental agreement, or other applicable statutory or common law.

Franklin Civil Code § 543 – Tenant's Affirmative Obligations

No duty on the part of the landlord to repair shall arise under Section 540 or 541 if the tenant is in violation of any of the following affirmative obligations, provided the tenant's violation contributes materially to the existence of the condition or interferes materially with the landlord's obligation under Section 540 to effect the necessary repairs:

(1) To keep that part of the premises which the tenant occupies and uses clean and sanitary as the condition of the premises permits.

(2) To properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits.

(3) Not to permit any person or animal on the premises to destroy, deface, damage, impair, or remove any part of the dwelling unit or the facilities, equipment, or appurtenances thereto.

* * *

Franklin Civil Code § 550 – Eviction Proceedings

(a) In an eviction action involving residential premises in which the tenant has raised as an affirmative defense a breach of the landlord's obligation under Section 540, the court shall determine whether a substantial breach of this obligation has occurred.

(b) If the court finds that a substantial breach of Section 540 has occurred, the court shall (i) order the landlord to make repairs and correct the conditions which constitute the breach, (ii)

order that the monthly rent be reduced by an appropriate amount until repairs are completed, and (iii) award the tenant possession of the premises.

(c) If the court determines that there has been no substantial breach of Section 540 by the landlord, then judgment shall be entered in favor of the landlord.

(d) As used in this section, "substantial breach" means the failure of the landlord to maintain the premises with respect to those conditions that materially affect a tenant's health and safety.

Burk v. Harris

Franklin Court of Appeal (2002)

Defendant Ashley Harris (Tenant) appeals the judgment entered in favor of plaintiff Roger Burk (Landlord) in this eviction action. The issue on appeal is whether the trial court misapplied the law when it found that the conditions proved to exist were nonsubstantial and therefore not a breach of the warranty of tenantability.

Landlord sought possession of the premises, forfeiture of the lease agreement, and past-due rent. Tenant asserted the defense of breach of the warranty of tenantability, set forth in Franklin Civil Code § 540, and the right to withhold rent under § 542(a)(4).

At trial, Tenant testified that the roof and windows of the premises had leaked during the entire term of her tenancy and, as a result, had caused water damage to the walls and floors and had damaged her personal property. Tenant also testified that the thermostat was broken and that the shower leaked. Tenant offered into evidence several letters she sent to Landlord complaining about the leaking roof and other conditions in the apartment, as well as photographs documenting the problems. Landlord denied receiving any such letters, asserted that he had not been inside the premises since Tenant moved in and did not have a key to the residence, and introduced before-and-after photos of repairs he had made upon learning of Tenant's complaints.

The trial court found that the conditions were not "substantial" as defined in Franklin Civil Code § 550. Accordingly, it entered judgment for Landlord for possession of the premises and past-due rent.

In *Gordon v. Centralia Properties Inc.* (Fr. Sup. Ct. 1975), the Franklin Supreme Court held that in every residential lease, there is an implied warranty of tenantability. In *Gordon*, the Franklin Supreme Court further held that a tenant who proves that the landlord has breached the warranty of tenantability is entitled not only to maintain possession of the premises but also to an appropriate reduction of rent corresponding to the reduced value of the premises. The *Gordon* court further held that a tenant is not entitled to a reduction in rent for minor violations that do not materially affect a tenant's health and safety. *Id.*

The *Gordon* decision is codified in the Franklin Civil Code. Under this statutory scheme, when a tenant raises breach of the warranty of tenantability as a defense in an eviction case, the trial court is required to determine whether a substantial breach has occurred. *See* §§ 542(b) and 550(a). If the court finds that there has been a substantial breach, it shall order the landlord to

make the repairs and correct the conditions caused by the breach, order that monthly rent be reduced by an appropriate amount, and award the tenant possession of the premises. § 550(b).

Section 540 requires that the landlord of a building intended for human occupation "put it into a condition fit for such occupation and repair all subsequent conditions that render it untenantable." Under § 541, a dwelling is untenantable for human occupancy if it lacks effective waterproofing and weather protection of roof and exterior walls, plumbing maintained in good working order, heating facilities maintained in good working order, and floors maintained in good repair.

Here, the trial court found that the premises were not properly waterproofed from the outside elements, the thermostat did not work, and the shower leaked. The trial court erred when it concluded that these conditions were nonsubstantial. These conditions are not merely cosmetic defects or matters of convenience but affect Tenant's health and safety.

Accordingly, Tenant is entitled to judgment on the defense of breach of the warranty of tenantability, to possession of the premises, and to an appropriately reduced rent. *See* §§ 542(a)(4) and 550(b).

