

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TIMOTHY HARGENRADER and	:	NO. 02-01,123
MARCIE HARGENRADER,	:	
Plaintiffs	:	
	:	
vs.	:	
	:	
JOHN SCHON and LINDA SCHON,	:	CIVIL ACTION - LAW
Defendants	:	Motion for Summary Judgment

**OPINION AND ORDER**

Before the Court is Defendants' Motion for Summary Judgment, filed February 2, 2004. Argument on the motion was heard April 15, 2004.

By way of background, during a period when Plaintiffs were tenants in an apartment leased from Defendants, Plaintiff Timothy Hargenrader fell from a second floor porch when he leaned against the railing around the porch and it gave way. The complaint filed by Plaintiffs seeks to recover damages under theories of negligence and breach of an implied warranty of habitability. In their Motion for Summary Judgment, Defendants contend neither theory can be the basis for a claim inasmuch as Plaintiffs have not alleged, nor can they prove, notice to Defendants of a defective condition. Plaintiffs counter that no notice was required as Defendants were not "out of possession" of the porch.<sup>1</sup>

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<sup>1</sup> Plaintiffs do not, nor could they, contend the porch was a common area and thus the responsibility of the landlord, inasmuch as the building contained only one residential unit.

The Court agrees that the key issue in resolving the instant motion is whether Defendants were out of possession since, as a general rule, no exceptions to which are applicable here, a landlord out of possession is not liable to injuries caused to the tenant. Kobylinski v. Higgs, 519 A.2d 488 (Pa. Super. 1986). Plaintiff's contention Defendants were not out of possession is based on the following language contained in the lease: "This lease confers no rights on Tenant(s) to use, for any purpose, any of the property of Lessor other than the interior of the apartment hereby leased...." This statement goes on to except, however, "the walks and roadways<sup>2</sup> and roadways gaining access thereto and such other areas, if any, as Lessor may, from time to time, designate for the use of the residents." There is no dispute the porch in question provided access to the apartment through a door, as well as access to steps which led to a basement used by Plaintiffs for their laundry facilities. Plaintiffs' contention the porch was not included in the lease is thus meritless.

Inasmuch as the facts, none of which are in dispute, indicate Defendants were "out of possession" of the area in question, and also that Defendants had no notice of any defect, Plaintiffs cannot pursue their claims and summary judgment is appropriate.

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<sup>2</sup> A standard form lease was used.

ORDER

AND NOW, this 16<sup>th</sup> day of April 2004, for the foregoing reasons, Defendants' Motion for Summary Judgment is hereby GRANTED and judgment is hereby entered in favor of Defendants and against Plaintiffs.

BY THE COURT,

Dudley N. Anderson, Judge

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Hon. Dudley Anderson