Vanderbilt Law Review

Volume 38
Issue 2 *Issue 2 - March 1985*

Article 3

3-1985

Landlord Liability for Crimes Committed by Third Parties Against Tenants on the Premises

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I. INTRODUCTION

The controversial subject of landlord liability for crimes committed by third parties on the apartment premises has been the subject of much debate. The discussion has produced a scattering of opinions rather than one settled rule. Not all jurisdictions agree that a landlord should be held liable to his tenants for crimes on the premises. Even jurisdictions that do hold landlords liable for such crimes disagree on the basis for liability. Some courts ground their decisions in contract. Other courts conjure landlord liability out of an implied warranty of habitability. Still other courts impose landlord liability for third party crimes on the basis of tort principles.

The dust kicked up by the debate, however, should not cloud the issues. The very nature of the disagreement has clarified the direction that the courts should take. The emergence of a new standard for judging landlord liability is a milestone in the development of American law, but must be recognized uniformly to bring stability to this area of the law. This Note advocates that courts should base their decisions concerning a landlord's liability for crimes committed by third parties on tort principles rather than on contract or implied warranty of habitability theories. Part II of this Note focuses on property and tort law principles that have shaped landlord liability in general. The Note considers only the case of the urban apartment landlord and tenant. Part III examines the tort, implied warranty of habitability, and contract theories upon which courts base landlord liability for third party crimes. Part IV analyzes these different principles and concludes that courts should rely on the tort theory as the basis for landlord liability to tenants for crimes committed by third parties on the premises. Finally, part IV concludes that, in applying tort principles, courts should use a rebuttable presumption of landlord negligence. This presumption should arise once the tenant has shown injuries from a foreseeable crime committed on the premise by a third party who gained entrance through a common area.

II. The Legal History: Property and Tort Principles That Have Shaped the Landlord's Responsibilities

A. *Common-Law Origins of the Landlord-Tenant Relationship*

At common law a lease of land was a conveyance.[1] The landlord gave the tenant possession of the land in exchange for rent.[2] Both landlord and tenant were concerned primarily with profitable agricultural use of the leasehold.[3] Consequently, any residential use of the land was incidental. Because the common law deemed the lease a conveyance of land, the tenant had complete dominion over the leasehold.[4] The landlord retained no control over the land; indeed, under common law the landlord was a trespasser if he entered the leasehold.[5] Virtually the only limit on the tenant's rights, as long as he paid rent, was that he not commit waste.[6] Because the tenant had exclusive control of the land, he made all repairs that the property required.[7] The condition of a residential building on the leasehold was unimportant to the landlord, whose only interest was to collect the rent.[8]

As commerce developed and towns grew, the divergence between the town resident and the agrarian country dweller grew.[9] In

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1. 2 W. Blackstone, Commentaries *317: "A lease is properly a conveyance of any lands or tenements (usually in consideration of rent or other annual recompense) made for life, for years, or at will . . . ." Pollock and Maitland emphasize that a lease at common law was not a contract, even though a landlord's action to recover rent might appear to be an action on a contract:

> We here have no enforcement of an obligation; we have the recovery of a thing. Of course hetween landlord and tenant there often is an obligation of the most sacred kind [feudal homage] . . . . The landlord who demands the rent that is in arrear is not seeking to enforce a contract, he is seeking to recover a thing.

2 F. Pollock & F. Maitland, The History of English Law 127 (1895); *see* Lesar, *The Landlord-Tenant Relation in Perspective: From Status to Contract and Back in 900 Years?*, 9 Kan. L. Rev. 369 (1961).

2. 2 W. Blackstone, *supra* note 1, at *318-19.

3. 2 R. Powell, The Law of Real Property ¶ 221[1] (1983). "Anciently the greater part of rents were reserved in provisions; in corn, in poultry, and the like; till the use of money became more frequent." 2 W. Blackstone, *supra* note 1, at *318.

4. 2 W. Blackstone, *supra* note 1, at *317-22; T. Plucknett, A Concise History of the Common Law 599 (1st Am. ed. 1923).

5. 2 W. Blackstone, *supra* note 1, at *317-22.

6. 1 E. Coke, Institutes of the Laws of England § 67 (1st Am. ed. Philadelphia 1812).

7. *Id.* One court has stated that the medieval tenant handily made repairs, for he was a " 'jack-of-all-trades' farmer . . . who often remained on one piece of land for his entire life." Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1078 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970).

8. *See supra* text accompanying note 2.

9. 3 W. Holdsworth, History of English Law 269 (1923).

medieval England lawmakers recognized that the laws governing agrarian land interests were not appropriate to govern the houses and shops located in towns.[10] Lawmakers, realizing that the good repair of town buildings was "necessary to the safety of the community,"[11] developed borough customs[12] that strictly regulated the maintenance of leased land and structures.[13] Although overlooked by most commentators, these borough customs are critically important to modern courts' considerations of landlord liability because borough customs show that even early English law required different maintenance of leased premises depending on the location and nature of the leased property.[14]

B. The Expansion of Landlord Liability in Tort

Courts in the United States generally followed England's rules regarding a landlord's duties to his agrarian tenants. As the primary use of land turned from agricultural to residential, however, urban realities forced courts to reevaluate the landlord's responsibilities.[15] These urban realities included increased crimes, which is "an inescapable fact of modern life,"[16] the tenant's inability to install security devices in the common areas of an apartment building,[17] and the landlord's exclusive control over security measures in the building.[18] Courts began to hold landlords liable to tenants for negligent conduct in a growing number of situations. For example, the landlord faced possible liability if he entered a short term lease

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10. *Id.*

11. *Id.* at 272.

12. Borough customs, codified rules that regulated town life, contained rules which were the predecessors of today's housing codes.

13. 3 W. HOLDSWORTH, *supra* note 9, at 269-75.

14. *Id.* at 269. Although borough customs are the forerunners of today's housing codes, borough customs differ in one respect: they required the tenant, not the landlord, to make repairs because the tenant was deemed to have control of the property. *Id.* at 272. The tenant of today's urban apartment, however, does not control the premises. *See, e.g.*, Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 480, 484, 488 (D.C. Cir. 1970); O'Hara v. Western Seven Trees Corp, 75 Cal. App. 3d 798, 802, 142 Cal. Rptr. 487, 489-90 (1978); Mullins v. Pine Manor College, 389 Mass. 47, ____, 449 N.E.2d 331, 335 (1983); Trentacost v. Brussel, 82 N.J. 214, 226, 412 A.2d 436, 442 (1980); *see also* Peterson v. San Francisco Community College Dist., 36 Cal. 3d 799, ____, 685 P.2d 1193, 1202, 205 Cal. Rptr. 842, 851 (1984).

15. *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1074-80 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970).

16. Trentacost v. Brussel, 82 N.J. 214, 227, 412 A.2d 436, 443 (1980).

17. Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 484 (D.C. Cir. 1970).

18. *Id.*

but failed to deliver habitable quarters,[19] if a latent defect existed in the land,[20] if the landlord agreed to repair the premises but failed to do so,[21] if he leased the land for public use,[22] or if the landlord retained control over part of the premises.[23] Thus social and cultural changes in the United States motivated the courts to broaden the scope of the landlord's liability beyond what it was at common law.[24]

In evaluating the development of modern landlord and tenant law, most commentators have examined only briefly the common-law treatment of innkeepers.[25] This area of law, however, is critical to an understanding of the principles on which modern landlord and tenant law is based. The innkeeper, not the medieval landlord, is the counterpart of the modern urban landlord.[26] Early common-law courts imposed little if any duty on innkeepers.[27] Over time,

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19. *See* Ingalls v. Hobbs, 156 Mass. 348, 31 N.E. 286 (1892).

20. *See* Miner, Read & Garrette v. McNamara, 81 Conn. 690, 72 A. 138 (1909); Andonique v. Carmen, 151 Ky. 249, 151 S.W. 921 (1912); Baird v. Ellsworth Realty Co., 265 S.W.2d 770 (Mo. Ct. App. 1954).

21. *See* Ashmun v. Nichols, 92 Or. 223, 178 P. 234 (1919); *see also* Dunson v. Friedlander Realty Co., 369 So. 2d 792 (Ala. 1979); Roesler v. Liberty Nat'l Bank, 2 Ill. App. 2d 54, 118 N.E.2d 621 (1954); Bauer v. 141-149 Cedar Lane Holding Co., 24 N.J. 139, 130 A.2d 833 (1957); Woods v. Forest Hill Cemetary, 183 Tenn. 413, 192 S.W.2d 987 (1946); Damron v. C.R. Anthony Co., 586 S.W.2d 907 (Tex. Civ. App. 1979).

22. *See* Swords v. Edgar, 59 N.Y. 28 (1874) (owner of pier must keep it in reasonably safe condition); O'Toole v. Thousand Island Park Ass'n, 206 A.D. 31, 200 N.Y.S. 502 (1923) (owner of park must keep sidewalks reasonably safe).

