

CAUSE NO. _____

OSCAR E. BATRES,

Plaintiff,

v.

DARTFORD SQUARE APARTMENTS,

Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, T E X A S

_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

Now Comes Plaintiff, Oscar E. Batres, (“Plaintiff”) and complains of the actions of Defendant Dartford Square Apartments (“Defendant”) and would respectfully show this Honorable Court and all parties as follows:

DISCOVERY-CONTROL PLAN

1. Plaintiff intends to conduct discovery in this case under Level 3 of Texas Rule of Civil Procedure 190.1, or in the alternative, under Level 2 of that Rule.

JURISDICTION AND VENUE

2. This is a civil action arising under state law. This Court has subject matter jurisdiction because Plaintiff’s damages exceed the minimum jurisdictional limits of this Court.

3. Venue is permissible in Harris County under Texas Civil Practice & Remedies Code section 15.087 because this county is where Defendant is domiciled.

4. Finally, venue is also proper in this district because the substantial part of the incidents made the basis of this suit occurred in this district and the Defendant does business in this district.

PARTIES

5. Plaintiff OSCAR E. BATRES is an individual resident of Harris County, Texas.

6. Defendant, DARTFORD SQUARE APARTMENTS, is a privately owned company formed, organized and existing under the laws of the State of Texas, and may be served with process by serving its on-premise manager, Ms. Christine Escamilla, at 1100 S. Cherry, Tomball, Texas 77375, in accordance with Tex. Prop. Code Ann. § 92.003 (West 2007).

FACTUAL BACKGROUND

7. This case arises out the negligence and complete disregard for the safety of the Plaintiff and other residents of the Dartford Apartment Complex.

8. Plaintiff Oscar Batres and his family live in unit 2001 in the Dartford Apartment Complex.

9. Defendant is the owner of an apartment complex called Dartford Square Townhomes, located at 1100 S. Cherry, Tomball, Texas 77375 (hereinafter referred as Dartford Apartments”). The Dartford Apartments participate in governmental affordable housing programs and is mostly occupied by low income families, like the Plaintiffs.

10. On or about Friday, November 27, 2009, Plaintiff arrived home from work around 3:30 p.m. and his wife informed him that the down stairs toilet was clogged. On or about 4:00 p.m. on the same afternoon, Plaintiff went to the management office of his apartment complex and informed the person on duty that his apartment toilet was clogged. The manager wrote down the complaint and said that they would send someone right away. No one came.

11. The following day, Plaintiff thought the issue would be solved and that the management office had sent somebody during the day to fix the toilet, but his wife informed him that no one had come by all day. Plaintiff again went to the management office and the

manager once again wrote down his complaint and assured him that someone would go by the apartment shortly to fix the problem. No one came that day nor the following day.

12. On or about November 30, 2009, around 3:30 p.m., Plaintiff sent his oldest daughter to speak to the manager once again. The manager said that they were aware of the problem and that they would send someone right away. Again, no one came.

13. Finally, after about four days of not being able to use his toilet and after sharing the only other toilet in his house with his wife and three children, Plaintiff went to Wal-Mart to buy a plunger and try to solve the problem himself.

14. As Plaintiff was in the process of unclogging the toilet, the water in the toilet commenced to overflow. Plaintiff stepped away and closed the lid, but the water continued to overflow. Plaintiff closed the toilet water supply valve on the wall, but the water continued to overflow, now filling the entire bathroom and expanding onto the floor and carpet of his master bedroom.

15. Finally after about 10 minutes, the toilet stopped overflowing. The liquid coming out of the toilet was brown and clearly contained feces. Plaintiff proceeded to clean the bathroom floors and toilet the best he could, but the muddy water had gone about 3 feet onto the carpeted area in the master bedroom. Plaintiff also cleaned this area as best he could.

16. Early the following day, the Plaintiff informed the management office that their failure to repair the toilet as requested had caused an overflow of raw sewage inside the Plaintiff's apartment and requested that Defendant clean the carpet in his master bedroom. Over a month later, and after several requests by Plaintiff and constant visits to the management office, the management finally cleaned his carpet on January 9, 2010, but it was too late.

