

FILED

JAN 29 1986

IN THE COURT OF APPEALS OF IOWA CLERK SUPREME COURT

JOHN P. HOGARTY, JR., and
UE A. HOGARTY,

Plaintiffs-Appellants,

vs

CHESTER W. BELL and
DOROTHY BELL,

Defendants-Appellees.

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Filed January 29, 1986

5-596
85-287

Appeal from the Iowa District Court for Johnson County - Ansel J.
Chapman, Judge.

Plaintiffs appeal from an adverse judgment in this action by residential
tenants to recover damages from landlords for insect infestation. **AFFIRMED.**

Thomas R. Pence of Hines, Pence, Jackson, Day & Powers, Cedar Rapids,
for plaintiffs-appellants.

Lawrence E. Blades of Blades & Carmichael, Cedar Rapids, for defendants-
appellees.

Heard by Oxberger, C.J., and Snell and Hayden, JJ.

Plaintiffs appeal an adverse judgment in this action by residential tenants to recover damages from landlords for insect infestation. Plaintiffs contend the trial court erred in: 1) holding defendants did not breach the implied warranty of habitability regarding plaintiffs' apartment; 2) not finding defendants liable for negligence under violation of state statute and municipal ordinance; 3) not ruling lack of adequate pest control constituted a private nuisance; and 4) not awarding damages for breach of warranty, for intentional infliction of severe emotional distress, and diminution of rental value. The trial court did award plaintiffs a refund of their \$100 damage deposit. We affirm.

In August 1981, John and Sue Hogarty entered into an oral lease with defendants for the upstairs apartment in a three-unit apartment house. The lease was on a month-by-month basis; either party had the right to terminate upon 30 days' notice.

In the 1970's, the defendants had a cockroach problem in that apartment house and had engaged a commercial pest control service for the building until sometime in 1977 or 1978. The pest service representative testified that at the time he discontinued service the infestation was continuing.

In May 1982, the Hogartys noticed roaches in their apartment. They notified defendants who did nothing. Plaintiffs purchased some over-the-counter remedies which didn't help. The infestation increased significantly. Finally, in late June or early July, the Hogartys notified defendants they were moving.

When they actually did move on July 8, 1982, they left most of their furniture and clothing behind, claiming they did not want to transplant cockroaches or cockroach eggs to their new premises. They estimated their loss in goods at over \$13,000.

The Hogartys did not receive their damage deposit back from the defendants nor did they receive a written explanation as to why the landlords were withholding any amount.

Plaintiffs subsequently brought this action to recover damages resulting from the infestation of cockroaches. The trial court found that the premises were rendered uninhabitable due to the infestation; however, the court also indicated that there was insufficient evidence that the problem extended beyond the Hogartys' apartment. As such, the court concluded that the responsibility for extermination rested with the plaintiffs. Recovery was denied except for the return of the \$100 damage deposit. The plaintiffs have appealed.

I.

Plaintiffs first claim the trial court erred in failing to find that the implied warranty of habitability had been breached.

The landmark case establishing this warranty is Mease v. Fox, 200 N.W.2d 791 (Iowa 1972). There the court stated:

[W]e hold the landlord impliedly warrants at the outset of the lease that there are no latent defects in facilities and utilities vital to the use of the premises for residential purposes and that these essential features shall remain during the entire term in such condition to maintain the habitability of the dwelling. Further, the implied warranty we perceive in the lease situation is a representation there neither is nor shall be during the term a violation of applicable housing law, ordinance or regulation which shall render the premises unsafe, or unsanitary and unfit for living therein.

Id. at 796. These principles have been codified in Chapter 562A of the Iowa Code. Section 562A.15, which sets forth the landlord's duty to maintain fit premises, provides in part:

1. The landlord shall:

- a. Comply with the requirements of applicable building and housing codes materially affecting health and safety.

b. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.

The tenant's obligations include:

1. Comply[ing] with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.
2. Keep[ing] that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit.

Iowa Code § 562A.17 (1985).

The relevant question then is whether the applicable housing and building codes impose the duty of pest control on the landlord or tenant. A breach of the implied warranty of habitability will only exist if, under the facts of this case, the duty should be imposed on the landlord. We find to the contrary.

Sections 17-7(t) and 17-8(c) of the Iowa City Code set forth the relative duties of landlords and tenants concerning pest extermination:

§17-7(t) Pest Extermination. Whenever infestation exists in two (2) or more dwelling units or rooming units of any dwelling, or in the shared or public parts of any dwelling containing two (2) or more dwelling units or more than one rooming unit, extermination thereof shall be the responsibility of the owner.

§17-8(c) Extermination of Pests. Every occupant of a single-family dwelling shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises; every occupant of a dwelling containing more than one dwelling unit or rooming unit shall be responsible for such extermination within the unit occupied by him/her whenever said unit is the only one infested. Notwithstanding, the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a reasonably rodent proof or reasonably insect proof condition, extermination shall be the responsibility of the owner.

Based on these provisions, it is apparent that the Hogartys had the responsibility of extermination. The trial court specifically found that the infestation was limited to the Hogartys' apartment, thus relieving the landlord of any duty

to exterminate. Since this action is at law, we are bound by this finding as long as it is supported by substantial evidence in the record. Iowa R. App. P. 14(f)(1). As such, we conclude that the implied warranty of habitability was not breached.

The Hogartys argue that this finding is inappropriate and claim that the owners failed to maintain the dwelling in a reasonably rodent-proof manner as required by the final sentence in section 17-8(c). They point out that the defendants discontinued pest control services in 1977 or 1978 before the problem was actually under control. Even so, this is not sufficient basis for imposing liability on the landlord. We do not interpret section 17-8(c) as requiring a landlord to continuously use commercial pest control services. Further, there is nothing in the record to indicate that discontinuing services in 1977 or 1978 caused the present problems.

Accordingly, we affirm the trial court's finding on this issue.

II.

The Hogartys' remaining claims of error presuppose that defendants breached a duty to employ adequate pest control. Because of our finding to the contrary, we find it unnecessary to consider these claims.

The decision of the trial court is affirmed in all respects.

AFFIRMED.