23. *See* Hinthorn v. Benfer, 90 Kan. 744, 136 P. 247 (1913) (landlord controlled porch and so was held liable for tenant's death, which occurred when a railing she leaned against gave way); McNab v. Wallin, 133 Minn. 370, 158 N.W. 623 (1916) (because landlord was responsible for repair of building step, he was held liable for tenant's falling from wobbly step); Inglehart v. Mueller, 156 Wis. 609, 146 N.W. 808 (1914) (hall was within landlord's control, so landlord held liable for boy's death caused by falling radiator in hall); *see also* Goodman v. Smith, 340 Mass. 336, 164 N.E.2d 130 (1960) (landlord controlled attic, so landlord held liable for injuries tenant received because of faulty attic floor); Lipsitz v. Schecter, 377 Mich. 685, 142 N.W.2d 1 (1966) (because landlord controlled window screen fastenings, he was liable to tenant hit by a falling screen); Hellon v. Trotwood Apartments, Inc., 62 Tenn. App. 203, 460 S.W.2d 372 (1970) (landlord liable for tenant's fall on mud on sidewalk that accumulated because of faulty drainage system).

24. For an excellent discussion of the expanded scope of landlord liability, see Note, *Lessor's Duty to Repair: Tort Liability to Persons Injured on the Premises*, 62 HARV. L. REV. 669 (1949).

25. The *Javins* court explored the similarities between the modern landlord and the common-law innkeeper. Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1077 n.33 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970).

26. *See, e.g., id.* For a discussion of the innkeeper's duty to protect his guests, see Mustad v. Swedish Brethren, 83 Minn. 40, 85 N.W. 913 (1901); Rommel v. Schambacher, 120 Pa. 579, 11 A. 779 (1887); Gurren v. Casperson, 147 Wash. 257, 265 P. 472 (1928).

27. *Cayle's Case*, 8 Coke 32a, 77 Eng. Rep. 520 (1584) ("if the guest be beaten in the inn, the innkeeper shall not answer for it").

however, the law imposed a heightened standard of care on keepers of inns, the only multiple dwelling structures known at common law.[28] This special duty was justifiable because the innkeeper could not expect guests to make necessary repairs due to the temporary nature of the guests' stay at the inn.[29] More importantly, the innkeeper controlled the common areas of the inn. The modern urban landlord's similar control over the premises of urban apartment buildings makes him more like the innkeeper than the agrarian landlord.[30] Nevertheless, for years the common law categorized leases as conveyances even though the apartment lease resembled the innkeeper's contract more than the agrarian landlord's lease.[31]

C. *The Expansion of Landlord Liability for Crimes of Third Parties*

With the general expansion of landlord liability, tenants began to seek relief in the courts for crime in urban apartment buildings. Some courts imposed liability on landlords for third party crimes committed against tenants on the premises.

In *Goldberg v. Housing Authority*[32] two men assaulted and robbed a milkman[33] in the elevator of an apartment complex. The milkman sued the landlord for failing to furnish police protection.[34] The New Jersey Supreme Court ruled that a residential landlord has no duty to provide police protection. The court reasoned that a landlord should not have to perform a job that "must be left with the duly constituted police forces."[35] In dicta, however, the court noted that a landlord may be liable for theft by an intruder if the landlord's failure to secure property within his control "carelessly enables a thief to gain entrance to the apartment of the tenant."[36] The court did not hold the landlord liable in negligence

28. Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1077 n.33 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970). Similarly, common carriers owe a special standard of care to their passengers. Although the facts of the common carrier cases differ from the innkeeper cases, the increased duty that courts impose upon common carriers and landlords is based upon the element of control, *see* Quigley v. Wilson Line, 338 Mass. 125, 154 N.E.2d 77 (1958), and superior knowledge of risks, *see* Neering v. Illinois Central R.R., 383 Ill. 366, 50 N.E.2d 497 (1943).

29. *Javins*, 428 F.2d at 1077 n.33.

30. *Id.*

31. *See* Lesar, *supra* note 1, at 372-77.

32. 38 N.J. 578, 186 A.2d 291 (1962).

33. The milkman was not a tenant.

34. *Goldberg*, 38 N.J. at 579-80, 186 A.2d at 291.

35. *Id.* at 591, 186 A.2d at 298.

36. *Id.* at 588, 186 A.2d at 296.

for the third party's crime because negligence had not been an issue in the trial court proceedings.[37]

The court in *Kendall v. Gore Properties*[38] held a landlord liable for the strangling death of an apartment tenant. The landlord had hired a man with mental health problems and violent tendencies to paint the tenant's apartment. The landlord had made no inquiries into the man's background, yet allowed him free access to the tenant's apartment with no supervision. Because the landlord had acted unreasonably in hiring the painter, the court concluded that the landlord had breached his duty to exercise reasonable care to prevent harm to tenants.[39] *Kendall* is weak precedent for landlord liability to tenants for third party crimes because the court relied heavily on the "latent defect" doctrine[40] and the fact that the landlord himself had hired the painter without even a minimum investigation of his background. The case, nevertheless, is significant because it weakened the common-law rule under which a landlord had no duty to protect his tenant from crime.

In *Ramsay v. Morisette*[41] the court held a landlord liable for injuries a tenant received when an intruder broke into her apartment and assaulted her. The court based its decision on the landlord's failure to use reasonable care to secure the common areas of the building. The court relied upon evidence that the landlord had failed to install locks in the building and had allowed transients to sleep in the hallways.[42] Moreover, the court found that the landlord bad known of criminal activity in the building, but had failed to notify the police or the tenants. The *Ramsay* court, therefore, applied the traditional reasonableness analysis of landlord liability to cover the maintenance of security in common areas.[43]

In *Johnston v. Harris*[44] the Michigan Supreme Court ruled that a tenant who had been assaulted in the poorly lit, unlocked lobby of an apartment building had a cause of action against his landlord. The court found that the landlord's breach of his duty to provide reasonably safe common areas could have been the cause

37. *Id.* at 580 n.1, 186 A.2d at 291 n.1.
38. 236 F.2d 673 (D.C. Cir. 1956).
39. *Id.* at 680.
40. The court found that the landlord himself had created the "latent defect" by giving the painter keys to the apartment of a young woman who lived alone. *Id.* at 678, 680.
41. 252 A.2d 509 (D.C. 1969).
42. *Id.* at 512.
43. *See id.* at 513.
44. 387 Mich. 569, 198 N.W.2d 409 (1972).

of the tenant's harm.[45]

Thus, courts have recognized that a landlord may be liable to a tenant for the crimes of third parties. The dicta in *Goldberg* left a door open for consideration of traditional negligence standards in assessing landlord liability for third party crimes. Moreover, *Kendall*, *Ramsay*, and *Johnston*, which held landlords liable for third party crimes, signify an expansion of the scope of landlord liability based upon traditional negligence principles. Although these cases stood alone for several years, they indicated judicial willingness to expand landlord liability and foreshadowed the development of still other theories of landlord liability.

D. The Lease as Contract: Housing Codes

The 1970 landmark decision in *Javins v. First National Realty Corp.*[46] recognized that a lease requires a landlord to deliver a package of services as well as possession of the premises.[47] The *Javins* court recognized that the twentieth century landlord is more like the common-law innkeeper than the agrarian landlord.[48] The court reasoned that the modern day lease requires more than a mere transfer of land. The tenant demands and the lease requires that the landlord transfer a "well known package of goods and services," which includes adequate maintenance and upkeep.[49] The court concluded that it should interpret a lease like any other contract.[50]

In analyzing the lease contract, the *Javins* court found that the lease had created an implied warranty of habitability.[51] The

45. Under the circumstances of the case, this duty included providing adequate lighting and door locks. *Id.* at 572-73, 198 N.W.2d at 409-10. The court reversed the lower court's summary judgment ruling in favor of the landlord and remanded for a new trial. *Id.* at 576, 198 N.W.2d at 411.

46. 428 F.2d 1071 (D.C. Cir.), *cert. denied*, 400 U.S. 925 (1970).

47. In *Javins* the landlord sued to recover unpaid rent. As an equitable defense the tenants alleged that the landlord had violated the District of Columbia Housing Regulations. The court ruled that the landlord's violations could suspend the tenants' duty to pay rent. *Id.* at 1082.

48. The court stated: "[The common law's assumption that] a lease primarily conveyed to the tenant an interest in land may have been reasonable in a rural, agrarian society . . . . But in the case of the modern apartment dweller, the value of the lease is that it gives him a place to live." *Id.* at 1074. See *supra* notes 1-14 and accompanying text for a discussion of the development of common-law attitudes toward the landlord-tenant relationship.

49. 428 F.2d at 1074. According to the court, "[the] package . . . includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation, and proper maintenance." *Id.*

50. *Id.* at 1075.

51. *Id.* at 1077.

court based the warranty upon housing code requirements[52] and the nature of the urban housing market.[53] The court held that the tenant justifiably could withhold rent if he could show that the apartment conditions violated the implied warranty of habitability.[54] Thus, *Javins* discarded concepts applicable to medieval agrarian life and adopted standards that fit the modern day landlord-tenant relationship.

