Masthead Logo

McGeorge Law Review

Volume 17 | Issue 3

Article 11

1-1-1986

Becker v. IRM Corporation: The Final Chapter in the Destruction of Landlord Tort Immunity

Matthew E. Karanian

Becker v. IRM Corporation: The Final Chapter in the Destruction of Landlord Tort Immunity

In *Becker v. IRM Corporation*,[1] the California Supreme Court held that a landlord in the business of leasing dwellings is strictly liable in tort when a defect in the premises, present at the inception of the lease, injures the tenant. Part I of this note will set forth the facts and decision of the case. Part II will discuss the legal background of *Becker* and Part III will examine the likely ramifications of the opinion, both in California and in other jurisdictions.

I. THE CASE

A. The Facts

George Becker, a tenant in a 36-unit apartment complex owned by the IRM Corporation, broke and severely lacerated his arm when he slipped and fell against a frosted glass shower door in his apartment. The door, made of untempered glass, broke upon impact. Becker filed claims for negligence and strict liability against the corporate landlord.[2]

Officers of IRM Corporation did not dispute that the risk of serious injury to Becker would have been substantially reduced if the shower door had been built with tempered rather than untempered glass. Instead, IRM Corporation contended that the traditional common law tort immunity of landlords[3] precluded recovery. The corporation contended that there had been neither a concealment of a known danger nor an express contractual or statutory duty to repair. Absent the application of these or other exceptions to immunity,[4] a landowner at common law

---

1. 38 Cal. 3d 454, 698 P.2d 116, 213 Cal. Rptr. 213 (1985).

2. While the case was pending before the California Supreme Court, the plaintiff settled with the builder and a door assembler-installer for $150,000, with a contingent settlement of an additional $50,000 if plaintiff did not succeed against the remaining defendants. *Id.* at 457 n.1, 698 P.2d at 117 n.1, 213 Cal. Rptr. at 214 n.1.

3. The common law rules governing the relation of landlord and tenant substantially absolved the landlord of responsibility in tort for injury caused by the condition of the premises. *See, e.g.*, RESTATEMENT (SECOND) OF TORTS §356 (1965).

4. THE RESTATEMENT (SECOND) OF TORTS (1965) lists six exceptions to the general rule that a lessor of land is not liable to the lessee. The lessor generally has no immunity when the lessor contracts to repair, RESTATEMENT (SECOND) OF TORTS §357 (1965); when there are undisclosed dangerous conditions known to the lessor, RESTATEMENT (SECOND) OF TORTS §358

could not be held liable in tort for injuries to land occupiers. IRM Corporation moved for summary judgment.

In support of the motion for summary judgment, the defendant corporation filed affidavits explaining that the apartment complex had been built in 1962 and 1963 and that the defendant acquired the building in 1974. Before purchasing the complex, two officers of the corporation inspected each apartment and observed that all the shower doors appeared similar. No accidents involving any shower door had occurred prior to Becker's accident in 1978 and the corporate officers were unaware until after Becker's injury that some of the shower doors were constructed of untempered glass. After the plaintiff's accident, the maintenance personnel of IRM Corporation inspected the shower door in each apartment. A close inspection revealed a small mark, indicating untempered glass, in the corner of 31 doors. An employee of the corporation replaced each of these doors. The trial court granted the landlord's motion for summary judgment, dismissing the tenant's claims for negligence and strict liability.[5] The tenant appealed.

B. The Decision

In an opinion written by Justice Broussard,[6] the California Supreme Court concluded that the trial court erred as to both causes of action and reversed the grant of summary judgment.[7] The California Supreme Court reached this conclusion by examining the development of strict liability in California. Strict liability in tort has been broadened since first announced in *Greenman v. Yuba Power Products, Inc.*[8] Initially limited to manufacturers,[9] strict liability has been extended to all who are part of the overall producing and marketing enterprise, and to

---

(1965); when land is leased for a purpose involving admission of the public, RESTATEMENT (SECOND) OF TORTS §359 (1965); when there are parts of land retained in the lessee's control which the lessee is entitled to use, RESTATEMENT (SECOND) OF TORTS §360 (1965); when there are parts of land retained in the lessor's control but necessary to the safe use of the part leased, RESTATEMENT (SECOND) OF TORTS §361 (1965); and when negligent repairs are made by the lessor, RESTATEMENT (SECOND) OF TORTS §362 (1965).

5. Becker v. IRM Corporation, 38 Cal. 3d at 457, 698 P.2d at 117, 213 Cal. Rptr. at 214.

6. Chief Justice Bird wrote a concurring opinion. *Id.* at 470, 698 P.2d at 126, 213 Cal. Rptr. at 223. Justice Lucas wrote an opinion in which he concurred and dissented, with Justice Mosk concurring in the Lucas opinion. *Id.* at 479, 698 P.2d at 133, 213 Cal. Rptr. at 230.

7. *Id.* at 469, 698 P.2d at 126, 213 Cal. Rptr. at 223.

8. 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963).

9. *Greenman* held that, as a matter of policy, manufacturers who put defective products on the market should bear the costs of injuries that result. The costs should not be borne by injured persons because they are powerless to protect themselves. *Id.* at 63, 377 P.2d at 901, 27 Cal. Rptr. at 701.

licensors, bailors, and lessors.[10] Reflecting on this trend of expansion of strict liability, the California Supreme Court in *Becker* found no grounds to distinguish landlords from other classes of suppliers of products.[11]

The California Supreme Court recognized the common law rule exempting landlords from tort liability, but reasoned that to apply common law theories derived from an agrarian age in a modern urban society would be anachronistic.[12] The court noted the recent emergence of a judicial and leglislative trend toward increased responsibility for landlords.[13] This trend was advanced in California by the court in *Green v. Superior Court.*[14] *Green* declared the modern urban tenant indistinguishable from other consumers of goods, and found an implied warranty of habitability in every lease of a dwelling by a landlord.[15] The court in *Becker* concluded that "a landlord engaged in the business of leasing dwellings is strictly liable in tort for injuries resulting from a latent defect in the premises when the defect existed at the time the premises were let to the tenant."[16] The court expressly declined to decide whether strict liability would apply to a disclosed defect[17] or whether strict liability would apply to defects in property that develop after the property is leased.[18] *Becker* was silent regarding a landlord's liability in tort for injuries caused by patent defects in the premises.[19] The court did not establish

---

10. *See infra* notes 70-75 and accompanying text.

11. *Becker*, 38 Cal. 3d at 464-66, 698 P.2d at 122-24, 213 Cal. Rptr. at 219-21 (The involvement of real estate in an enterprise is not a basis for immunizing the landlord).

12. *Id.* at 462, 698 P.2d at 120, 213 Cal. Rptr. at 217. The traditional common law rule that absolved the landlord of any duty to make the dwelling habitable arose in the agrarianism of the Middle Ages. *Id. See infra* note 29 and accompanying text.