To determine the appropriate reduction in rent, a trial court may either (i) measure the difference between the fair rental value of the premises if they had been as warranted and the fair rental value as they were during occupancy in unsafe or unsanitary condition, or (ii) reduce a tenant's rental obligation by the percentage corresponding to the relative reduction of use of the leased premises caused by the landlord's breach.

Additionally, the trial court must order Landlord to make the repairs necessary under the statute. These are issues for the trial court to determine on remand. Reversed and remanded.

Shea v. Willowbrook Properties LP

Franklin Court of Appeal (2012)

After suffering through two separate bedbug infestations in his apartment, plaintiff Jordan Shea moved out and filed a complaint against his landlord, Willowbrook Properties LP, seeking to recover rent he had paid for the apartment ($1,000/month for 16 months) and out-of-pocket expenses relating to the infestation ($2,000). After a bench trial, the trial court found Willowbrook responsible for the first infestation, but not the second. It awarded Shea a fraction of the damages he sought ($400), limiting his recovery to his documented out-of-pocket expenses and declining to award any rent recovery. Shea appeals.

The facts are as follows: within a few days of entering into a six-month lease with Willowbrook on July 1, 2010, Shea began to suffer from insect bites, which he discovered were the result of bedbugs. He reported this to Willowbrook, which sprayed his apartment, replaced his carpeting, and cleaned his apartment thoroughly to remove the bugs. While this work was being done, Shea stayed at a nearby motel. For several months after Willowbrook cleaned his apartment, Shea experienced no bedbug problems, so he believed that the problem had been corrected. In January 2011, he renewed his lease for an additional year; he then departed for a three-week study-abroad program. Upon his return, he started to get bedbug bites again; the bedbug problem continued throughout the renewal period, but Shea failed to report the second infestation to Willowbrook. He finally moved out of the apartment in October 2011, two months before the end of his lease.

A. Rent

The trial court denied Shea's claim that he was entitled to a full refund of all the rent he had paid over the course of his tenancy. When a landlord breaches the warranty of tenantability and creates an untenantable property, as is alleged here, a tenant has several options: (1) repair and deduct the cost of repairs if the cost of the repairs is less than one month's rent; (2) repair and sue, if the cost of the repairs exceeds one month's rent; (3) vacate the premises and be discharged of paying further rent; or (4) withhold some or all of the rent if the landlord does not make the repairs, provided the conditions substantially threaten the tenant's health and safety. Franklin Civil Code §§ 540, 542. In his lawsuit, Shea sought to recover all the rent he had paid ($16,000) pursuant to the initial and renewed leases.

We believe that the trial court correctly declined to award Shea the rent requested. First, the evidence supports the conclusion that Willowbrook's efforts to address the first infestation (spraying, replacing carpet, and cleaning the apartment) were successful. Shea even renewed his lease for another 12 months, from which the trial court concluded that the apartment was free of the infestation when he renewed and was therefore not untenantable as he claimed. Thus there is no factual basis to support awarding Shea damages for rent paid in 2010 under the first lease.

Nor is there a basis to award damages with respect to the second bedbug infestation, which arose in 2011 after Shea returned from abroad. Shea failed to demonstrate that the 2011 prolonged bedbug infestation occurred through Willowbrook's fault and through no fault of his own. If Shea were responsible, he would have been obligated to resolve the issue himself. *See* Franklin Civil Code § 543 (landlord has no duty to repair under § 540 or 541 if tenant has breached his affirmative obligation to keep premises as clean and sanitary as the condition of premises permits). If Shea believed that his landlord was responsible for the bedbug infestation, he had an obligation to mitigate his damages by promptly notifying Willowbrook to give it an opportunity to resolve the problem. *See Burk v. Harris* (Fr. Ct. App. 2002). Since this did not occur, the trial court declined to find Willowbrook responsible for the second infestation and concluded that Shea was not entitled to vacate the premises under § 542(a)(3). Because Shea retained possession of the apartment and reaped the benefit of staying, he could have been held responsible for the remaining two months of rent under the lease had Willowbrook sought it.

The trial court correctly declined to award Shea any damages related to rent already paid. We affirm the denial of the $16,000 rent reimbursement claim.

B. Out-of-pocket expenses

Shea also requested a total of $2,000 for motel and medication costs he incurred while living in the apartment. However, Shea submitted a receipt only for $400 for the motel room he rented while his apartment was being sprayed for bedbugs during the initial infestation in 2010. He provided no further documentation of his claimed expenses. Therefore, the trial court properly awarded him $400 but appropriately declined to award $1,600 for medication because Shea provided no documentation or explanation of how he came to that number.

Affirmed.