The *Javins* court's reliance on housing code requirements to imply a duty of due care running from landlord to tenant was an expansion of the scope of landlord liability that some courts have been quick to limit. In *Williams v. Davis*[55] the court held that tenants could not withhold rent because of the landlord's failure to take crime prevention measures. The court determined that the housing regulations' requirement of safety did not obligate a land-

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52. The housing codes imposed specific requirements on landlords and exacted penalties from nonconforming landlords. A majority of states have enacted legislation recognizing implied warranties of habitability. *See* ALASKA STAT. § 34.03.100, .160-.190 (1979); ARIZ. REV. STAT. ANN. § 33-1324 (Supp. 1983); CAL. CIV. CODE §§ 1941-42 (West Supp. 1984); CONN. GEN. STAT. ANN. § 47a-7 to -12 (West Supp. 1984); DEL. CODE ANN. tit. 25, § 5303 (1974); FLA. STAT. ANN. §§ 83.51, .55-.56 (West Supp. 1984); GA. CODE ANN. § 44-7-13 (1983); HAWAII REV. STAT. §§ 521-42 (Supp. 1981); KY. REV. STAT. § 383.595, .625, .635, .640, .645, .655 (Supp. 1982); ME. REV. STAT. ANN. tit. 14, § 6021 (1980 & Supp. 1985); MASS. GEN. LAWS ANN. ch. 239, § 8A (West Supp. 1984); MICH. COMP. LAWS ANN § 554.139 (Supp. 1984); MINN. STAT. ANN. § 504.18 (West Supp. 1984); NEB. REV. STAT. §§ 76-1419, -1425 (1981); NEV. REV. STAT. § 118A.290, .360 (1977); N.J. ADMIN. CODE tit. 5, § 10-6.6(d)(7) (1968); N.Y. REAL PROP. LAW § 235-b (Supp. 1984); N.C. GEN. STAT. §§ 42-42a (Supp. 1983); N.D. CENT. CODE § 47-16-13.1 (1978); OHIO REV. CODE ANN. § 5321.04 (Page 1981 & 1983); OR. REV. STAT. § 91.770 (1983); R.I. GEN. LAWS § 34-18-16 (1969); TENN. CODE ANN. §§ 68-40-101 to -105 (1983) (applies to major cities only); VT. STAT. ANN. tit. 12, § 4859 (1973); VA. CODE §§ 55-248.13, .23 (1981); WASH. REV. CODE ANN. § 59.18.060 (West Supp. 1984); WIS. STAT. ANN. § 704.07 (West 1981).

Courts bave ruled that a landlord's violation of the implied warranty of habitability justified a tenant's withholding rent. Lemle v. Breeden, 12 Ariz. App. 321, 462 P.2d 470 (1979); Green v. Superior Court, 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974); Jack Spring, Inc. v. Little, 50 Ill. 2d 351, 280 N.E.2d 208 (1972); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972); King v. Moorehead, 495 S.W.2d 65 (Mo. Ct. App. 1973); Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971); Morbetli Realty Corp. v. Velez, 73 Misc. 2d 996, 343 N.Y.S.2d 406 (Civ. Ct. 1973); Foisy v. Wyman, 83 Wash. 2d 22, 515 P.2d 160 (1973).

53. *Javins*, 428 F.2d at 1076-77. The court emphasized tliat today's urban housing market requires a reevaluation of traditional landlord-tenant law. In contrast to the frequent lifelong rural lease for agricultural purposes, the urban apartment lease does not convey land, but rather a "house suitable for occupation." *Id.* at 1078. Because of economic, time, or legal constraints, urban tenants often are unable to make needed repairs. In addition, urban tenants have little bargaining power because of general urban liousing shortages and, therefore, "have very little leverage to enforce demands for better housing." *Id.* at 1079.

54. *Id.* at 1082-83.

55. 275 A.2d 231 (D.C. 1971).

lord to install locks, window bars, floodlights, or other protection from crime. The court stated that the housing regulations' use of the words "safe" and "safety" referred to safety from structural defects, unsanitary conditions, and fire hazards and did not apply to safety from criminal acts of third parties.[56]

The *Williams* ruling effectively limited landlord liability under *Javins* to structural safety. Although the housing codes did not necessarily make landlords responsible for crimes on the premises, the codes did change the way courts viewed residential leases.[57] Thus, the housing codes laid the groundwork for changes in landlord and tenant law.

III. The Liability Decisions: Tort, Warranty of Habitability, or Contract

Against this background, tenants brought suits seeking to hold landlords liable for crimes committed by third parties.[58] Courts began to hand down decisions imposing greater landlord liability. The courts based this increased liability upon several different standards, primarily relying upon tort, implied warranty of habitability, and contract principles.

A. Kline v. 1500 Massachusetts Avenue Apartment Corp.: *Tort*

In *Kline v. 1500 Massachusetts Avenue Apartment Corp.*[59] the tenant sued her landlord to recover for injuries suffered when she was assaulted and robbed in the hallway outside her apartment in Washington, D.C. When the plaintiff had moved into the apartment, a twenty-four hour doorman and two guards protected the building, and its side entrances were either guarded or locked. At the time of the assault the guards were no longer on duty and the

56. *Id.* at 232.

57. For further discussion of this issue, see Abbott, *Housing Policy, Housing Codes and Tenant Remedies: An Integration*, 56 B.U.L. Rev. 1 (1976); Bazyler, *The Duty to Provide Adequate Protection: Landowners' Liability for Failure to Protect Patrons from Criminal Attack*, 21 Ariz. L. Rev. 726 (1979); Browder, *Taming of a Duty — The Tort Liability of Landlords*, 81 Mich. L. Rev. 99 (1982); Henszey and Weisman, *What is the Landlord's Responsibility for Criminal Acts Committed on the Premises?* 6 Real Est. L.J. 104 (1977); Quinn and Phillips, *The Law of Landlord-Tenant: A Critical Evaluation of the Past with Guidelines for the Future*, 38 Fordham L. Rev. 225 (1969).

58. Crime is increasingly a part of life in this country. FBI criminal statistics for 1982 show 21,012 murders (9.1 per 100,000 people); 77,763 rapes (33.6 per 100,000 people); 536,888 robberies (231.9 per 100,000 people); 650,042 aggravated assaults (280.8 per 100,000 people); 3,415,540 burglaries (1,475.2 per 100,000 people); 7,107,663 thefts (3,069.8 per 100,000 people). 1982 FBI Uniform Crime Reps. 6-27 (1983).

59. 439 F.2d 477 (D.C. Cir. 1970).

outside doors had been unlocked.[60] In the months before the plaintiff was attacked, tenants had asked the landlord to restore security protection to counter recurring crime in the area.[61] The court held the landlord liable, reasoning that a landlord owes the tenant of an urban apartment a duty of protection, especially in the areas that the landlord controls.[62] The court based its ruling in tort, recognizing two sources of the landlord's duty: (1) foreseeability of the crime and (2) the obligation "implied in the contract between landlord and tenant . . . to provide those protective measures which are within his reasonable capacity."[63]

The landlord's traditional duty to maintain common areas logically led to requiring the urban landlord to keep premises reasonably safe from foreseeable crime.[64] The court judged the landlord's compliance by the standard of care that is reasonable in all circumstances.[65] The court stated that in *Kline* that standard required the landlord to provide the same level of protection as when the tenant entered the lease because that level of protection was common in the community.[66] This requirement, the court explained, imposed no duty of police protection upon the landlord, but merely required that the landlord provide reasonable security measures.[67] Emphasizing that the duty to protect tenants from foreseeable crime is not a duty to protect against all possible crime,[68] the court quoted the United States Supreme Court's statement in *Lillie v. Thompson* that a defendant can be liable for injuries caused by the crime of a third party when the defendant is " 'aware of conditions which created a likelihood' of criminal attack."[69] This explanation of "reasonably foreseeable crime" limited the possibility that subsequent decisions would rely on the *Kline*

60. *Id.* at 479.

61. *Id.*

62. *Id.* at 487.

63. *Id.* at 485.

64. *See id.* at 481-82. The court noted that in *Javins* a lease contract created an obligation on the part of the landlord to keep the premises reasonably safe. *Id.*

65. *Id.* at 485.

66. *Id.* at 486.

67. *See id.* at 483 (citing Goldberg v. Newark Hous. Auth., 38 N.J. 578, 583, 186 A.2d 291, 293 (1962)). The court noted that placing responsibility on the landlord was consistent with the *Goldberg* decision, which had held narrowly that landlords do not have a duty to provide police protection to tenants. Even the *Goldberg* court stated that "the landlord may be liable for theft if he carelessly enables a thief to gain entrance to the apartment of the tenant." *Goldberg*, 38 N.J. at 588, 186 A.2d at 296.

68. *Kline*, 439 F.2d at 487.

69. *Id.* at 483 (quoting Lillie v. Thompson, 332 U.S. 459, 461 (1947)).

ruling to impose unlimited liability on landlords.

The *Kline* court based the landlord's duty in part upon his ability—vastly superior to that of the tenants and even the police—to provide security in the common areas.[70] The court also noted that the landlord's duty arises from the individual tenant's inability to make the common areas secure.[71] Although this duty imposes greater costs on the landlord, the court noted that the landlord is in a better economic position to make needed security changes.[72] The court reasoned that the landlord could spread the cost of increased security among his tenants.[73] The court concluded: "The landlord is no insurer of his tenants' safety, but he certainly is no bystander."[74]

B. Trentacost v. Brussel*: Warranty of Habitability*

Ten years after *Kline*, the New Jersey Supreme Court went the next step. It stated in *Trentacost v. Brussel*[75] that landlord liability could arise solely from an implied warranty of habitability. No court previously had recognized the implied warranty of habitability as an independent basis of landlord liability for crimes committed by third parties.

In *Trentacost* a tenant sued her landlord for injuries that the tenant received when she was assaulted and robbed in the hallway of her apartment building. Although the back door to the building had been padlocked, the front door had no lock at all.[76] Justice

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70. *Kline*, 439 F.2d at 484. The court stated:

> Not only as between landlord and tenant is the landlord best equipped to guard against the predictable risk of intruders, but even as between landlord and the police power of government . . . . Municipal police cannot patrol the entryways, and the hallways, the garages and the basements of private multiple unit apartment dwellings. They are neither equipped, manned, nor empowered to do so.