13. *Becker*, 38 Cal. 3d at 461, 698 P.2d at 120, 213 Cal. Rptr. at 217. The trend is said to be directed toward "provid[ing] the tenant with property in a condition suitable for the use contemplated by the parties." RESTATEMENT (SECOND) OF PROPERTY, Landlord and Tenant introductory note, ch. 5 (1977). The view reflected is that "no one should be allowed or forced to live in unsafe and unhealthy housing." *Id.*

14. 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974).

15. 10 Cal. 3d at 627-29, 517 P.2d at 1175-76, 111 Cal. Rptr. at 711-12.

16. *Becker*, 38 Cal. 3d at 464, 698 P.2d at 122, 213 Cal. Rptr. at 219.

17. *Id.* at 464 n.4, 698 P.2d at 124 n.4, 213 Cal. Rptr. at 219 n.4.

18. *Id.* at 467 n.5., 698 P.2d at 124 n.5, 213 Cal. Rptr. at 221 n.5.

19. *Becker* expressly addresses the liability of a landlord for latent defects of the premises. Whether a defect is patent and obvious or is latent, would likely constitute a distinction without a difference today in California. A landlord's duty to exercise due care in the maintenance of the premises does not differ for hidden and obvious defects. *See id.* at 468, 698 P.2d at 125, 213 Cal. Rptr. at 222. In Knight v. Hallsthammar, 29 Cal. 3d 46, 54, 623 P.2d 268, 273, 171 Cal. Rptr. 707, 712 (1981), the court held that "a tenant's lack of knowledge of defects is not a prerequisite to the landlord's breach of the warranty." By analogy, a tenant's presumed knowledge of a patent defect should not preclude recovery in tort on a strict liability theory for injuries sustained, but *Becker* left this undecided. *Becker*, 38 Cal. 3d at 464 n.4, 698 P.2d at 122 n.4, 213 Cal. Rptr. at 219 n.4.

a bright line for determining when a lessor is in the business of leasing dwellings.[20]

Becker also reversed the landlord's summary judgment victory over the negligence claim.[21] The application of a negligence theory for recovery against a lessor by a lessee became unsettled when the California Supreme Court in *Rowland v. Christian*[22] abrogated the traditional classification scheme for entrants upon the land. The *Rowland* decision made recovery possible in a negligence action against a land occupier, for any entrant upon the land, without regard to the entrant's status as invitee, licensee, or trespasser.[23] The Supreme Court had not been called upon to decide whether a lessee could recover in a negligence action against the lessee's landlord. Several subsequent appellate level cases[24] facing this question found the rationale of the California Supreme Court in *Rowland* persuasive, however, and applied general negligence principles to the landlord and tenant relation.

The *Becker* court concluded that a landlord has a duty to inspect apartments for dangerous conditions at the beginning of a lease.[25] Nevertheless, *Becker* recognized that a landlord's right of access to dwelling units is limited by statute.[26] Consistent with this limited right of access, *Becker* did not impose a duty to inspect the premises for defects that develop after the lease begins.[27]

---

20. The court wrote that a lessor of "numerous units" plays a substantial role in leasing dwellings and thus found that IRM Corporation, as a lessor of a 36-unit apartment complex, was in the business of leasing dwellings. *Becker*, 38 Cal. 3d at 464, 698 P.2d at 122, 213 Cal. Rptr. at 219. At the other extreme, a lessor "engaged in isolated acts" may not be in the business. *See id.* An "isolated act" likely would describe the subletting, for a brief period, of an individual's home. The point at which a casual lessor will be considered to be in the business of leasing dwellings, however, has been subject to varying interpretations. *See infra* notes 97-98 and accompanying text.

21. *Becker*, 38 Cal. 3d at 467-69, 698 P.2d at 124-26, 213 Cal. Rptr. at 221-23.

22. 69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968). *See infra* notes 28-33 and accompanying text.

23. *See generally Rowland*, 69 Cal. 2d at 108, 443 P.2d at 561, 70 Cal. Rptr. at 97.

24. *See, e.g.*, Stoiber v. Honeychuck, 101 Cal. App. 3d 903, 162 Cal. Rptr. 194 (1980); Evans v. Thomason, 72 Cal. App. 3d 978, 140 Cal. Rptr. 525 (1977), Brennan v. Cockrell Investments, Inc., 35 Cal. App. 3d 796, 111 Cal. Rptr. 122 (1973).

25. *Becker*, 38 Cal. 3d at 469, 698 P.2d at 125, 213 Cal. Rptr. at 222-23. This duty to inspect dwellings for dangerous conditions is consistent with the landlord's statutorily limited right of access to dwelling units. Civil Code section 1954, which provides that a landlord may enter a dwelling unit only in certain enumerated situations, none of which extend to inspections, does not preclude a landlord from inspecting dwelling units at the time of purchasing or leasing a unit. *Id.*

26. *See* CAL. CIV. CODE §1954.

27. *See Becker*, 38 Cal. 3d at 469, 698 P.2d at 12526, 213 Cal. Rptr. at 222-23. *See also* Uccello v. Laudenslayer, 44 Cal. App. 3d 504, 118 Cal. Rptr. 741 (1975) (no duty to inspect for defects arising *after* lease begins).

II. LEGAL BACKGROUND

At common law, a landlord was immune from liability in tort either to a tenant or to others for injuries resulting from defects in the condition of the demised premises.[28] Immunizing landlords from tort liability worked well in agrarian England, where the typical lessor transferred possession of a farm for a term of years. The rule was not well suited to an industrial and urban society, however, where the leasehold was generally of shorter duration and the lessee was seeking a place to live rather than acreage to farm.[29]

This rule of immunity had the harsh effect of precluding the injured tenant from recovering in tort against a negligent landowner, and hence frequently barred the tenant's only source of recovery. In an attempt to mitigate the severity of the rule, the courts created several exceptions to landlord tort immunity.[30] One by one, the exceptions added avenues for recovery in tort from the lessor.[31] As the courts struggled to reach

---

28. *See* W. KEETON, PROSSER AND KEETON ON THE LAW OF TORTS §63 (5th ed. 1984). This immunity from tort liability was a product of the property law concept that a lessee acquires an estate in land for the term of the lease. The lessee was thus deemed, for the duration of the lease, to be the owner as well as the occupier of the land, leaving the lessor with only a reversionary interest in the realty. *Id.* The lessor, as owner and occupier, was thereby subject to all of the liabilities of one in possession, both to those who entered the land and to those outside of the land. RESTATEMENT (SECOND) OF TORTS §356, comment a (1965). *See also* §356 (a lessor of land is not liable to his lessee or to others on the land for physical harm caused by any dangerous condition, whether natural or artifical, which existed when the lessee took possession, subject to certain enumerated exceptions).

29. A modern lessee holding a month to month tenancy in an apartment, for example, is likely to lack both the incentive and the means to make costly repairs in the premises. The incentive to repair defects may not exist for a tenant who must change residences in the pursuit of employment. Those who rent rather than own their homes are also least likely, as a class, to be able to afford the financial burden of making repairs or of adequately insuring against the potential liability stemming from defects in the premises. Comment, *Landlord Tort Liability in California: Are The Restrictive Common Law Doctrines On Their Way Out?*, 12 SAN DIEGO L. REV. 401, 415 (1975). *See also Green*, 10 Cal. 3d at 624, 517 P.2d at 1173, 111 Cal. Rptr. at 709 (the expense of needed repairs will often be outside the reach of many tenants).