17. This measure came about a month too late, and only after Plaintiff's leg had been amputated due to an infection caused by Defendant's gross negligence.

18. On or about Friday, December 4, 2009, about three days after his toilet overflowed, Plaintiff was in the bathroom trimming his toe nails when he cut himself. He immediately put a bandage on the small cut and some over-the-counter ointment and continued trimming his nails.

19. Two days later, on Sunday, December 6, 2009, his toe still hurt and he noticed liquid coming out of the wound. Plaintiff went to the local pharmacy and bought some fungus removal cream and put antibiotic ointment on his foot. Plaintiff went to work on Monday and Tuesday, but by Wednesday he could hardly put any pressure on his foot. On Thursday, he hardly slept and he woke up shaking with a high fever. Plaintiff thought that he had the flu so he took the day off work and stayed home to rest. His condition continued to get progressively worse.

20. By Friday morning, December 11, 2009, Plaintiff felt terrible. His toes and now part of his foot were red and he was in a lot of pain. He went to the emergency room early in the morning and was admitted right away. The Plaintiff was given an IV and several tests were run. On Monday, the doctor informed him that he had gangrene and that it had spread throughout his foot. The following day, on Tuesday, December 15, 2009, Plaintiff's right leg was amputated below his knee.

21. Plaintiff has suffered great pain and suffering as result of the Defendant's failure to fix a simple toilet. Had the Defendant used the ordinary care required, Plaintiff's leg would not have been amputated. The specimen taken at the hospital revealed that Plaintiff's infection

and eventual leg amputation was caused due to an infection caused by bacteria commonly found in feces.

22. This was not the first time that Dartford Apartments had acted with complete disregard for the health and safety of its occupants. Dartford Apartment Complex is well known for its lack of compliance with basic safety and health regulations and tenants openly complain about the lack of response from management, including other similar complaints regarding sewage problems and management's lack of response to same. The following are only some of the most recent (2009) internet postings by other tenants complaining of similar issues:

- “Maintenance... well what maintenance? I’ll receive a notice that their coming to check this or that and yet nobody ever comes. I had a backup sewage problem where I couldn't use my downstairs toilet for over a week before they came, mind you it came out the pipe right in front of my front door.”
<http://www.apartmentratings.com/rate/TX-Tomball-Dartford-Square-Apartments-960245.html#ixzz0gJ5XOj89>
- “[T]he maintenance is a joke one man for the whole complex and he don’t work weekends.” <http://www.apartmentratings.com/rate/TX-Tomball-Dartford-Square-Apartments-939537.html#ixzz0gJ5mc1Rc>
- “Christine the manager is by far the most untrained ill-prepared manager I've ever met the apartments are not painted when new tenants move in (they're spot painted. new carpet requires an act of congress no maintenance ever, poor outdated appliances, broken a/c units now she's more concerned about parking violations than working a/c the maintenance man never has proper equipment, they take from one empty house to put it yours when and if they repair anything.”
<http://www.apartmentratings.com/rate/TX-Tomball-Dartford-Square-Apartments-912769.html#ixzz0gJ6EAQzY>
- “The sewers overflow all the time so that there is constantly standing water in the drive way. ... I swear that something inside this house is making my family sick. My husband and my son, who never get sick, have been sick about 8 times in 2 years. I also have had severe headaches and feeling like my ears are full of liquid for about 1 and 1/2 years, which is odd because I can usually hear what is going on in the other room without straining. Both of my daughters are constantly congested and sick. I have had strep throat twice in the last couple of months and I have never had strep before moving here. I think all of the sickness relates to the mold problem. In the master shower it grows like crazy.

We have bleached it (which is the only thing that seems to work) and even replaced the caulking around the tub and it still manages to grow.”
<http://www.apartmentratings.com/rate/TX-Tomball-Dartford-Square-Apartments-906589.html#ixzz0gJ74FxXg>

23. This clearly illustrates the complete lack of care and indifference shown by the Defendant, and owners of the Plaintiff’s apartment complex, who are quick to collect rent payments, but slow to provide even the most basic services such as a working bathroom.