Id.

71. *See id.* at 480. The court noted:

> No individual tenant had it within his power to take measures to guard the garage entrance ways, to provide security at the main entrance of the building, to patrol the common hallways and elevators, to set up any kind of security alarm system in the building, to provide additional locking devices on the main doors, . . . and to see that the entrance was manned at all times.

Id.

72. *Id.* at 480-81.

73. *Id.* at 488.

74. *Id.* at 481.

75. 82 N.J. 214, 412 A.2d 436 (1980). *See generally* Recent Development, *Expanding the Scope of the Implied Warranty of Habitability: A Landlord's Duty to Protect Tenants from Foreseeable Criminal Activity*, 33 VAND. L. REV. 1493 (1980) (discussing *Trentacost*).

76. 82 N.J. at 218, 412 A.2d at 438.

Pashman, writing for the court, held the landlord liable for the tenant's injuries.[77] The full court agreed that the landlord was liable in tort for failing to take reasonable security measures against foreseeable crime.[78] A three-justice plurality, however, stepped ahead of former decisions by stating that in the alternative the landlord was liable to the tenant for breach of the warranty of habitability implied in the lease.[79] To support the imposition of an implied warranty of habitability, Justice Pashman, also writing for the plurality, cited increasingly unsafe urban conditions,[80] the landlord's control over common areas, the tenant's inability to secure the common areas,[81] and the landlord's superior bargaining position.[82]

Relying on *Javins*,[83] Justice Pashman characterized the urban apartment lease as a contract rather than a conveyance.[84] The court reasoned that a landlord's failure to keep the premises reasonably secure is equivalent to a breach of the warranty of habitability implied in the lease contract.[85] The court concluded that the landlord's breach of this implied warranty of habitability made the landlord "liable to the tenant for injuries attributable to that breach."[86] Thus, the *Trentacost* ruling went beyond the definitions of the scope of the landlord's duty that had appeared in previous decisions. The court discarded "foreseeability" as a limiting factor on the landlord's liability. The court reasoned that because the landlord's implied obligation to provide adequate security exists independent of his knowledge of risks, the tenant did not have to prove that the landlord had notice of a defective and unsafe condi-

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77. *Id.*

78. *Id.* at 215, 412 A.2d at 437.

79. *Id.* at 224, 412 A.2d at 441.

80. The apartment building was in a high crime area of Passaic, New Jersey. *Id.* at 218-19, 412 A.2d at 438-39.

81. The court emphasized the landlord's control over security and the tenants' inability to provide adequate maintenance such as doorlocks and common area lights. The court also noted that our "highly mobile society" should not require tenants to invest "suhstantial sums in improvements that might outlast their tenancy." The landlord, on the other hand, can spread security costs over time and among all tenants who enjoy the increased security. *Id.* at 226, 412 A.2d at 442.

82. The court found that "[i]ncreasing urbanization, population growth and inflated construction costs" had created an urban housing shortage that gives landlords superior bargaining power and makes urban apartment leases mere "form contracts of adhesion." *Id.* at 226, 412 A.2d at 442.

83. *See supra* notes 46-54 and accompanying text.

84. 82 N.J. at 225-27, 412 A.2d at 441-43.

85. *Id.*

86. *Id.* at 228, 412 A.2d at 443.

tion to establish the landlord's contractual duty.[87] In essence, the court imposed a strict liability standard on the landlord for violation of the often amorphous implied warranty of habitability.[88]

C. Flood v. Wisconsin Real Estate Investment Trust: *Contract*

A third approach that courts take is to consider landlord liability solely as a breach of contract question. The contract approach is more conservative than the *Trentacost* approach because the contract approach does not depend on a general warranty implied by social policy, but rather on the specific facts of each case.

In *Flood v. Wisconsin Real Estate Investment Trust*[89] a tenant who had been raped in her apartment brought suit against her landlord for the landlord's failure to provide adequate security.[90] The tenant alleged breach of contract. The court held the landlord liable for breaches of both an implied and an express warranty of security.[91]

The court reasoned that the implied warranty of security had arisen from an implicit understanding between the landlord and the tenant that the security conditions which had existed when the tenant signed the lease would continue throughout the term of the lease.[92] The court cited *Kline* for the proposition that an implied warranty can be the basis of a landlord's liability to a tenant for third party crimes.[93] The *Flood* court, however, failed to recognize

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87. *Id.*

88. *See id.* Justice Clifford, dissenting from the plurality's implied warranty of habitability holding, harshly criticized the imposition of strict liability. He reasoned that the duty "should not be grounded simply on a special relationship between the parties but rather should arise from the particular circumstances of the case, including foreseeability." Justice Clifford would have included in the court's analysis a balancing of "the relative interests of the parties, the nature of the risk, and the public interest in the proposed solution. . . . This [balancing] process has been well served in the past through the application of traditional negligence principles." *Id.* at 234-35, 412 A.2d at 447.

89. 503 F. Supp. 1157 (D. Kan. 1980).

90. *Id.* at 1159. Significantly, the attack occurred in the tenant's apartment rather than in a common area. Imposing liability in this situation, therefore, is an expansion of the traditional property principle that a landlord may be liable for damages due to his negligence in common areas.

91. The court stated that "[t]he Kansas Supreme Court has recognized that a lease is essentially a contract." *Id.* at 1160 (citing Steele v. Latimer, 214 Kan. 329, 521 P.2d 304 (1974)).

92. The court stated: "As a result of this [implied] contractual relationship . . . an implied warranty arises that the landlord will continue to keep the premises in their beginning condition during the lease term." *Flood*, 503 F. Supp. at 1160.

93. *See id.* Quoting from *Kline*, the court noted that "[s]ince the lessees continue [sic]

that *Kline* had established a standard of care only for tort analysis. The *Flood* court, nevertheless, used the *Kline* language to establish an implied warranty of security as an independent basis for a landlord's liability under a breach of contract analysis.[94]

Although the *Flood* decision came nine months after *Trentacost*, *Flood* did not mention *Trentacost*. *Flood* based its implied warranty of security on the agreement between the parties and on conditions existing at the apartment complex itself,[95] rather than on the social policy that the *Trentacost* court had used as the basis of its implied warranty of habitability.[96] Thus, in contrast to *Trentacost*, the *Flood* court took a more conservative approach to the problem of landlord liability. In addition to a breach of the implied warranty of security, the *Flood* court also found a breach of an express warranty of security.[97] The court concluded that the express warranty arose from conversations between the landlord and the tenant in which the landlord had assured the tenant that the complex was safe and from advertisements representing that the apartment complex was safe.[98]

Thus, the *Flood* court found the landlord liable by examining only the property conditions relative to the individual tenant and the specific exchanges between the landlord and the tenant. This cautious approach virtually limits the application of each case analysis to its own facts because the lease terms, both in the written contract and orally discussed by the landlord and the tenant, and the conditions existing at the beginning of each tenant's lease, will differ with each tenant. The *Flood* court's contract analysis, therefore, both restricts the scope of landlord liability and limits the protection afforded tenants.[99]

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to pay the same rent, they were entitled to expect that the landlord would continue to keep the premises in the beginning condition during the lease term. It is precisely such expectations that the law now recognizes as deserving of formal, legal protection." *Id.* (quoting *Kline*, 439 F.2d at 485).

94. The *Flood* action was in contract, not in tort. The court rejected the tort defense of comparative fault because the defense is improper in a contract case. *Flood*, 503 F. Supp. at 1160.

95. *Id.*

96. *See supra* notes 80-82 and accompanying text.

97. *Flood*, 503 F. Supp. at 1160.

98. *Id.*

99. The *Flood* contract approach can lead to inequitable results. For example, assume T*1 moves into a building one year before T*2 and finds minimum security. When T*2 moves in, the landlord improves the security. T*2 thus has an implied warranty of security. These improved security conditions, however, would not apply to T*1 under the *Flood* analysis. If both tenants were assaulted by the same criminal at the same time, T*2 could recover but T*1 could not. This inequitable result shows the flaw of the "pure contract" ap-

IV. The Emerging Hybrid Solution

A. Development of a Liability Theory

The emerging solution to the question of landlord liability for third party crimes is a hybrid of tort, implied warranty of habitability, and contract law. This Note suggests that such an action against a landlord is best decided on tort principles.

Holding a landlord liable under an implied warranty of habitability, as in *Trentacost*, in effect imposes a strict liability standard upon the landlord.[100] This strict liability standard for crimes of third parties is far too expansive because it imposes liability on the landlord for conditions that could arise for reasons beyond his control. The *Trentacost* standard in effect makes the landlord the insurer of his tenants' safety. Consequently, adherence to the *Trentacost* rule would encourage a landlord to adopt security precautions that are unnecessarily expensive. The landlord no doubt would pass on the unnecessary cost to his tenants in the form of higher rent.

The contract approach, on the other hand, is too limited in scope.[101] Under the contract standard, landlords may allow security maintenance to lapse if no tenant's lease requires the landlord to maintain adequate protection. Because urban apartments generally are in short supply, individual tenants are not in a strong enough bargaining position to demand security maintenance provisions in new leases. In addition, the relatively short terms of urban apartment leases make cooperation among tenants to secure a building unlikely. As a result, a standard of determining landlord liability that relies on the terms of existing leases often will result in outrageously inadequate security for urban apartment buildings.