30. In California, for example, the general rule that a landlord is not liable to a tenant or others for defects in the premises was held to apply in the absence of (1) a concealment of a known danger, (2) an express covenant to repair or a promise to repair supported by consideration, or (3) a statutory duty to repair. Del Pino v. Gualtieri, 265 Cal. App. 2d 912, 920, 71 Cal. Rptr. 716, 721 (1968). *See also* Fakhoury v. Magner, 25 Cal. App. 3d 58, 63, 101 Cal. Rptr. 473, 476 (1972) (landlord not liable in the absence of fraud, concealment, covenant in the lease, or statutory duty to repair).

31. *See, e.g.*, RESTATEMENT (SECOND) OF TORTS §357 (1965) (lessor liable where there is a contract to repair a defect which caused injury); Lee v. Giosso, 237 Cal. App. 2d 246, 46 Cal. Rptr. 803 (1965); RESTATEMENT (SECOND) OF TORTS §358 (1965) (undisclosed dangerous conditions known to lessor); Hale v. Depaoli, 33 Cal. 2d 228, 201 P.2d 1 (1948); RESTATEMENT (SECOND) OF TORTS §359 (1965) (land leased for the admission of the public); id. §360 (land retained in lessor's control); DiMare v. Cresci, 58 Cal. 2d 292, 373 P.2d 860, 23 Cal. Rptr. 772 (1962); RESTATEMENT (SECOND) OF TORTS §361 (1965) (land retained in lessor's control but needed by the lessee in order to safely use the part leased); id. §362 (negligent repairs by lessor);

just results while working within the framework of outmoded law,[32] however, these judicially created exceptions to the general rule of immunity became severely distorted in their definition and application. Caveat lessee[33] was the order of the day.[34]

The early aversion to tort recovery was not limited to tenants, but also extended to persons entering the land.[35] In a negligence action, the duty a land occupier owed to a person entering the land was determined by the status of the entrant as either an invitee, licensee or trespasser.[36] These distinctions[37] were major obstacles to recovery even when the land

---

Callahan v. Loughran, 102 Cal. 476, 36 P. 835 (1894); Minoletti v. Sabini, 27 Cal. App. 3d 321, 103 Cal. Rptr. 528 (1972).

32. Comment, *Products Liability at the Threshold of the Landlord-Lessor,* 21 HASTINGS L.J. 458, 474 (1970). The exceptions to the general rule appeared to have given the courts ample room for creativity in their efforts to reach the "right" result. "For example, the California courts have: (1) permitted a res ipsa loquitor instruction in a case involving a twenty year old, decomposed and creaking common stairway, thus avoiding the question of whether a reasonable inspection could possibly have disclosed the defect and requiring the defendant to prove that he was not negligent or give a satisfactory alternative explanation; (2) held that even though a stairway had been used exclusively by the tenant, the jury, rather than the court, must determine whether it was a common stairway . . . ; (5) held that it was a question of fact whether a ladder leading to a roof was a common stairway; [and] (6) held that a landlord may be liable for concealing a latent defect even though he does not know the defect exists but only has reason to suspect its existence." *Id.* at 474-475 (footnotes omitted).

33. "Let the lessee beware." The phrase is borrowed from the maxim "caveat emptor" (let the buyer beware), which summarizes the rule that a purchaser must examine, judge and test for himself. *See* BLACK'S LAW DICTIONARY 202 (5th ed. 1979). In a decision that created what is known as the "furnished house exception" to the rule of nonliability for landlords, however, the Wisconsin Supreme Court refused to be guided by caveat emptor, and found an implied warranty of habitability. "The need and social desirability of adequate housing for people in this era of rapid population increases is too important to be rebuffed by that obnoxious legal cliche, *caveat emptor.*" Pines v. Perssion, 111 N.W.2d 409, 412-13 (1961).

34. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences,* 69 CORNELL L. REV. 517, 520 (1984). At early common law, the lease was regarded as the sale of the demised premises for the term. Upon this basis, the courts applied the same concept of caveat emptor that prevailed generally in that day to the sale of all chattels, to the leases of realty. *See generally* Bowles v. Mahoney, 202 F.2d 320 (D.C. Cir. 1952), *cert. denied.*, 344 U.S. 935 (1953). In 1872, California statutorily imposed a requirement that residential premises be habitable. "The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenantable . . . ." CAL. CIV. CODE §1941. This statute does not endorse recovery in tort for tenants who are injured by conditions that make their homes "untenantable," Seiber v. Blanc, 76 Cal. 173, 18 P. 260 (1888), and did not, therefore, eliminate the need for the lessee to "beware." Instead, the statutory remedy is limited to the "repair and deduct" provisions of Civil Code section 1942. *Id.* at 174, 18 P. at 261. Recent decisions, however, have held that this is not an exclusive remedy, and that these statutes do not preclude the recognition of a common law warranty of habitability. *See, e.g.*, Secretary of Housing and Urban Development v. Layfield, 88 Cal. App. 3d Supp. 28, 30, 152 Cal. Rptr. 342, 344 (1978) (statutory "repair and deduct" remedy is not an exclusive remedy); *See also infra* notes 62-63 and accompanying text.

35. RESTATEMENT (SECOND) OF TORTS §356 (1965).

36. KEETON, *supra* note 28, §62, at 432.

37. An invitee is a person who enters the premises upon business which concerns the occupier

occupier had not exercised reasonable care.[38] Landowners and occupiers could thus use tort law as a shield from liability.

The Supreme Court of California abrogated these distinctions regarding occupiers of land in *Rowland v. Christian*.[39] The court in *Rowland* held that an occupier of land is liable in accordance with general negligence principles for injuries suffered by persons on the premises.[40] The California Supreme Court in *Rowland* did not explicitly decide whether the general rule of negligence applies to the landlord and tenant relationship. *Rowland* did, however, reaffirm the fundamental principle of negligence liability as set out in Civil Code section 1714[41] and found the principle incompatible with a scheme of distinctions based on the status of the parties involved.[42] This rationale was accepted by the California appellate courts, which found *Rowland* persuasive as applied to the

---

and upon the invitation of the occupier, express or implied. The most common invitee is the customer in a store. KEETON, *supra* note 28, §61, at 419. The duty owed to an invitee is greater than the duty owed licensees or trespassers. A licensee is anyone privileged to enter the land and is most commonly a social guest of the land occupier. *Id.* §60, at 412. A trespasser is a person who enters or remains upon the land of another without the privilege to do so. *Id.* §58, at 393.

38. Ursin, *Strict Liability For Defective Business Premises—One Step Beyond* Rowland *and* Greenman, 22 UCLA L. REV. 820, 821 (1975). "Under the traditional scheme, a full duty of reasonable care was owed only to invitees. Licensees and trespassers were denied compensation even when the land occupier was admittedly negligent." *Id.* at 821-22.

