

Mold: Arkansas Court of Appeals Addresses Alleged Breach in Residential Lease Agreements



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06/20/2023

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The Arkansas Court of Appeals addressed in a May 24th Opinion an issue involving alleged unsafe conditions at a Helena apartment building. See *Angel v. Helena Renaissance 1, L.P.*, 2023 Ark. App. 297.

A concern raised by the tenants was the presence of mold.

The question considered was whether the owners and property managers of Helena Heights Apartments (“Helena Heights”) breached several covenants contained in the lease agreements. These allegedly included creating and maintaining a nuisance in the common areas of the apartment complex.

The tenants claimed that poor maintenance of the building exposed them to toxic levels of mold, causing them to suffer from a myriad of allergic reactions, including:

“acute respiratory infections, acute exacerbation of chronic obstructive pulmonary disease (COPD), shortness of breath, onset of asthma, acute irritation of existing asthma symptoms, hypertension, headaches, depression, anxiety, skin irritation, elevated blood-lead levels, insect or animal bites, nausea, vomiting, diarrhea, pneumonia, embarrassment at having visitors, and increased stress as a result of the poor maintenance and repair of the Helena Heights Apartments.”

The “*Resident Handbook Rules and Regulations*” included in the lease agreement provided that management and the tenants would cooperate to maintain the apartments in such a condition that health and safety standards were met.

Helena Heights moved to dismiss the case under summary judgement. It argued that the tenants could not show entitlement to damages for the various medical issues related to the presence of mold in the apartment building. It argued that the tenants failed to provide an expert witness qualified to link issues at Helena Heights to any medical issue.

The second argument for dismissal by Helena Heights was that several of the tenants could not establish breach of covenants in the lease because they never signed a lease.

Helena Heights also argued that the tenants could not establish any breach of covenant because they signed lease addendums that expressly absolved Helena Heights of liability for problems arising from mold or mildew. The addendum provided, in part:

“[i]n consideration of the lease of the premises, Landlord shall not be responsible for any damages, liabilities, claims, or losses, incurred by residents or others inhabiting the premises arising out of or

relating to mold or any other fungus or agent that may be associated with alleged defects in the premises, include, but not limited to, property damages, personal injury, adverse health effects, loss of income, emotional distress, death, loss of use or loss of value of the premises and resident hereby releases Landlord from the same. This means that the resident shall not seek to hold the Landlord responsible under any legal theory for any damages whatsoever caused by mold or any other agent.”

The Phillips County Circuit Court (“Circuit Court”) dismissed the case. It held that:

1. the tenants’ claims that their medical issues were related to the presence of mold were purely speculative;
2. if there was an issue of fact as to causation, the mold and mildew addendum shielded Helena Heights from liability;
3. there was no factual basis on the issue of quiet enjoyment; and
4. the law of nuisance has no applicability under these circumstances.

The tenants appealed to the Arkansas Court of Appeals (“Court”).

The Court affirmed the dismissal of the claims alleged by three of the tenants. It determined there was no evidence in the record that those three plaintiffs paid rent, signed a lease, or otherwise could state a claim that the covenants in the lease were breached.

The Court then addressed the tenants’ allegation that the tenants’ exposure to mold caused the illnesses that they claimed in their complaint. It explained that nominal damages may be recovered for a breach of contract unaccompanied by any actual damage; and the possibility of an award of nominal damages was sufficient to preclude summary judgment. Therefore, the Court reversed and remanded the Circuit Court’s order granting summary judgment on that issue.

As to the mold and mildew addendum, the Court explained that in Arkansas, landlords generally do not have the common-law duty to repair or maintain leased premises. However, a landlord may contractually agree to repair or maintain leased premises. It found that since, in the Helena Heights lease agreement, the landlord expressly assumed the duty to repair mold conditions, the exculpatory clause, which purports to release Helena Heights from liability under any legal theory, was unenforceable.

The lease agreement was also noted to include a covenant of quiet enjoyment, which provided, in part, that:

“[the] tenant may peaceably and quietly enjoy the premises, subject nonetheless to the terms and conditions of the lease.”

The Court stated that the law in Arkansas is that every residential lease has an implied covenant of quiet enjoyment. Several of the tenants testified that the conditions at Helena Heights forced them to leave their apartments. It found that the Circuit Court incorrectly granted summary judgement on this issue. This ruling was reversed and remanded so that the Circuit Court could address each tenant’s claim of constructive eviction individually.

The final issue was a claim of nuisance, which is defined in Arkansas as:

“conduct by one landowner that unreasonably interferes with the use and enjoyment of the lands of another and includes conduct on property that disturbs the peaceful, quiet, and undisturbed use and enjoyment of a nearby property.”

The Court found that the definition of a nuisance excludes tenants’ nuisance claims against their landlords, because it requires two separately owned parcels of property. It affirmed the Circuit Court’s order on this point.

A copy of the opinion can be downloaded [here](#).