Tort is the most efficient ground upon which to determine the question of landlord liability for third party crimes. The tort framework imposes on the landlord an objective duty of care independent of his contractual obligations, but at the same time limits the tenant's recovery to injuries arising from conditions within the landlord's control. The tort standard also does not rely upon outmoded or changing property law notions, but rather is grounded in well-settled negligence principles.

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proach; this approach ignores the concept that a landlord should have obligations to keep the premises secure, regardless of specific contractual transactions with individual tenants.

100. *See supra* notes 75-88 and accompanying text.

101. *See supra* notes 89-99 and accompanying text.

B. *Duty: The Tort Theory Duty of Care*

1. Policy Justifications

Several policy arguments support imposing upon landlords a duty to keep premises reasonably secure from foreseeable crime. In today's urban housing crunch landlords are in a superior bargaining position with potential tenants and, therefore, can deny lessees contractual promises to maintain reasonable security.[102] A landlord also has control of the entire apartment complex, unlike his tenants who generally are responsible only for their separate units.[103] This central control gives the landlord access to better information about crime in the area and the level of security needed in the building. Tenants come and go, but the landlord and his successors have access to the complete history and current status of the building.[104] Thus, the landlord's strong bargaining position, central control, and permanency make him the most efficient bearer of the risk of third party crime.

Landlords also are in a better financial position to prevent crime.[105] They can spread the cost of maintenance and security improvements by small increases in each tenant's rent. Lone tenants cannot construct crime barriers as easily as landlords can. Moreover, individual tenants do not have the right, even if they do have the money, to make substantial changes in the apartment building, such as installing heavier doors or providing an alarm system for the complex.[106]

The landlord's duty to keep the premises safe did not exist at common law. This duty, however, is not at odds with common-law principles because the common law did impose such a duty on individuals who performed a function analogous to that of the modern urban landlord. The common law required an innkeeper, the predecessor to the modern day landlord, to keep the inn and its premises reasonably safe for guests.[107] Several courts have ruled that the analogy between the common-law innkeeper and the present day landlord is a good analogy and should set the standard for

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102. *See, e.g.*, Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 485 n.20 (D.C. Cir. 1970); Quinn and Phillips, *supra* note 57, at 225.

103. *See, e.g., Kline*, 439 F.2d at 480, 484, 488; Trentacost v. Brussel, 82 N.J. 214, 226, 412 A.2d 436, 442 (1980).

104. *See Kline*, 439 F.2d at 480, 484.

105. *Id.*

106. *Id.*; Mullins v. Pine Manor College, 389 Mass. 47, ___, 449 N.E.2d 331, 335 (1983).

107. *See supra* notes 25-31 and accompanying text.

landlord liability.[108] While the innkeeper was neither a policeman nor an insurer,[109] he was not a neutral bystander. Because the innkeeper exercised control over the premises, courts charged him with the special duty of protecting his guests from foreseeable harm from third parties.[110] The apartment landlord's control over building security similarly justifies imposing a duty upon urban landlords to keep the premises reasonably safe.

2. Judicial Recognition

An excellent example of the emerging trend recognizing that the urban apartment landlord owes a special duty of care to his tenants is *Feld v. Merriam.*[111] The *Feld* court held the landlord liable in negligence to tenants who were assaulted in the apartment building's garage. The court relied on the nature of the modern urban apartment lease to justify imposing a duty on the landlord "to provide adequate security to protect his tenants from the foreseeable criminal actions of third persons."[112] The court agreed with the *Javins* court's characterization of the urban apartment lease as an exchange of rent for a "well known package of goods and services"[113] and concluded that reasonable security protection is part of that expected package. To evaluate the reasonableness of the safety procedures that the landlord provided, the *Feld* court considered the custom of similarly situated landlords with respect to security[114] and the specific security measures that the *Feld* land-

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108. *See, e.g., Kline*, 439 F.2d at 482; *Javins*, 428 F.2d at 1077 n.33.

109. McFadden v. Bancroft Hotel Corp., 313 Mass. 56, 59, 46 N.E.2d 573, 575 (Mass. 1943).

110. *See* Orlando Executive Park v. P.D.R., Inc., 402 So. 2d 442 (Fla. Dist. Ct. App. 1981) (motel liable for guest's injuries from third party attack when attack was reasonably foreseeable); Zang v. Leonard, 643 S.W.2d 657 (Tenn. Ct. App. 1982) (hotel could be liable for injuries that a guest suffered when shot in the hotel parking lot).

111. 314 Pa. Super. 414, 461 A.2d 225 (1983).

112. *Id.* at 427, 461 A.2d at 231. The court noted that the urban apartment lease is not a conveyance of land but a contract that imposes rights and duties on both landlord and tenant. The urban apartment dweller, the court said, expects to receive "not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation and proper maintenance." *Id.* at 427, 461 A.2d at 231 (quoting Commonwealth v. Monumental Properties, Inc., 459 Pa. 450, 467-68, 329 A.2d 812, 820-21 (1974)).

113. *Feld*, 314 Pa. Super. at 427, 461 A.2d at 231 (quoting Commonwealth v. Monumental Properties, Inc., 459 Pa. at 467-68, 329 A.2d at 820-21 (1974)).

114. *Feld*, 314 Pa. Super. at 428 & n.9, 461 A.2d at 232 & n.9. The court stated that other factors in the reasonableness test easily could overcome the court's reliance on landlord custom: "[i]f a landlord does not provide locks for the doors in a building located in a high crime district, his conduct may be unreasonable despite the fact that no other landlord

lord had employed when the tenants entered the lease.[115] The court refused to rely on the landlord's subjective view of what security precautions were appropriate; instead the court used an objective standard based on what a reasonable person would consider adequate under the circumstances.

In *Scott v. Watson*[116] the plaintiffs brought suit against a landlord for the murder of a tenant in an apartment building garage. The appellate court, answering certified questions from a lower court, stated that landlord liability should be based on the traditional common-law principle that a landlord is responsible for the safety of tenants in the common areas under his control.[117] Thus, the court limited the duty to situations in which a landlord has control such that he knows or should know of a danger of crime on the premises.[118] The common-law principle that a landlord must take reasonable precautions to secure common areas, however, traditionally required landlords to keep premises safe only from physical and structural defects.[119] The *Scott* court's application of this tort theory to a case of injury from a third party crime represents a judicial trend toward expanding traditional tort duty notions in the landlord-tenant setting.[120]

The court in *Holley v. Mt. Zion Terrace Apartments, Inc.*[121] held that a landlord may be liable for the murder of a tenant in her apartment. The court based the landlord's liability on his duty to keep common areas safe because the murderer's only possible entrance into the apartment was by a common walkway adjacent to the tenant's window.[122] The court imposed a heightened standard of care on the landlord because of his personal knowledge of security problems in the building.[123] The court also noted that

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in the area provides such locks." *Id.* at 428 n.9, 461 A.2d at 232 n.9.

115. *Id.* at 428, 461 A.2d at 232.

116. 278 Md. 160, 359 A.2d 548 (1976).

117. *Id.* at 167, 359 A.2d at 553.

118. *Id.* at 169, 359 A.2d at 554; *see also* Gulf Reston v. Rogers, 215 Va. 155, 159, 207 S.E.2d 841, 844 (1974) (The Virginia court adopted the same "duty to keep common areas safe" standard, but did not find the landlord liable for the tenant's death because the landlord had taken reasonable care to secure the common areas.).

119. *See* Note, *supra* note 24, at 669.

120. For earlier cases consistent with this expansion of traditional tort principles, see *supra* notes 38-45 and accompanying text.

121. 382 So. 2d 98 (Fla. Dist. Ct. App. 1980) (reversing and remanding the lower court's summary judgment ruling for the landlord).

122. *Id.* at 99, 101.

123. Prior to the murder, the landlord had employed security guards. *Id.* at 100. In Penner v. Falk, 153 Cal. App. 3d 858, 200 Cal. Rptr. 661 (1984), the court stated that the landlord would be liable for injuries caused by third party crimes if the landlord knew of

shortly before the murder the landlord may have increased the rent in an effort to improve security.[124] Similarly, in *O'Hara v. Western Seven Trees Corp. Intercoast*[125] the tenant sought to hold her landlord liable for injuries that the tenant sustained when an intruder assaulted and raped her in her apartment.[126] The court recognized the landlord's duty to protect against crime because "only the landlord is in the position to secure common areas."[127] Moreover, the landlord had known of several recent assaults in the apartment complex.[128] The court concluded that the landlord had breached the duty of care by failing to provide adequate security and by misrepresenting to tenants the security measures that the apartment complex employed.[129]

One category of landlords arguably owes an even higher duty of care to tenants: colleges that provide dormitory space or apartments for their students. In *Mullins v. Pine Manor College*[130] the court held Pine Manor College liable for the rape of a student in a campus dormitory room. The court reasoned that society expects colleges to keep dormitories secure.[131] The court felt that the high concentration of women on college campuses made the risk of third party crimes reasonably foreseeable.[132] The *Mullins* court concluded that because students are transient residents, they lack the motivation and ability to secure dormitories adequately and, therefore, the college was in a better position to protect students against attacks.[133] The court found that Pine Manor had breached its duty

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previous crimes and of "tenant complaints that unauthorized persons were often in the building but [the landlord] . . . refused to exclude them or prevent their access." 153 Cal. App. 3d at 867-68, 200 Cal. Rptr. at 666.