39. 69 Cal. 2d 108, 119, 443 P.2d 561, 568, 70 Cal. Rptr. 97, 104 (1968). In 1957, England abolished the distinction between licensees and invitees by statute, and held the occupier of land to a common duty of care toward all persons lawfully on the premises. KEETON, *supra* note 28, §62, at 432-33. Eight American jurisdictions have also abolished all distinctions between entrants on land. KEETON, *supra* note 28, §62, at 433. Five additional U.S. jurisdictions have retained a distinction only as to trespassing adults. *Id.*

40. *Rowland*, 69 Cal. 2d at 119, 443 P.2d at 568, 70 Cal. Rptr. at 104. *Rowland* found no justification for limiting the liability of an occupier of land through classification of the injured party as an invitee, licensee or trespasser. The court in *Rowland* wrote that "the classifications of trespasser, licensee, and invitee, the immunities from liability predicated upon those classifications, and the exceptions to those immunities, often do not reflect the major factors which should determine whether immunity should be conferred upon the possessor of land." *id.* at 117, 443 P.2d at 567, 70 Cal. Rptr. at 103. The classifications were rigid and could only lead to further complexity, confusion, and injustice. *Id.* at 119, 443 P.2d at 568, 70 Cal. Rptr. at 104. The distinctions were also contrary to a statutory scheme that all persons are responsible for injuries caused by their failure to exercise ordinary care. *See* CAL. CIV. CODE §1714, which provides that "Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care of skill in his management of his property or person, . . ." An exception to this principle could be made if clearly supported by public policy. *Rowland*, 69 Cal. 2d at 112, 443 P.2d at 100, 70 Cal. Rptr. at 564. *Rowland,* however, found no justification for the classification of entrants upon the land. *Id.* at 117, 443 P.2d at 567, 70 Cal. Rptr. at 103.

41. *Rowland*, 69 Cal. 2d at 111, 443 P.2d at 563, 70 Cal. Rptr. at 99.

42. *Id.* at 118-19, 443 P.2d at 568, 70 Cal. Rptr. at 104. The definitions of the classifications had been so manipulated by the courts that a "semantic morass" had resulted, according to the U.S. Supreme Court. Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 631 (1959).

landlord and tenant relation.[43] For example, a personal injury claim of a tenant, based on a general negligence theory, was resolved against the landlord by the California Fourth District Court of Appeal in *Brennan v. Cockrell Investments, Inc.*[44] In *Brennan*, a tenant sought to recover damages for personal injuries sustained in a fall off the stairway of a house he rented from the owner.[45] The tenant fell when the railing broke. The *Brennan* court held that *Rowland* had changed the common law rules concerning landlord tort liability and that no tort immunity exists for landlords when they are sued by their tenants.[46] *Brennan* reiterated the policy of Civil Code section 1714[47] and held that no compelling policy reason existed to support judicial amendment of the code to preclude application to landlords.[48] The California Supreme Court then recognized, by way of dictum in *Mark v. Pacific Gas & Electric Co.*,[49] that the rule of *Rowland v. Christian* applies in landlord-tenant cases.[50]

Thus, *Becker's* decision permitting recovery on a negligence theory is the culmination of a judicial process set in motion with *Rowland*.[51] *Becker* took the process a step further, however, by allowing a strict liability claim against a landlord as well. Just as *Rowland* had opened the door to later decisions allowing negligence claims against landlords, the decisions of the California Supreme Court recognizing an implied

---

43. *See, e.g.*, Minoletti v. Sabini, 27 Cal. App. 3d 321, 324, 103 Cal. Rptr. 528, 529-30 (1972).
44. 35 Cal. App. 3d 796, 111 Cal. Rptr. 122 (1973).
45. *Id.* at 798, 111 Cal. Rptr. at 123.
46. *Id.* at 800-01, 111 Cal. Rptr. at 125.
47. *Id.* at 800, 111 Cal. Rptr. at 125.
48. *Id.* at 800, 111 Cal. Rptr. at 125.
49. 7 Cal. 3d 170, 496 P.2d 1276, 101 Cal. Rptr. 908 (1972).
50. *See id.* at 183, 496 P.2d at 1285, 101 Cal. Rptr. at 917. The status of the plaintiff is only one of the factors to be weighed by the trier of fact in determining liability. *Id. Rowland* has also been invoked in litigation between trespassers and owners (Beard v. Atchison, Topeka & Santa Fe Ry. Co., 4 Cal. App. 3d 129, 135-36, 84 Cal. Rptr. 449, 453-54 (1970)), and in suits between lessors and lessees (Mezerkor v. Texaco, Inc., 266 Cal. App. 2d 76, 90, 72 Cal. Rptr. 1, 10 (1968)).
51. *See supra* note 39 and accompanying text. New Hampshire was the first state to recognize a negligence action against a landlord. Sargent v. Ross, 308 A.2d 528 (1973). In *Sargent*, the New Hampshire Supreme Court applied general negligence principles to landlord and tenant law and held that a landlord "must exercise reasonable care not to subject others to an unreasonable risk of harm." *Id.* at 534. The plaintiff had brought an action in tort against the defendant landlord after plaintiff's four year old daughter fell to her death from an outside stairway of an apartment owned by the defendant. *Id.* at 529. The stairway had been negligently constructed but the court declined to hold the landlord liable on a broadened concept of a failure to make proper repairs. Instead, the court reversed the general rule of nonliability for landlords, holding that liability was "more realistic." *Id.* at 533. "We think that now is the time for the landlord's limited tort immunity to be relegated to the history books where it more properly belongs." *Id.* New Hampshire reached this conclusion "naturally and inexorably" after an earlier state decision established an implied warranty of habitability in an apartment lease transaction. *See* Kline v. Burns, 276 A.2d 248, 251-52 (1971).

warranty of habitability in residential leases[52] fueled the possibility that the court would hold landlords strictly liable for injuries caused by defects in leased premises.

Prior to the decision of the California Supreme Court in *Green v. Superior Court*,[53] the traditional common law rule had absolved the landlord of any duty to maintain the leased premises in a habitable condition during the term of the lease.[54] The action in *Green* had been commenced by a landlord who was seeking, through an unlawful detainer proceeding, possession of the premises and $300 in back rent.[55] The tenant admitted nonpayment of rent but cited as a defense[56] the landlord's failure to maintain the leased premises in a habitable condition.[57] The court held that the statutory "repair and deduct" provisions of Civil Code sections 1941 through 1942.1[58] were not an exclusive remedy for tenants, and did not preclude the development of new common law principles in this area.[59] The Civil Code merely granted the tenant an additional remedy to whatever remedy a tenant may possess at common law.[60] The California Supreme Court thus permitted the tenant to assert the landlord's breach of an implied warranty of habitability in the premises as a defense to the landlord's unlawful detainer action.[61] This finding of an implied covenant of habitability cleared the path for a tenant to recover in tort against a landlord for defective premises. Since the common law rationale which had precluded finding an implied covenant of habitability was so closely related to the rule of landlord tort immunity,[62] the imposition

---

52. *See* Green v. Superior Court, 10 Cal. 3d 616, 629, 517 P.2d 1168, 1176, 111 Cal. Rptr. 704, 712 (1974). The rationale that an implied warranty of habitability exists in residential lease transactions in California was first adopted by an appellate court in Hinson v. Delis, 26 Cal. App. 3d 62, 68-71, 102 Cal. Rptr. 661, 665-67 (1972). For a leading case in this field, see generally Javins v. First National Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970) (implied warranty of habitability measured by standards in housing code).

