



JOHNETTA PAYE ESQUIRE

REAL ESTATE JANUARY 23, 2017

Waiver of subrogation clause: Does it favor condo owners, tenants or association?



JPAYE

- SHARE
- TWEET
- PIN





JPAYE

f SHARE

🐦 TWEET

📌 PIN



FROM FORECLOSURE TO GENTRIFICATION CONCERNS: HOW TENANTS CAN PROTECT THEMSELVES



When signing a new lease for a condo, there are an incredible amount of things to agree to all at once. And most renters are racing against time to make sure another potential renter doesn't get access to that condo unit. One of the things that condo renters should be especially on the lookout for is the "waiver of subrogation," a clause in the lease agreement essentially used so a landlord does not have to reimburse the tenant's insurance company for damage done to that rental unit.

From a tenant's perspective

Imagine the landlord needed to replace a window in the tenant's condo. The building maintenance worker does so per her orders, but a thunderstorm damages the window. Everything in a section of the tenant's condo is ruined due to the damaged window leaking. Renters insurance would usually be the first way to go in order to recoup money for all damaged items, and then file a subrogation claim against the landlord's insurance for reimbursement. However, if the tenant's lease has a waiver of subrogation clause, then the tenant's alternative course of action would be to take her landlord to small claims court. After all, why should the tenant be held financially responsible for damage outside of her control?

The problem with that thought pattern is that the waiver of subrogation essentially says that tenants do *not* look to the landlord's insurance company to pay for damage done to the tenant's unit. Without a legal fight and abiding by this waiver of subrogation, the landlord could walk away without spending a dime. And rent is still due on the first of the month.

In a small claims lawsuit, the landlord could blame the maintenance person for installing the window incorrectly. If the landlord lost the trial, she could choose to sue the window manufacturer for faulty products. But if the tenant just pays the deductible for renters insurance, then none of these lawsuits potentially see the light of day.

Sound fair to the tenant? If not, you may want to reevaluate that lease before signing.



(Photo credit: iStock)

Condo owner versus tenant

When entering into a lease with a subrogation clause, the tenant will want to make sure there's enough coverage in renter's insurance to cover any possible damage to the condo. Typically, the contract controls the relationship between the parties. There are circumstances where a federal or state statute trumps the terms of a contract. In the case of the tenant's damaged window, the Chicago Landlord Tenant Ordinance places an obligation on the landlord to maintain the windows in the building or apartment. The landlord would need to have that window repaired a second time despite the subrogation clause.



(Photo Credit: iStock Photo)

From the condo owner's perspective

Now let's imagine this same window damage occurred with two condo owners. The thunderstorm (mentioned above) was so bad that water leaked into the condo owner's living room downstairs, too, damaging the owner's ceilings. The owner then goes upstairs to tell her neighbor, another condo owner, so her homeowners insurance can be used to pay for the ceiling damage. The condo owner then sends a notice to the condo association in case her neighbor upstairs refuses to pay for the ceiling damage.

Proof of damage whether tenant or owner

In order to assist with processing the claim, it is a good idea to:

Proof of damage whether tenant or owner

In order to assist with processing the claim, it is a good idea to:

- Provide documentation that shows the ceiling damage was caused by the upstairs neighbor.
- Have a copy of the estimate or invoice that shows how much it costs to repair the damage.
- Take pictures of the damage to the unit.

If the upstairs neighbor still refuses to remediate the problem, the bylaws may place an obligation on the condo association to fix the problem. Alternatively, the downstairs unit may have to fix the damage and file a small claim action against the upstairs neighbor to recover the cost of the damage.

Have more questions about if damage to your property is covered under your lease or bylaws? Contact [J. Paye & Associates](#) today.

Shamontiel L. Vaughn contributed to this blog. Find out more about her at [Shamontiel.com](#).

The information contained here is intended to provide useful information on the topic covered but should not be construed as one-size-fits-all legal advice. Speak to an attorney specifically about your contractual agreement for specific terms and conditions.