124. *Holley*, 382 So. 2d at 100. The court found that the rent increase imposed a contractual responsibility on the landlord to provide adequate security. That contractual responsibility, according to the court, raised the applicable standard of care. *Id.*

125. 75 Cal. App. 3d 798, 142 Cal. Rptr. 487 (1977). The court reversed the lower court's dismissal of the tenant's suit.

126. *Id.* at 801, 142 Cal. Rptr. at 489. The tenant based her charges on negligence theory.

127. *Id.* at 802, 142 Cal. Rptr. at 489. The landlord's breach of his duty to keep common areas secure "could have contributed substantially, as alleged, to appellant's injuries," although the assault occurred in the tenant's apartment. *Id.* at 803, 142 Cal. Rptr. at 490.

128. *Id.* at 801, 142 Cal. Rptr. at 489.

129. *Id.* at 803, 142 Cal. Rptr. at 490. The court stated that the plaintiff also had a cause of action for deceit and fraud because the landlord misrepresented the level of security in the apartments. The landlord falsely had assured the tenant that the apartments were safe and patrolled by security guards. *Id.* at 804, 142 Cal. Rptr. at 491.

130. 389 Mass. 47, 449 N.E.2d 331 (1983).

131. *Id.* at ___, 449 N.E.2d at 336.

132. *Id.* at ___, 449 N.E.2d at 335.

133. *Id.*

to keep the campus safe even though the college had installed electronic door locks in the dormitories. The court reasoned that the locks necessarily were inadequate because they did not keep the assailant out of the dormitory.[134]

3. Bases of the Duty

(a) Statutes

Statutes can be the basis of the landlord's duty to keep premises reasonably safe. In *Warner v. Arnold*[135] the court stated that a landlord could be liable in tort for damage to a tenant's property if an intruder set the premises on fire.[136] The court determined that provisions of Georgia's Housing Code had created a duty in the landlord to provide a suitable living area for the tenants.[137] The court used the Code's "suitability" standard to measure the landlord's compliance with his duty to keep the premises safe.[138] The court, therefore, clearly based the landlord's duty to the tenant on a statutory foundation.

In *Braitman v. Overlook Terrace Corp.*[139] the court held that a landlord was liable to tenants for losses resulting from a foreseeable burglary that had occurred after the landlord negligently failed to fix a broken lock.[140] The court relied in part upon the

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134. *Id.* at ____, 449 N.E.2d at 339. In a case virtually identical to *Mullins*, a New York court held that a state college could be held liable for the attack of a student because the college had failed to keep dormitory doors locked. Miller v. State, 62 N.Y.2d 506, 467 N.E.2d 493, 478 N.Y.S.2d 829 (1984); *see also* Peterson v. San Francisco Community College, 36 Cal. 3d 799, 685 P.2d 1193, 205 Cal. Rptr. 842 (1984).

135. 133 Ga. App. 174, 210 S.E.2d 350 (1974).

136. *Id.* at 177, 210 S.E.2d at 353-54. A burglar had broken into the tenant's apartment and set a fire that damaged the tenant's property. The tenant earlier had complained to the landlord that the lock on her front door was inadequate in light of recent break-ins in the area.

137. The relevant portions of the Georgia Housing Code provide:

> The landlord must keep the premises in repair, and shall be liable for all substantial improvements placed upon them by his consent . . . .
>
> The landlord, having fully parted with possession and right of possession, is not responsible to third persons for damages resulting from the negligence or illegal use of the premises by the tenant; but he is responsible to others for damages arising from defective construction or for damages from failure to keep the premises in repair.

GA. CODE ANN. tit. 61, chs. 111, 112 (1979).

138. *Warner*, 133 Ga. App. at 179, 210 S.E.2d at 353. The Georgia Supreme Court had ruled that the Code requires a landlord to make the premises suitable "for the use intended by the lessee and known to the lessor." Point Apartments, Inc. v. Bryant, 99 Ga. App. 110, 113, 107 S.E.2d 684, 687 (1959).

139. 68 N.J. 368, 346 A.2d 76 (1975).

140. The landlord had notice of the faulty lock because the tenant had complained before the break-in that the deadbolt did not work. Thus, the risk of harm was foreseeable.

New Jersey Housing Code as a justification for imposing on the landlord a duty to provide safe premises.[141] The Code required that doors to multidwelling units have a specified heavy duty lock.[142] The landlord in *Braitman*, however, had failed to install the locks on the apartment doors.[143] Although the court weighed heavily the landlord's failure to comply with the Housing Code provision in holding the landlord liable, the court stopped short of finding that a violation of the statute was negligence per se.[144] The court, nevertheless, ruled that violating the statute was significant evidence of landlord liability.[145]

(b) Contract: Express and Implied Warranties of Security

Courts also have relied upon express and implied warranties as a basis for finding a landlord's duty to provide safe premises for his tenants.[146] A landlord has the duty to deliver the level of security promised in advertisements that induced a tenant to rent[147] and the level stated in the tenant's lease.[148] Courts also have ruled

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Id. at 371, 346 A.2d at 77-78.

141. The court stated that it also could base the landlord's duty on the "recent judicial trend" requiring landlords to keep premises reasonably safe, or on New Jersey's judicial recognition that liability can arise for negligence that leads to third party crime. *Id.* at 374, 379, 382, 346 A.2d at 79-81, 83, 86.

142. At the time of the burglary, the Commissioner of the Department of Community Affairs had issued regulation N.J. ADMIN. CODE tit. 5:10, § 6.6(d)(7) (1968), which provides that "[d]oors to dwelling units shall be equipped with a heavy duty lock set equipped with stopwork for control of the knob and an additional dead bolt . . . to prevent manipulation by means other than a key." 68 N.J. at 384, 346 A.2d at 85 (quoting N.J. ADMIN. CODE tit. 5:10, § 6.6(d)(7) (1968)).

143. 68 N.J. at 384, 346 A.2d at 85.

144. *Id.*

145. *Id.* at 385, 346 A.2d at 86.

146. See *supra* notes 89-99 and accompanying text for a discussion of landlord liability based solely on contract.

147. *See* Flood v. Wisconsin Real Estate Investment Trust, 503 F. Supp. 1157 (D. Kan. 1980).

148. *See id.* In a majority of jurisdictions an exculpatory clause will not relieve a landlord of liability for harm resulting from his negligence. *See, e.g.*, Armi v. Huckabee, 266 Ala. 91, 95-96, 94 So. 2d 380, 384 (1957); Cappaert v. Junker, 413 So. 2d 378 (Miss. 1982); Nashua Gummed & Coated Paper Co. v. Noyes Buick Co., 41 A.2d 920 (N.H. 1945); Jones v. Houston Aristocrat Apartments Ltd., 521 S.W.2d 1 (Tex. Civ. App. 1978); College Mobile Home Park & Sales v. Hoffman, 241 N.W.2d 174 (Wis. 1976); ALASKA STAT. § 34.03.040(3) (1975) (only residential leases); ARIZ. REV. STAT. ANN. § 33-1315(3) (Supp. 1984); CAL. CIV. CODE § 1953(5) (West Supp. 1984) (only residential leases); CONN. GEN. STAT. ANN. § 47a-4(3) (West Supp. 1984) (only residential leases); DEL. CODE ANN. tit. 25, § 5515 (1975); FLA. STAT. ANN. § 83.47(1)(b) (West Supp. 1984) (only residential leases); GA. CODE ANN. § 61-102 (1981); HAWAII REV. STAT. § 521-33 (1976); MASS. GEN. LAWS ANN. ch. 186, § 15A (West Supp. 1984); NEB. REV. STAT. § 76-1415(1)(d) (1981); N.Y. GEN. OBLIG. § 5-321 (1978); OHIO REV. CODE ANN. § 5321.13 (Page 1981) (only residential leases); ORE. REV. STAT. §

that a landlord has a duty to maintain safety standards implied by the conditions of the building when the tenant assumed possession.[149]

In *Ten Associates v. McCutcheon*[150] the court held a landlord liable to a tenant who had been raped in her apartment. The court based the landlord's duty to the tenant on warranties of security expressly stated in the tenant's lease.[151] Prior to signing the lease, the tenant had asked about security in the complex. The manager had assured the tenant that the apartments were safe and that the management employed several security guards. The court found that these statements created an express warranty of security.[152] In addition, the court determined that the landlord's advertisements stating that the apartment provided a twenty-four hour security service created an implied warranty of security.[153] These express and implied warranties of security formed the basis of the landlord's duty to provide security.

In *Holley v. Mt. Zion Terrace Apartments, Inc.*[154] the court in part based the landlord's duty to the tenant on contract principles.[155] The landlord had charged the tenant an additional five dollars in rent each month purportedly to provide improved security. The *Holley* court found that this additional charge created a contractual obligation in the landlord to provide adequate protection for the tenants.[156]

91.745(1)(c) (1983) (only residential leases); TENN. CODE ANN. § 66-28-203 (1982) (only residential leases in major cities); VA. CODE ANN. § 55.248.9(a)(4) (1981) (only residential leases); WASH. REV. CODE ANN. § 59.18.230(2)(d) (Supp. 1984); W.VA. CODE § 55-8-14 (1981). Moreover, courts have ruled that an exculpatory clause in a lease cannot relieve a landlord of the duty to take reasonable precautions to secure a residential building against crime. *See* Cain v. Vontz, 703 F.2d 1279, 1282 (11th Cir. 1983) (applying Georgia law); Smith v. General Apartment Co., 133 Ga. App. 927, 929, 213 S.E.2d 74, 76 (1975).