53. 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974).

54. *Id.* at 622, 517 P.2d at 1171-72, 111 Cal. Rptr. at 707-08.

55. *Id.* at 620, 517 P.2d at 1170, 111 Cal. Rptr. at 706.

56. *Id.*

57. *Id.* at 620-21, 517 P.2d at 1170, 111 Cal. Rptr. at 706. The apartment building had been cited by the San Francisco Department of Public Works for 80 housing code violations. The tenant also detailed a long list of defects in the apartment, including "(1) the collapse and nonrepair of the bathroom ceiling, (2) the continued presence of rats, mice, and cockroaches on the premises, (3) the lack of any heat in four of the apartment's rooms, [and] (4) plumbing blockages. . . ." *Id.*

58. The "repair and deduct" provisions state that if a landlord does not make repairs to the tenant's premises within a reasonable time after receiving notice of the defects, the tenant may repair the defect and deduct the cost of the repair from the rent otherwise due the following month. CAL. CIV. CODE §1942.

59. *Green*, 10 Cal. 3d at 629, 517 P.2d at 1176-77, 111 Cal. Rptr. at 712-13.

60. *Id.* at 630, 517 P.2d at 1177, 111 Cal. Rptr. at 713.

61. *Id.* at 631-32, 517 P.2d at 1178, 111 Cal. Rptr. at 714.

62. Comment, *supra* note 29, at 406.

of the implied warranty encouraged an outright judicial abrogation of tort immunity for landlords.[63] In language that foreshadowed the willingness of the court to impose a standard of strict liability on some lessors, the court found the modern urban tenant to be in the same position as other consumers of goods.[64] Through a residential lease, a tenant purchases housing from his landlord for a specified period of time. According to *Green*, this is a *product* the landlord is selling, and a tenant may reasonably expect that this product is fit for the purpose for which it is obtained, that is, as a living unit.[65] This reasoning certainly set the stage for extending the doctrine of strict liability to landlords.

Strict liability[66] was established in California with the decision in *Greenman v. Yuba Power Products, Inc.*[67] The theory[68] was adopted to ensure that the costs of injuries resulting from defective products are borne by the manufacturers that put defective products on the market rather than by the injured persons who are powerless to protect themselves.[69] Strict liability has been broadened considerably[70] since first introduced, in an effort to further the twin goals of accident reduction[71] and risk

---

63. *See* Comment, *supra* note 29, at 406. The elimination of tort immunity is not without precedent in other areas of the law, as an active judiciary has undertaken the piecemeal abrogation of traditional limitations on recovery. *See generally* Gibson v. Gibson, 3 Cal. 3d 914, 479 P.2d 648, 92 Cal. Rptr. 288 (1971) (parental immunity); Klein v. Klein, 58 Cal. 2d 692, 376 P.2d 70, 26 Cal. Rptr. 102 (1962) (interspousal immunity for negligence); Self v. Self, 58 Cal. 2d 683, 376 P.2d 65, 26 Cal. Rptr. 97 (1962) (interspousal immunity for intentional torts); Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955) (refusal to create a sibling immunity); Muskopf v. Corning Hosp. Dist., 55 Cal. 2d 211, 359 P.2d 457, 11 Cal. Rptr. 89 (1961) (sovereign immunity); Malloy v. Fong, 37 Cal. 2d 356, 232 P.2d 241 (1951) (charitable immunity); Silva v. Providence Hosp., 14 Cal. 2d 762, 97 P.2d 798 (1939) (charitable immunity).

64. *Green*, 10 Cal. 3d at 627, 517 P.2d at 1175, 111 Cal. Rptr. at 711.

65. *Id.*

66. Strict liability is liability imposed without regard for the fault of the defendant. Strict liability is "applied by the courts in product liability cases in which a seller is liable for any and all defective or hazardous products which unduly threaten a consumer's personal safety." BLACK'S LAW DICTIONARY 1275 (5th ed. 1979).

67. 59 Cal. 2d 57, 62, 377 P.2d 897, 900, 27 Cal. Rptr. 697, 700 (1963).

68. The theory originally held a manufacturer strictly liable in tort "when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being." *Id.* at 62, 377 P.2d at 900, 27 Cal. Rptr. at 700. Since liability is in tort, a contract between the parties is not required, *id.* at 63, nor must fault of the defendant be established. Plaintiff need only show the product as marketed was "unsafe for its intended use." *Id.* at 64, 377 P.2d at 901, 27 Cal. Rptr. at 701.

69. *Id.* at 63, 377 P.2d at 901, 27 Cal. Rptr. at 701.

70. "Decisions advancing this principle (of strict liability) since 1963 have been described as a tidal wave, a flood, and a prairie fire . . . a breakthrough, a new insight, and . . . a new era." Ursin, *supra* note 38, at 825 n.22, citing R. KEETON, VENTURING TO DO JUSTICE 101 (1969).

71. A recent decision by the Maryland Court of Appeals carried the goal of accident reduction to a logical extreme. The court held the manufacturer of a "Saturday night special" handgun strictly liable for the injury to an innocent person who was shot with one of the guns during a crime. Kelley v. R.G. Industries, Inc., 497 A.2d 1143, 1159-60 (1985). In reaching

distribution. The strict products liability "revolution"[72] soon brought within its ambit retailers,[73] wholesalers,[74] and lessors of personalty.[75] Additionally, lower appellate courts in California promptly applied the holding in *Greenman* to the field of real property. In *Kriegler v. Eichler Homes, Inc.*,[76] for example, a builder who mass produced homes was strictly liable in tort when the heating system installed in a home failed. The court could find no meaningful distinction between the mass production and sale of homes and the mass production and sale of goods, such as automobiles, to which strict liability had been applied.[77] Finally, the landlord and tenant relationship was not entirely excluded from the scope of strict liability prior to *Becker*. In *Fakhoury v. Magner* a landlord was held strictly liable in tort for injuries sustained by a tenant when the tenant fell through the loose springs of a sofa that had been leased with the apartment.[78] The *Fakhoury* court wrote that liability was not based on any defect in the *premises*, however. Rather, the court extended the rationale of *Price v. Shell Oil Co.*,[79] in which the court held the lessor of a used ladder strictly liable for injuries that resulted when the ladder collapsed under a lessee and the lessor was in the business of making these equipment leases.[80] The *Fakhoury* court did not believe the mere presence of a landlord and tenant relationship justified an exception to *Price*,[81] and held the landlord liable as a lessor of furniture. This holding was expanded in 1976 to include fixtures.[82] Despite this expansion,[83] the lessor of realty seemed to be outside the scope of strict

---

the decision, the Maryland Court noted the desirability of using the flexibility of the common law to fit the needs of society. *Id.* at 1159.

72. Ursin, *supra* note 38 at 825.

73. Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 262, 391 P.2d 168, 171, 37 Cal. Rptr. 896, 899 (1964).

