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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001685-MR

CAROL HARMON AND
EVERETT HARMON APPELLANTS

v.

APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 07-CI-00099

FLEMING PROPERTIES, LLC APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: NICKELL AND WINE, JUDGES; HARRIS,[1] SENIOR JUDGE.

HARRIS, SENIOR JUDGE: Carol Harmon and Everett Harmon appeal from a summary judgment in favor of Fleming Properties, LLC, in this premises liability action. The trial court granted summary judgment on the basis that Fleming Properties, as landlord, was not in exclusive control of any portion of the premises

[1] Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

upon which Mrs. Harmon was injured. On appeal, the Harmons argue that Fleming Properties owed Mrs. Harmon a duty to maintain the premises in a safe manner and failed to do so. After reviewing the record and briefs, we affirm.

Fleming Properties leased the premises to Kettle Top Restaurant and Katering ("Kettle Top"). There was no written lease; however, an oral month-to-month lease was in effect from September 6, 2006, until January 23, 2007. On September 18, 2006, Mrs. Harmon tripped and fell on a change in elevation between the sidewalk and the porch at the entrance to the restaurant. The difference in height was marked by a painted red stripe. The incident occurred during daylight hours.

The Harmons filed suit against Fleming Properties and Kettle Top. The trial court granted summary judgment in favor of Fleming Properties on the basis that, as landlord, it did not have control of the premises it leased to Kettle Top. The proceedings against Kettle Top remain pending. This appeal followed.

The Harmons argue that Fleming Properties owed Mrs. Harmon a duty to maintain the premises in a safe manner and failed to do so.

In *Lambert v. Franklin Real Estate Co.,* 37 S.W.3d 770, 775-76 (Ky. App. 2000), this Court summarized the law governing landlord-tenant liability as follows:

> "[A] landlord has a duty to disclose a known defective condition which is unknown to the tenant and

> not discoverable through reasonable inspection." *Milby v. Mears*, Ky.App., 580 S.W.2d 724, 728 (1979). However, "[i]t has been a longstanding rule in Kentucky that a tenant takes the premises as he finds them. The landlord need not exercise even ordinary care to furnish reasonably safe premises, and he is not generally liable for injuries caused by defects therein." *Milby* at 728. "[T]he landlord is under no implied obligation to repair the demised premises in the absence of a contract to that effect, nor is he responsible to a tenant for injuries to persons or property caused by defects therein, where there has been no reservation on the part of the landlord of any portion of the rented premises. In such cases the law applies to the contract or lease the doctrine of caveat emptor." *Home Realty Co. v. Carius*, 189 Ky. 228, 224 S.W. 751 (1920). Where the tenant is put in complete and unrestricted possession and control of the premises, as here, the landlord is liable only for the failure to disclose known latent defects at the time the tenant leases the premises. *Carver v. Howard*, Ky., 280 S.W.2d 708, 711 (1955). "[T]he duties and liabilities of a landlord to persons on the leased premises by the consent of the tenant are the same as those owed to the tenant himself. For this purpose they stand in his shoes. This rule applies to the tenant's wife or child. Where the tenant has no redress against the landlord, those on the premises in the tenant's right are likewise barred." *Clary v. Hayes*, 300 Ky. 853, 190 S.W.2d 657, 659 (1945).

See also Dutton v. McFarland, 199 S.W.3d 771, 773 (Ky. App. 2006). It is undisputed that the lease between Fleming Properties and Kettle Top was in effect at the time of the incident. While the Harmons take issue with the fact that there was no written lease, we are not cited to nor could we find any authority distinguishing written and oral leases with respect to a landlord's liability for injury to third parties. There is no question that Kettle Top maintained exclusive control and possession of the premises or that Kettle Top was aware of the

condition of the entranceway at the time the premises were leased. Fleming Properties did not undertake to repair or maintain the entranceway under the terms of the oral lease. Therefore, Fleming Properties was entitled to summary judgment under the cases cited above.

Accordingly, the judgment of the Fleming Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Raymond S. Bogucki
Maysville, Kentucky

BRIEF FOR APPELLEE:

John G. McNeill
Evan B. Jones
Lexington, Kentucky