HABITAT

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A Shabby Bike Room Is a Lawsuit Waiting to Happen

By Marianne Schaefer

A shareholder in a Queens co-op recently posed the following question:
"Does the warranty of habitability apply to a common area such as the bike room? Our co-op does not charge for bike storage and states 'Use at Your Own Risk.' Risk meaning, if your bike is stolen or damaged, they are not responsible. The conditions in the bike room have become unsafe, with some areas of the ceiling falling and an infestation of waterbugs. Our management and board will not remedy this situation and say this is not their responsibility."

Attorney Marc Luxemburg, a partner at Gallet Dreyer & Berkey, gives this response to the behavior of the Queens co-op board: "The warranty of habitability (§ 235-b of the Real Property Law) applies not only to the premises rented, but to 'all areas used in connection therewith in common with other tenants.' It provides that all such areas must be fit for human habitation, and are free from 'dangerous, hazardous, or detrimental' conditions. In addition, the proprietary lease, as well as Section 78 of the Multiple Dwelling Law, require the cooperative to keep the entire building 'and every part thereof' in good condition. The failure to repair the ceiling and to remove the vermin would be a breach of the lease and a violation of the law."

When Barbara Strauss, an insurance broker for York International, heard the phrase "Use at Your Own Risk," her first reaction was incredulity. According to Strauss, all insurance companies like boards to put up signs saying, "We are not responsible for your bicycles or your stored property," but that doesn't relieve the co-op from its obligation to make sure the room is safe and sound. "[The sign] really means you should lock your bike and make sure it's safe," Strauss says. "But the co-op has to protect the property. And even then, these signs don't mean much. The shareholder can sue the co-op anyway, but at least then it's more likely that the building and the shareholder can come to an agreement."

Having users of the bike room sign a waiver might give boards some protection, speculates Robert Tierman of the Tierman Law Firm. "But I think it still would not be good enough because any room has to be in good condition," he adds. "Nothing can override that. If somebody signs a waiver, that might be a little better, but it might still not be enforceable."

There are situations where a "Use at Your Own Risk" warning sign can protect somebody, but a storage room in a building is not one of them. "Maybe when you get on a roller coaster, such a sign could imply that you assume the risk that you might get hurt," Tierman says. "But for a bike room, this most likely does not apply."

If anything in any storage room in a co-op or condo gets damaged, or if somebody gets hurt, a shareholder or unit-owner does not even have to prove that the conditions were unsafe. "The concept of strict liability says that if you violate a law and that leads to damage to something or somebody, the injured party doesn't even have to prove negligence," says Tierman. "They just have to prove that the violation of law caused injury or damage."

Given the above, the sign in the Queens co-op should read: "We Neglect This Bike Room at Our Own Risk." Attorneys and insurance brokers agree that the Queens bike room violates the basic law of the warranty of habitability, and it puts the co-op in danger of costly lawsuits by the shareholders should damage or injury occur. The Queens co-op board needs to clean up its act – and its bike room.