74. Canifax v. Hercules Powder Co., 237 Cal. App. 2d 44, 52, 46 Cal. Rptr. 552, 557 (1965).

75. Price v. Shell Oil Co., 2 Cal. 3d 245, 251-52, 466 P.2d 722, 726, 85 Cal. Rptr. 178, 182 (1970); Cintrone v. Hertz Truck Leasing, 212 A.2d 769 (1965).

76. 269 Cal. App. 2d 224, 74 Cal. Rptr. 749 (1969).

77. *Id.* at 227, 74 Cal. Rptr. at 752. A defect in the condition of the land also gave rise to strict liability in tort in Avner v. Longridge Estates, 272 Cal. App. 2d 607, 615, 77 Cal. Rptr. 633, 639 (1969). In *Avner*, the manufacturer of a residential lot had employed a defective manufacturing process which caused subsidence. *Id.*

78. 25 Cal. App. 3d 58, 63, 101 Cal. Rptr. 473, 476 (1972).

79. 2 Cal. 3d 245, 466 P.2d 722, 85 Cal. Rptr. 178 (1970).

80. *Fakhoury*, 25 Cal. App. 3d at 64, 101 Cal. Rptr. at 476-77 (citing Price v. Shell Oil Co., 2 Cal. 3d 245, 466 P.2d 722, 85 Cal. Rptr. 178 (1970)).

81. *Fakhoury*, 25 Cal. App. 3d at 64, 101 Cal. Rptr. at 477.

82. Golden v. Conway, 55 Cal. App. 3d 948, 961-62, 128 Cal. Rptr. 69, 78 (1976) (landlord liable in tort for a defective heater when court could find no reason to distinguish between appliances attached to the realty and furniture which is not).

83. *See, e.g.*, Garci v. Halsett, 3 Cal. App. 3d 319, 82 Cal. Rptr. 420 (1970) (licensor of personalty an integral part of the overall marketing enterprise that should bear the cost of injuries resulting from defective products).

liability for defects of the premises. By definition, strict liability had been restricted to products.[84] In an effort to promote a public policy which values safe and clean housing, however, *Green* was willing to advance the fiction that an apartment may also be a "product,"[85] since the tenant, through a residential lease, is seeking to purchase housing "as any other normal consumer of goods."[86] Although the advancement of the concept of housing as a product may make more palatable the extension of strict liability to landlords who lease residential dwellings, no court has yet held housing to be any more than "like" a product. The application of strict liability in tort has been broadened since first applied in *Greenman*.[87] Among the policy reasons cited in support of this broadening have been the desirability of distributing the risk of loss among those in the best position to bear and distribute the loss[88] and the expectation that this approach will also provide a means of ultimately reducing accidents.[89]

III. Legal Ramifications

The decision in *Becker* marks the broadest judicial expansion of strict liability in California and is a logical extension of existing products liability precedents.[90] Although the holding that a negligence action may be brought against a landlord had been anticipated by earlier appellate court decisions,[91] the jump to strict liability for defective products had not been

84. *Greenman*, 59 Cal. 2d at 63, 377 P.2d at 901, 27 Cal. Rptr. at 701. "The purpose of [strict] liability is to insure that the costs of injuries resulting from defective *products* are borne by the manufacturers . . ." (emphasis added). *Id.*

85. *Green*, 10 Cal. 3d at 627, 517 P.2d at 1175, 111 Cal. Rptr. at 711.

86. *Id.*

87. A dispute now exists in California, for example, whether strict liability in tort may attach when a defective transmission of electricity has occurred. Electric transmissions have generally been considered services and would fall outside the traditional scope of strict liability theory. Comment, *Torts of Electric Utilities: Can Strict Liability Be Plugged In?*, 11 Loy. L.A.L. Rev. 775, 778 (1978). The appellate courts have split on the issue and the California Supreme Court has yet to rule on the matter. *See generally* United Pacific Ins. Co. v. Southern Cal. Edison Co., 163 Cal. App. 3d 700, 209 Cal. Rptr. 819 (1985) (strict liability does not attach to defective transmissions of electricity); Pierce v. Pacific Gas & Electric Co., 166 Cal. App. 3d 68, 212 Cal. Rptr. 283 (1985) (manufacturer of electricity strictly liable for defective transmissions when electricity is actually in the stream of commerce and is expected to be at marketable voltage).

88. *See, e.g.*, Cronin v. J.B.E. Olson Corp., 8 Cal. 3d 121, 129, 501 P.2d 1153, 1159, 104 Cal. Rptr. 433, 439 (1972).

89. Ursin, *supra* note 38 at 829. One commentator has suggested that accidents may be reduced by "providing a financial incentive for manufacturers of products to reduce the level of accidents below that which would exist under a negligence standard of liability." *Id.*

90. *See* Love, *Landlord's Liability for Defective Premises: Caveat Lessee, Negligence or Strict Liability?*, 1975 Wis. L. Rev. 19, 158 (1975) (predicting that landlords would face strict liability for injuries caused by defective premises).

91. *See supra* notes 43-50 and accompanying text.

endorsed by any of the lower appellate courts. Whether the decision will have the effect of imposing "an unusual and unjust burden on property owners"[92] remains to be seen. Strict liability has been imposed on landlords by statute in Louisiana[93] since the early 1800's[94] without creating any significant difference between the insurance rates for landlords in Louisiana and for those in other states.[95] No other state has imposed strict liability upon landlords or other lessors of defective premises.[96]

The burden of strict liability on landowners will depend in part on the extent of the application of this theory. *Becker* held that a landlord engaged in the business of leasing dwellings is subject to liability,[97] but did not establish specific guidelines for determining when a lessor is engaged in the business of leasing dwellings. The defendant owned "numerous units" and therefore was within the scope of the theory.[98] A person who regularly leases a room in a house, however, may also be in "business," and would be in a class of people least likely to be able to afford strict liability. Nothing in the *Becker* opinion confines application of the theory to lessors of multiple residences, leaving open to question the liability of the person who regularly rents a room in the family home or who only owns one rental unit.

Becker is perhaps most troublesome for the issues left unresolved by the opinion. *Becker* does not decide whether defects which develop *after* a property has been leased will fall within the ambit of strict liability.[99] Traditionally, a product must be defective at the time it leaves the hands

---

92. *Becker*, 38 Cal. 3d at 479, 698 P.2d at 133, 213 Cal. Rptr. at 230 (Lucas, J., dissenting) (quoting Dwyer v. Skyline Apts., Inc., 301 A.2d 463 (1973)).