149. *See* Ten Assocs. v. McCutcheon, 398 So. 2d 860 (Fla. App. 1981). "Building conditions" may include secure doors, heavy locks, guards, and signs stating that a security service protects the premises.

150. *Id.*

151. *Id.* at 862.

152. *Id.*

153. *Id.*

154. 382 So. 2d 98 (Fla. App. 1981).

155. *Id.* at 100.

156. *Id.*

4. Scope of the Duty

(a) The Landlord Is Not an Insurer of Tenants' Safety

The landlord's duty to keep the premises reasonably safe does not place the landlord in the role of an insurer.[157] Imposing strict liability upon the landlord, or effectively holding the landlord liable for all crimes committed on the premises, would make the landlord an insurer of his tenants' safety.[158] Courts can avoid this overly burdensome result by closely adhering to a flexible standard of duty under which the landlord must secure only those areas in which a foreseeable risk of harm exists.[159] This standard does not require the landlord to build a safety bubble over the premises. It only requires the landlord to take reasonable security precautions against foreseeable criminal activity.[160]

(b) Foreseeability Based on Knowledge of Prior Crimes

Although saddled with the duty to provide reasonable security, a landlord may escape liability for injuries resulting from unsafe conditions if the court finds that the crime was not foreseeable. Some courts have denied tenants recovery on the ground that the crimes were not foreseeable because no prior similar crimes had occurred on the premises.[161] The emerging majority trend,

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157. *Kline*, 439 F.2d at 481. In other areas of the law, courts have imposed a "duty to police" on certain parties. *See, e.g.*, Kenny v. SEPTA, 581 F.2d 351 (3d Cir. 1978) (carrier-passenger), *cert. denied*, 439 U.S. 1073 (1979); Dilley v. Baltimore Transit Co., 183 Md. 557, 39 A.2d 469 (1944) (carrier has duty to furnish police protection sufficient to protect passengers from reasonably foreseeable harm); Amoruso v. New York City Transit Auth., 12 A.D.2d 11, 207 N.Y.S.2d 855 (1960) (carrier-passenger); Morgan v. Valley Forge Drive-In Theater, 431 Pa. 432, 246 A.2d 875 (1968) (landowner-invitee); Buck v. Hankin, 217 Pa. Super. 262, 269 A.2d 344 (1970) (innkeeper-guest).

158. *See supra* notes 75-88 and accompanying text (warranty of habitability).

159. *See supra* notes 111-15 and accompanying text.

160. "Reasonable security measures" depend on the circumstances of each case. Courts have imposed liability for broken or nonexistent apartment door locks, Cain v. Vontz, 703 F.2d 1279, 1283 (11th Cir. 1983), inadequate outdoor lighting, Johnston v. Harris, 387 Mich. 569, 573, 198 N.W.2d 409, 410 (1972), failure to put locks on outside doors, *Trentacost*, 82 N.J. at 228, 412 A.2d at 436, nonexistent lighting in common areas, Kwaitkowski v. Superior Trading Co., 123 Cal. App. 3d 324, 325, 176 Cal. Rptr. 494, 495 (Ct. App. 1981), no guards, *Holley*, 382 So. 2d at 98, untrimmed foliage, *Peterson*, 36 Cal. 3d 799, ___, 205 Cal. Rptr. at 850, and failure to limit access to nontenants, *Penner*, 183 Cal. App. 3d at 799, 200 Cal. Rptr. at 661.

161. *See, e.g.*, Cornpropst v. Sloan, 528 S.W.2d 188, 197-98 (Tenn. 1975) (finding a business-patron relationship and not a landlord-tenant relationship and holding that because the plaintiff had not shown evidence of similar previous crimes on the premises, the assault was not foreseeable); Gulf Reston, Inc. v. Rogers, 215 Va. 155, 159, 207 S.E.2d 841, 845 (1974) (trespassers' "boyish prank[s]," including redirecting roof lights, making a hole in

however, is to define foreseeability in terms of all the circumstances of the case.[162] Knowledge of the existence of prior crimes is just one factor that courts consider.

A majority of courts hold that prior third party crimes need not have been similar to the crime in question to make the crime foreseeable.[163] The landlord in *Feld v. Merriam*[164] argued that he should not be liable for the assault on a tenant in an apartment parking garage because, although the landlord had been aware of criminal activity on the premises, he did not have notice of crimes as serious as the assault committed against the plaintiff. The court disagreed and ruled that the landlord's notice of prior, though "lesser," criminal activity was sufficient to indicate that "criminal conduct by third parties was likely to endanger the safety of tenants."[165] Thus, the court held that foreseeability does not require proof that exactly the same crime was committed previously on the premises.[166]

Similarly, in *Mullins*[167] the college argued that a rape in a dormitory was not foreseeable because no prior rapes had occurred there.[168] The court rejected this argument, preferring to consider other factors in addition to the previous occurrence of similar crimes. The court noted that the college's proximity to a metropolitan area increased the foreseeability of a criminal act occurring on campus.[169] In addition, the court found that warnings from the director of student affairs concerning dormitory safety showed that

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the roof, and dropping water-filled bags off the roof, held not sufficient to create foreseeable barm).

162. *See, e.g.*, Olar v. Schroit, 155 Cal. App. 3d 861, 202 Cal. Rptr. 457 (1984); Penner v. Falk, 153 Cal. App. 3d 858, 200 Cal. Rptr. 661 (1984); Kwaitkowski v. Superior Trading Co., 123 Cal. App. 3d 324, 176 Cal. Rptr. 494 (1981); Holley v. Mt. Zion Terrace Apartment, Inc., 382 So. 2d 98 (Fla. 1980); Smith v. General Apartment Co., 133 Ga. App. 927, 213 S.E.2d 74 (1975); Mullins v. Pine Manor College, 389 Mass. 47, 449 N.E.2d 331 (1983); Feld v. Merriam, 314 Pa. Super. 414, 461 A.2d 225 (1983).

163. *Olar*, 155 Cal. App. 3d at 861, 202 Cal. Rptr. at 463 (1984). In Virginia D. v. Madesco Inv. Corp. 648 S.W.2d 881 (Mo. 1983) (en banc), the court considered an innkeeper's liability for a third party assault on a guest. The court analyzed the effect on foreseeability of prior crimes and concluded that "[t]here is no requirement that there be at least one mugging or rape before the innkeeper is obliged to consider the possibility. The duty is one of the appropriate degree under the circumstances." *Id.* at 887.

164. 314 Pa. Super. 414, 461 A.2d 225 (1983). See *supra* text accompanying notes 111-15 for a discussion of *Feld*.

165. 314 Pa. Super. at 430, 461 A.2d at 233.

166. *Id.*

167. 389 Mass. 47, 449 N.E.2d 331 (1983). See *supra* text accompanying notes 130-34 for a discussion of *Mullins*.

168. 389 Mass. at ___ n.12, 449 N.E.2d at 337.

169. *Id.*

"[t]he risk of such a criminal act was not only foreseeable but was actually foreseen."[170]

Strict adherence to a "prior crimes" test of foreseeability leaves tenants in the building no cause of action against the landlord until at least one tenant has been murdered, assaulted, or robbed. Logic and justice demand adoption of a test similar to the subjective "dangerous premises" standard[171] applied in *Kwaitkowski v. Superior Trading Co.*[172] In *Kwaitkowski* the court held the landlord liable for a tenant's rape even though no prior rapes had occurred on the premises. The court reasoned that the occurrence of prior crimes of any nature was not required for an attack to be foreseeable.[173] Rather, the court adopted the more subjective dangerous premises test. Under this test, a court considers whether the apartment is in a potentially dangerous area and, therefore, is a foreseeable target of third party crime. In *Kwaitkowski* the court found that the landlord's notice of prior assaults and robberies in the area, the building's location in a high crime district, and a defective lobby door that allowed easy access by strangers, all made the attack on the tenant foreseeable.[174] Strong judicial support for the dangerous premises test suggests that it is the emerging majority trend.[175]

C. *Causation*

Once the court has established the landlord's duty and a breach of that duty, the court then must consider the question of

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170. *Id.* In a footnote, the court remarked: "The rule requiring evidence of prior criminal acts often leads to arbitrary results. . . ." *Id.* at ___ n.12, 449 N.E.2d at 337 n.12.

171. *See* Comment, *California Landlords' Duty to Protect Tenants from Criminals*, 20 SAN DIEGO L. REV. 859, 869-70 (1983).

172. 123 Cal. App. 3d 324, 176 Cal. Rptr. 494 (1981); *accord* Penner v. Falk, 183 Cal. App. 3d 858, 200 Cal. Rptr. 661 (1984).

173. 123 Cal. App. 3d at 329, 176 Cal. Rptr. at 497.

174. *Id.* at 333, 176 Cal. Rptr. at 497.

175. *See* Kendall v. Gore, 236 F.2d 673 (D.C. Cir. 1956); Spar v. Obwoya, 369 A.2d 173 (D.C. 1977); Samson v. Saginaw Professional Bldg., 393 Mich. 393, 224 N.W.2d 843 (1975).