**COUNT ONE
BREACH OF CONTRACT**

24. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

25. Plaintiff signed a Lease Agreement with Defendant, Dartford Apartments. The Lease Agreement provides that Defendant will diligently make repairs within a reasonable time.

26. Plaintiff fully performed the obligations required of him under that written contract signed by Defendant. Defendant breached the Lease Agreement by failing to repair Plaintiff’s toilet within a reasonable time.

27. Defendant’s breach caused injury to the Plaintiff which resulted in damages to Plaintiff.

**COUNT TWO
NEGLIGENCE**

28. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

29. Defendant owed a duty to the Plaintiff to diligently try to repair within a reasonable time his toilet and to clean up his carpet once the toilet overflowed due to the Defendant’s delay in making repairs. Defendant also had a duty to provide a dwelling in a safe and habitable condition.

30. Defendant breached its duties by failing to make these repairs within a reasonable time after receiving notice of the defects from the Plaintiff.

31. Defendant knew or should have known that tenants such as Plaintiff would foreseeably suffer injury as a result of its failure to exercise ordinary care as described above.

32. Defendant's negligent conduct caused substantial harm to the Plaintiff.

33. As a direct and proximate result of the Defendant's conduct, Plaintiff has been injured and incurred substantial damages, including, but not limited to, medical and hospital expenses, loss of income, physical and mental pain and suffering, pecuniary losses, loss of advice and counsel, loss of services, exemplary damages, prejudgment and postjudgment interest, court costs and reasonable attorneys' fees, and other damages for which Defendant is liable.

COUNT THREE GROSS NEGLIGENCE

34. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

35. Defendant owed a duty to the Plaintiff to diligently repair within a reasonable time his toilet and to clean up his carpet once the toilet overflowed due to the Defendant's delay in making repairs. Defendant also has a duty to provide a dwelling in a safe and habitable condition.

36. Defendant breached its duties by failing to make these repairs within a reasonable time after receiving notice of the defects from the Plaintiff.

37. Defendant knew or should have known that tenants such as Plaintiff would foreseeably suffer injury as a result of its failure to exercise ordinary care as described above. Defendant acted with conscious indifference to the health and safety of Plaintiff and his family

because its conduct involved an extreme degree of risk, considering the magnitude of the potential harm to others, yet the manager proceeded to ignore Plaintiff's repeated requests to make repairs and management did so with conscious indifference to the rights, safety and welfare of the Plaintiff and his family.

38. Defendant's negligent conduct caused substantial harm to the Plaintiff.

39. As a direct and proximate result of the Defendant's conduct, Plaintiff has been injured and incurred substantial damages, including, but not limited to, medical and hospital expenses, loss of income, physical and mental pain and suffering, pecuniary losses, loss of advice and counsel, loss of services, exemplary damages, prejudgment and post-judgment interest, court costs and reasonable attorneys' fees, and other damages for which Defendant is liable.

40. Defendant's conduct was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety to others, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages so as to punish Defendant and deter it from similar conduct in the future.

COUNT FOUR NEGLIGENCE PER SE

41. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

42. The Texas Property Code, specifically Section 92.052, establishes the procedures for tenants and landlords regarding conditions that need to be repaired. The statute imposes on landlords a duty to repair, if the following conditions are met: (1) the tenant specifies the condition in a notice to the person to whom or to the place where rent is normally paid; (2) the tenant is not delinquent in the payment of rent at the time notice is given; and (3) the condition

materially affects the physical health or safety of an ordinary tenant. Tex. Prop. Code Ann. § 92.052(a) (West 2007).

43. The Plaintiff in this case, is a tenant, and therefore he belongs to the class of persons the state was designed to protect, and his injury is exactly what the statute was designed to protect: tenant's safety and health.

44. Defendant violated the statute without an excuse.

45. As a direct and proximate result of the Defendant's conduct, Plaintiff has been injured and incurred substantial damages, including, but not limited to, medical and hospital expenses, loss of income, physical and mental pain and suffering, pecuniary losses, loss of advice and counsel, loss of services, exemplary damages, prejudgment and post-judgment interest, court costs and reasonable attorneys' fees, and other damages for which Defendant is liable.