93. LA. CIV. CODE ANN. art. 2695 (West 1952). The statute imposes strict liability on all lessors: "The lessor guarantees the lessee against all the vices and defects of the thing, which may prevent its being used even in case it should appear he knew nothing of the existence of such vices and defects, at the time the lease was made, and even if they have arisen since, provided they do not arise from the fault of the lessee; and if any loss should result to the lessee from the vices and defects, the lessor shall be bound to indemnify him for the same." *Id.*

94. Love, *supra* note 90, at 142.

95. *Id.* at 135 n.662. In 1985 the Louisiana legislature passed six bills designed to limit the liability exposures of the state or other public entities, in response to "tremendous" growth in payment of liability claims. BUS. INS., Aug. 5, 1985, at 23, col. 1. One of the bills, H.B. 68, makes a public entity strictly liable only for injury or damage related to buildings, and only if the defect had been discovered and there had been a reasonable opportunity to make a repair. *Id.* The need for this legislation is evidence that Louisiana has not been spared all of the expected consequential expenses of strict liability, despite the apparently ordinary insurance rates for Louisiana landowners.

96. The Supreme Court of New Jersey expressly declined to allow a strict liability claim against a lessor of defective premises in Dwyer v. Skyline Apts., Inc., 301 A.2d 463, 467 (1973).

97. *See Becker*, 38 Cal. 3d at 464, 698 P.2d at 122, 213 Cal. Rptr. at 219.

98. *Id.; Cf.* Conroy v. 10 Brewster Ave. Corp., 234 A.2d 415, 418-19 (1967) (The lessor of a two family dwelling was held not a mass lessor so as to allow recovery for breach of an implied warranty of habitability).

99. *Becker*, 38 Cal. 3d at 467 n.5, 698 P.2d at 124 n.5, 213 Cal. Rptr. at 221 n.5.

of a particular seller for strict liability to attach.[100] This general rule, however, conflicts with the implied warranty of habitability in *Green*, in which the landlord was deemed to owe a duty to maintain the premises in a habitable condition. An extension of liability for defects in the premises that develop after the lease begins is therefore a logical extension and is likely.

Since liability under *Becker* is in tort, and not in contract,[101] and since public policy reasons have compelled this result, liability cannot be waived by the tenant.[102] A landlord would not likely be permitted to escape liability simply by disclosing defects in the premises. Refusing to give effect to a tenant's waiver of a landlord's liability would also be consistent with statutory provisions requiring that apartments be maintained in habitable condition.[103] The California Supreme Court has already made the landlord the insurer for any injury suffered by a tenant because of a defect in the premises that existed at the start of the lease.[104] An analogous judicial application of *Green*, imposing strict liability on a landlord for any defect in the premises leased, without regard to the time at which the defect developed, would complete what appears to be a judicial mission to make absolute insurers of landlords.[105]

---

100. RESTATEMENT (SECOND) OF TORTS §402A, comment g at 351 (1965). *But cf. Kriegler*, 269 Cal. App. 2d 224, 74 Cal. Rptr. 749 (1969) (heater became defective eight years after installation); *Avner*, 272 Cal. App. 2d 607, 77 Cal. Rptr. 633 (1969) (defect in the land did not appear for six years); Aced v. Hobbs-Sesack Plumbing Co., 55 Cal. 2d 573, 583-85, 360 P.2d 897, 903-04, 12 Cal. Rptr. 257, 263-64 (1961) (liability may be a function of the service life of the individual components of the premises).

101. *See, e.g., Greenman*, 59 Cal. 2d at 63, 377 P.2d at 901, 27 Cal. Rptr. at 701; Crane v. Sears Roebuck & Co., Inc., 218 Cal. App. 2d 855, 860, 32 Cal. Rptr. 754, 757 (1963) (manufacturer's liability for defective product is not created by contract, but is imposed by law and is governed by the law of strict liability in tort).

102. CAL. CIV. CODE §1953 (public policy precludes modification or waiver of certain specified rights of lessee, including the lessee's right to assert a cause of action against the lessor which may arise in the future, CAL. CIV. CODE §1953(a)(2), or the lessee's right to have the landlord exercise a duty of care to prevent personal injury or personal property damage where that duty is imposed by law. CAL. CIV. CODE §1953(a)(5); *see also* RESTATEMENT (SECOND) OF PROPERTY §§5.6, 17.6 (1977) (supporting the invalidation of exculpatory clauses).

103. CAL. CIV. CODE §1942.1. "Any agreement by a lessee of a dwelling waiving or modifying his rights under [the "repair and deduct" provisions of Civil Code] Section[s] 1941 or 1942 shall be void as contrary to public policy with respect to any condition which renders the premises untenantable." *Id.*

104. *See Becker*, 38 Cal. 3d at 487, 213 Cal. Rptr. at 236, 698 P.2d at 139 (Lucas, J., dissenting). *But see* Comment, *supra* note 32, at 485. The defendant is not an insurer of the consumer's safety. *Id. See generally* Traynor, *The Ways and Meanings of Defective Products and Strict Liability*, 32 TENN. L. REV. 363, 366-67 (1965).

105. *See Becker*, 38 Cal. 3d at 487, 698 P.2d at 139, 213 Cal. Rptr. at 236 (Lucas, J., dissenting). To the extent that liability is imposed on a landlord for injuries caused by defects in the premises of which the landlord could not reasonably have known, the accident reduction goal of strict liability has not been attained. In a dissenting opinion, Justice Lucas wrote that the policy "amounts, in effect, to insurance for tenants." *Id.*

The possibility of liability will not likely force landlords out of the rental market. A scenario in which the financial risk incurred through renting a typical dwelling eviscerates the likelihood of any profit is difficult to fathom. Indeed, any real estate enterprise involves an element of risk which property managers routinely analyze.[106] Some landlords may choose to form minimally capitalized corporations, but tax disadvantages may preclude most from using incorporation as a shield from personal liability.

More likely is a scenario in which landlords will carry increased liability insurance, at premium rates that may be expected to rise as claims by tenants increase. These increased costs will be passed on to the tenants[107] in the form of higher rent, disproportionately burdening the lower income tenant.[108] For many other lessees, slightly higher rents may not be an onerous solution to potentially unsafe conditions. Vastly improved housing conditions, however, may not necessarily accompany higher rents.[109] Many potentially hazardous defects in dwellings, even frosted shower glass doors, will remain, simply because reasonable landlords will not foresee any hazard present in the item.[110] Apartments may become

---

106. *See* Nourse, *How Risky Is Income-Producing Property?*, REAL ESTATE REVIEW, Fall 1985, at 66.

107. Rabin, *supra* note 34, at 558. "It is arguable that each increased tenant protection and landlord duty must ultimately be paid by the consumers of rental housing, the tenants." *Id.* The dissenting opinion of Justice Lucas in *Becker* also anticipates that a landlord will adjust the costs of production by charging more to his tenants. *Becker*, 38 Cal. 3d at 485, 698 P.2d at 137, 213 Cal. Rptr. at 234 (Lucas, J., dissenting). "Unlike retailers, lessors, bailors, wholesalers or others in the original chain of distribution of the product, the landlord owning used property cannot adjust the costs of protection up the chain. He may only do it, at best, *down* the chain of 'distribution,' . . . " (emphasis in original) *Id.* "The only logical result is that the price of rental housing will increase because of the increased cost of insurance, assuming insurance can even be obtained for this purpose." *Id.* at 487 n.6, 698 P.2d at 139 n.6, 213 Cal. Rptr. at 236 n.6.