The flaw in the prior crimes standard is analogous to the first year law problem of the biting dog. *See* Smith, *The Landlord's Duty to Defend His Tenants Against Crime on the Premises*, 4 WHITTIER L. REV. 587, 608-09 (1982). The maxim "every dog is entitled to one bite" sounds reasonable. This rule, however, does not hold up under careful analysis. Law and logic dictate that a dog owner is liable to the individual bitten, even though the dog never has bitten anyone else, if the dog owner has reason to know that the dog has dangerous or vicious propensities. The defendants in *Olar v. Schroit* advanced the argument that the "one bite" rule should apply to landlords. The court rejected the contention, reasoning that the general principles of foreseeability should apply. 155 Cal. App. 3d 861, 202 Cal. Rptr. 457, 462 (1984).

causation. A landlord who breaches his duty escapes liability if the tenant cannot show a causal connection between the breach and the tenant's damages.[176] The tenant must prove that the landlord's negligence enhanced the risk of crime[177] or created a situation that the landlord knew or should have known would afford an opportunity for a criminal attack.[178] The tenant, however, need not demonstrate that certain security measures would have prevented the crime.[179] The tenant only must present evidence sufficient to show that the landlord probably caused the event; no tenant can prove with certainty what would have occurred had the landlord acted otherwise.[180]

The court in *Johnston v. Harris*[181] directly addressed the causation question. In *Johnston* a lurking criminal had assaulted and robbed an elderly tenant in the poorly lit, unlocked vestibule of the tenant's apartment building. The tenant sued the landlord for the injuries that the tenant incurred.[182] The tenant demonstrated that the landlord had enhanced the likelihood of exposure to criminal assaults by failing to provide adequate lighting and locks.[183] Because the landlord's negligence had created a foreseeable risk of crime, the landlord's negligence was the legal cause of the crime.[184] The court further stated that the act of the criminal was not a superseding cause of the harm because the landlord's negligence itself invited that very act.[185]

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176. Clarke v. J.R.D. Management Corp., 118 Misc. 2d 547, 461 N.Y.S.2d 168 (N.Y. Civ. Ct. 1983). The *Clarke* court held that the landlord had a duty to provide adequate security. The court, however, did not find the landlord liable because the tenant had failed to show that the landlord's negligence had caused the property damage at issue.

177. Scott v. Watson, 278 Md. 160, 172, 359 A.2d 548, 555-56 (1976); *Braitman*, 68 N.J. at 382, 346 A.2d at 83-84.

178. Johnston v. Harris, 387 Mich. 569, 574, 198 N.W.2d 409, 411 (1972).

179. Virginia D. v. Madesco Inv. Corp., 648 S.W.2d 881, 889 (Mo. 1983) (en banc); *see* Orlando Executive Park v. P.D.R., Inc., 402 So. 2d 442, 448 (Fla. Ct. App. 1981); Mayer v. Housing Auth., 84 N.J. Super. 411, 425, 202 A.2d 439, 447 (1964).

180. *See Orlando Executive Park*, 402 So. 2d at 448 (quoting W. PROSSER, HANDBOOK ON THE LAW OF TORTS § 41, at 242 (4th ed. 1977)).

181. 387 Mich. 569, 198 N.W.2d 409 (1972).

182. *Id.* at 572, 198 N.W.2d at 409. The trial court granted the landlord's motion for a directed verdict and the Michigan Court of Appeals affirmed on the ground that the tenant had not proved that the landlord caused the injuries. The Michigan Supreme Court reversed, rejecting the lower courts' "narrow[ ] view [of] plaintiff's pleadings and proofs." *Id.* at 573, 198 N.W.2d at 410.

183. *Id.* at 573, 198 N.W.2d at 410.

184. *Id.* at 573-75, 198 N.W.2d at 410-11.

185. *Id.* The court based its reasoning on the *Restatement (Second) of Torts:*

> Section 302B. An act or omission may he negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of

The *Holley*[186] court adopted a causation analysis similar to the test that the *Johnston* court used.[187] Relying on the *Restatement (Second) of Torts*,[188] the court rejected the landlord's argument that the criminal's act was a superseding cause.[189] If the landlord negligently created a risk of criminal conduct,[190] the court ruled that the resulting occurrence of such conduct could not be a superseding cause of the injury.[191]

D. Proposal

Courts have imposed a duty on landlords to secure the premises against foreseeable crime. They base this duty on two consid-

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the other or a third person which is intended to cause harm, even though such conduct is criminal.

Section 448. The act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime, *unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime.*

Section 449. If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby.

Id. (emphasis added) (quoting RESTATEMENT (SECOND) OF TORTS §§ 302B, 448, 449 (1965)).

186. 382 So. 2d 98 (Fla. Dist. Ct. App. 1980).

187. For additional cases using a similar causation theory in the landlord-tenant context, see Cain v. Vontz, 703 F.2d 1279, 1282-83 (11th Cir. 1983); O'Hara v. Western Seven Trees Corp., 75 Cal. App. 3d 798, 804, 142 Cal. Rptr. 487, 490-91 (1977); General Apartment Co. v. Smith, 133 Ga. App. 927, 930, 213 S.E.2d 74, 77 (1977); Mullins v. Pine Manor College, 389 Mass. 47, ____, 449 N.E.2d 331, 341 (1983); Feld v. Merriam, 314 Pa. Super. 414, 428, 461 A.2d 225, 232 (1983).

188. *See supra* note 185.

189. 382 So. 2d at 101.

190. *Id.* at 99.

191. *Id.* at 101. These landlord-tenant decisions are consistent with traditional tort causation rules. The Supreme Court in Lillie v. Thompson, 332 U.S. 459 (1947), held an employer liable to a telegraph operator for injuries she had incurred when an intruder assaulted her at work. According to the Court, the criminal assault, even though intentional, did not break the chain of causation because the attack was the foreseeable result of the employer's negligence. *Id.* at 462. The *Lillie* rule set the standard for determining liability for injuries resulting from crimes committed by third parties. *See, e.g.*, Liberty Nat'l Life Ins. Co. v. Weldon, 267 Ala. 171, 187, 100 So. 2d 696, 710-11 (1958); Welch & Son Contracting Co. v. Gardner, 96 Ariz. 95, 392 P.2d 567 (1964); Nigido v. First Nat'l Bank, 264 Md. 702, 288 A.2d 127 (1972); Wallinga v. Johnson, 269 Minn. 436, 131 N.W.2d 216 (1964); McLeod v. Grant County School Dist., 42 Wash. 2d 316, 255 P.2d 360 (1953); Phelps v. Woodward Constr. Co., 66 Wyo. 33, 204 P.2d 179 (1949). Thus, adopting the *Lillie* standard to determine causation of injuries from third party crimes in the landlord-tenant context is consistent with established tort principles.

erations: (1) the landlord's control of building conditions and (2) the fact that some security measures are needed to combat urban crime. The courts, however, have not agreed on the grounds of decision. This Note proposes that landlord liability should be based on tort principles. Other approaches either impose too strict a standard on the landlord or define his duties too narrowly.

The discussion in part IV of this Note has set out the components of the tort action: the landlord's duty of care, the bases and scope of the standard of care, and causation. The duty arises from a hybrid of tort, implied warranty, and contract principles. As a result, the negligence framework is flexible enough to address the many different issues that arise in actions for landlord liability for third party crime. This framework ensures tenant safety without unnecessarily fueling skyrocketing inflation in rental housing costs. Imposing a duty upon the landlord ensures security maintenance while limiting that duty to foreseeable harm protects landlords and, therefore, their tenants from unlimited maintenance costs.

The pivotal issue in landlord-tenant litigation concerning third party crime is whether the landlord unreasonably created a risk of crime. This Note proposes that a rebuttable presumption of landlord negligence arises once the tenant has shown injuries from a foreseeable crime committed on the premises by an intruder who gained entrance through a common area. This presumption would state clearly what many courts implicitly have used to guide their decisions.[192] The requirement of foreseeability recoguizes that the landlord is not the insurer of his tenants' safety, but requires the landlord to take reasonably prudent security precautions. The requirement of "entrance through a common area" holds the landlord responsible for inadequate security in only the areas that he controls. A rebuttable presumption similarly would not impose an unreasonable liability on the landlord. The landlord could overcome the presumption and thereby shift the burden back to the tenant by showing that the building did have reasonable security or that inadequate security was not the cause of the harm. Requiring the landlord to prove adequate security or disprove causation is consistent with the traditional property law notion that the landlord has greater access to information about security needs in the building.

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192. *See supra* notes 111-75 and accompanying text.

V. Conclusion

Courts may base a landlord's liability to a tenant for crimes committed by third parties upon contract, implied warranty of habitability, or tort principles. Reliance upon the contract theory may shield landlords from excessive liability at the expense of tenants who may receive inadequate protection. The implied warranty of habitability theory in effect imposes a standard of strict liability on the landlord that results in excessive security precautions that tenants ultimately pay for in rental increases. The tort theory balances the adequacy of tenant protection against the burden imposed upon the landlord in providing that protection. Drawing from the strengths of contract and implied warranty theories, the tort approach achieves this balance through the creation of a duty upon the landlord to provide adequately safe common areas. The creation of the duty ensures tenant safety. The presumption, however, protects the landlord from the potential for extreme liability because his duty is limited to only reasonably foreseeable crimes.

In deciding future cases concerning landlord liability to tenants for crimes committed by third parties on the premises, courts should use the tort theory as the basis for landlord liability. Moreover, courts should use a rebuttable presumption of landlord negligence that arises once the tenant has shown injuries from a foreseeable crime committed on the premises by a third party who gained entrance through a common area.

Centuries ago, building maintenance laws varied according to surrounding circumstances, including the nature of the area. Returning to that standard of landlord responsibility today affirms the notion that the law is responsive to the needs of changing times.

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