**COUNT FIVE
BREACH OF IMPLIED WARRANTY OF HABITABILITY**

46. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

47. The implied warranty of habitability requires the landlord to proactively keep the unit in a habitable statute. The premises provided by Defendant for residential purposes were not in a condition that made the property livable.

48. The Defendant's failure to make reasonable repairs rendered the premises unsafe, and unsanitary, or otherwise unfit for living therein.

49. The Plaintiff gave the landlord notice and ample time to correct the problems that rendered the premises unsafe and unsanitary.

50. As a direct and proximate result of the Defendant's conduct, Plaintiff lost his leg and incurred substantial damages, including, but not limited to, medical and hospital expenses, loss of income, physical and mental pain and suffering, loss of enjoyment of life, exemplary damages, prejudgment and post-judgment interest, court costs and reasonable attorneys' fees, and other damages for which the Defendant is liable.

51. Defendant's conduct was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety to its tenants, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages so as to punish the Defendant and deter it from similar conduct in the future.

COUNT FIVE
VIOLATION OF TEXAS PROPERTY CODE SECTION 92.052

52. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

53. Texas Property Code Section 92.052 imposes on landlords a duty to repair all conditions that materially affect the physical health or safety of an ordinary tenant.

54. Plaintiff is a tenant as defined by the statute.

55. Plaintiff gave notice of the specific conditions that rendered the apartment unsafe and unsanitary to the person to whom or to the place where rent is normally paid.

56. Plaintiff has and continues to pay his monthly rent and was not delinquent in the payment of rent at the time notice was given.

57. As a direct and proximate result of the Defendant's conduct, Plaintiff lost his leg and incurred substantial damages, including, but not limited to, medical and hospital expenses, loss of income, physical and mental pain and suffering, loss of enjoyment of life, exemplary

damages, prejudgment and post-judgment interest, court costs and reasonable attorneys' fees, and other damages for which the Defendant is liable.

58. Defendant's conduct was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety of its tenants, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages so as to punish the Defendant and deter it from similar conduct in the future.

**COUNT SIX
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

59. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges as follows.

60. Defendant failed to repair within a reasonable time Plaintiff's toilet and to clean up Plaintiff's carpet once the toilet overflowed despite multiple requests to do so. These actions caused the Plaintiff's premises to become unsafe and unsanitary.

61. Plaintiff suffered severe distress as a result of the Defendant's actions.

62. The Defendant's conduct was extreme and outrageous.

63. As a direct and proximate result of the Defendant's conduct, Plaintiff lost his leg and incurred substantial damages, including, but not limited to, medical and hospital expenses, loss of income, physical and mental pain and suffering, loss of enjoyment of life, exemplary damages, prejudgment and post-judgment interest, court costs and reasonable attorneys' fees, and other damages for which the Defendant is liable.

64. Defendant's conduct was committed with knowing, conscious, wanton, willful and deliberate disregard for the value of human life and the rights and safety to its tenants, including Plaintiff, thereby entitling Plaintiff to punitive and exemplary damages so as to punish the Defendant and deter it from similar conduct in the future.

65. No alternative cause of action would provide a remedy for the severe emotional distress caused by Defendant.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays:

1. That Defendant answer and appear herein;
2. That upon final trial Plaintiff recover the damages proximately caused by Defendant's conduct;
3. That Defendant be held liable to pay penalties and all applicable exemplary damages for its egregious conduct;
4. That Defendant be held liable to pay Plaintiff's reasonable and necessary attorneys' fees and court costs in accordance with Tex. Prop. Code Ann. § 92.005 (West 2007);
and
5. That Plaintiff recovers such other and further relief as he may show himself justly entitled.

Dated: March __, 2010.

Respectfully submitted,

By:  _____

David J. Van Susteren
State Bar No. 20495880
Veronica H. Foley
State Bar No. 24038903
Law Offices of David J. Van Susteren PLLC
4000 Washington Avenue
Integrity Bank Plaza, Suite 203
Houston, Texas 77007
Tel: 713.470.7000
dvansusteren@vansuslaw.com
vfoley@vansuslaw.com
Fax: 832.319.6813

Counsel for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all fact issues.



Veronica H. Foley