108. *See* Rabin, *supra* note 34, at 569. The rent-to-income ratio for low income renters is significantly greater than the rent-to-income ratio for all renter households. *See id.* Assuming rent increases are imposed without regard to the income of the tenant, the proportion of income paid for rent by the lowest income tenants would increase relative to the proportion of income paid for rent by all other renter households. "Those least able to pay increased rents will lose more than they gain from additional [duties imposed on landlords]." *Id.* at 558. "Tenants formerly occupying [substandard] housing would either be forced out or be required to pay a higher proportion of their income for rent." *Id.* at 559.

109. Imposing strict liability upon landlords for injuries resulting from defects in the premises has been justified by the ability of the landlord to pass this increased cost to the tenants. Comment, *supra* note 29 at 421. If this is the only reason for the rent increase, the tenant has merely purchased an "insurance" policy from the landlord without any concurrent increase in the safety of the premises. At least one commentator has tacitly acknowledged this practical effect of landlord strict liability. Comment, *supra* note 29 at 422.

110. "No matter how carefully [landlords] inspect, and no matter how impossible to discern the defect, they are now the last outpost of liability for countless unrelated products in which they have no particular expertise." *Becker*, 38 Cal. 3d at 485, 698 P.2d at 137, 213 Cal. Rptr. at 234 (Lucas, J., dissenting).

more costly to rent, but the added measure of safety will approach a mathematical abstraction. The net effect may be to further reduce the availability of privately owned low income housing.[111] Landlords who cannot upgrade housing without incurring a deficit because rental income is insufficient to cover the cost of repairs will be forced out of the market. New investments in low rent housing will be discouraged,[112] and more government sponsored housing would be needed to fill this new void.

If landlords are to be held absolute insurers of the premises they lease, they may be expected to become more aggressive in keeping the rented premises free from patent defects.[113] Landlords will also need to seek out defects in order to limit their liability.[114] Statutory restrictions on a landlord's right to enter a dwelling unit will need to yield to the landlord's need to make spot inspections for defects.[115] Indeed, the California Supreme Court could, consistent with the logic of past landlord and tenant decisions, impose upon the landlord an affirmative duty to inspect dwelling units for defects that may arise after the unit has been leased to the tenant.[116]

Although California is the only state to have judicially imposed strict liability on landlords for injuries suffered by tenants because of defects in the premises,[117] at least three other jurisdictions have considered the issue.[118] Other cases may follow, possibly encouraged by the decision

---

111. Rabin, *supra* note 34 at 559.

112. *Id.* Construction of new publicly owned housing units has declined steadily during the past decade. According to U.S. Census Bureau statistics, construction on 9,000 new publicly owned housing units was started in 1983, compared with construction of 35,000 units in 1970. U.S. Bureau of the Census, *Construction Reports*, series C20. Units in public housing projects totaled 2.18 million in 1980. U.S. Bureau of the Census, *1980 Census of Housing*, vol. 1, chapters A, B.

113. *See, e.g.*, Comment, *supra* note 32, at 488. A landlord may decrease his liability by inspecting and repairing. *Id.*

114. Comment, *supra* note 29, at 419.

115. *See, e.g.*, Love, *supra* note 90, at 152-53. "If the tenant unreasonably refused to permit the landlord to enter, the tenant could be precluded from bringing a strict liability action . . . . " *Id.* at 153.

116. At least two commentators argue for enforcement of this duty to inspect by making "slumlordism" a tort in itself. *See generally* Sax and Hiestand, *Slumlordism as a Tort*, 65 MICH. L. REV. 869 (1967).

117. *See Becker*, 38 Cal. 3d at 479, 698 P.2d at 133, 213 Cal. Rptr. at 230 (Lucas, J., dissenting) (the decision of the court is without precedent).

118. New Jersey rejected strict products liability as a basis for recovery against landlords. *See* Dwyer v. Skyline Apts., Inc., 301 A.2d 463 (1973). *Dwyer* held that a landlord does not have a duty to insure the safety of tenants, but only to exercise reasonable care. *Id.* at 465. "To apply the broad brush of strict liability to the landlord-tenant relationship in a dwelling house would impose an unusual and unjust burden on property owners." *Id.* at 467. New York has also refused to adopt a policy of strict liability for landlords. *See* Curry v. New York City Housing Authority, App. Div., 430 N.Y.S.2d 305 (1980). The Supreme Court of

reached by the California Supreme Court in *Becker*. As more courts decide that no injured plaintiff should be left uncompensated, greater acceptance of strict liability may be expected.

Becker is a major step toward unlimited liability for all those who provide services, combined with *any* element of product, which ultimately cause injury.[119] If other jurisdictions prove as willing as California to sweepingly apply strict liability, negligence claims may prove to be as archaic and outmoded as the legal theories that once barred them. A lessee would be foolish to suffer the burden of proving negligence when recovery is available, even in the absence of fault, against the most prudent and cautious landlord.

CONCLUSION

The decision of the California Supreme Court in *Becker* is the culmination of a two decades long revolution in landlord and tenant law. *Becker* held that a tenant who is injured by defects in a dwelling rented from a landlord in the business of renting dwellings may state a cause of action against the landlord on either a general negligence theory or under a strict products liability approach. The embrace of negligence liability had been forecast by the lower appellate courts in California and has brought landlord and tenant relations current with modern standards for recovery in tort. The decision of the court to permit a tenant to proceed on a strict liability claim against a landlord for injuries caused by defects in the premises is, however, without judicial precedent. The decision indicates the willingness of the California Supreme Court to ensure that the owners of rental property bear the burden of protecting their lessees from harm. Although the burden will be borne by landlords who will need to acquire additional liability insurance, *Becker* acknowledges that the tenant will ultimately bear the *cost* of the protection. Prior to *Becker*, tenants were forced to bear the costs of protecting themselves from injury in their home through liability insurance which the tenant selected to meet

---

South Carolina refused to impose strict liability on a landlord when the alleged defect in the premises was the work of an independent subcontractor. Young v. Morrisey, 329 S.E.2d 426 (1985).

119. Providers of services are not held strictly liable for defects in their performance. *See, e.g.*, Gagne v. Bertran, 43 Cal. 2d 481, 487, 275 P.2d 15, 20 (1954). Strict liability has been applied, however, when elements of service combine with products to produce injury. *See, e.g.*, Hyman v. Gordon, 35 Cal. App. 3d 769, 773, 111 Cal. Rptr. 262, 264 (1973) (defendant held strictly liable for resultant injuries after choosing a defective location for a product). *But see* Murphy v. E.R. Squibb & Sons, Inc., L.A. Daily J. D.A.R., Jan. 7, 1986, at 86, col. 3 (Cal. Sup. Ct. Dec. 30, 1985) (pharmacist, although engaged in a hybrid enterprise combining the performance of services with the sale of prescription drugs, not held strictly liable for injuries caused by defects in drugs sold).

the tenant's needs. The costs of protection will continue to be borne by tenants after *Becker*, with the landlord acting as intermediary. *Becker* thus does not create a windfall for tenants. Rather, the ruling imposes a mandatory program of insurance, initially paid for by the landlord, but ultimately financed by the tenant.

Matthew E. Karanian