

ASK THE ADMINISTRATOR

I have received several calls from RSA members after they read about an owner, who on November 10, 2014, pleaded guilty to criminal charges of negligent homicide in connection with a fire that occurred at their property. They inquired as to the circumstances of the case and why the owner was arrested.

The facts here are simple, and troubling, especially in light of my article written a couple of years ago regarding the criminal conviction of an owner in connection with the deaths of two FDNY firefighters in a Bronx fire. In that case, the tenant illegally broke up his apartment into small rooms and the firefighters were trapped in a fire and jumped to their deaths. Even though the tenant was never convicted of a crime, the owner was, despite the fact that he had gone to court prior to the fire in an unsuccessful effort to get the tenant to remove the partitions. Ultimately, the owner's criminal conviction was overturned on appeal.

The facts surrounding the recent case, however, are distinct from the prior case because of the knowledge and involvement of the owner.

Here, a tenant claiming he was drunk and possessed by demons doused a roll of toilet paper with paint thinner and lit it on fire inside the building. Five people were killed and one infant was seriously injured in the ensuing fire.

Investigators found that several of the victims were trapped inside illegally partitioned apartments in the building. Firefighters needed three times as much time to put out the fire and had to tear down the illegal walls to get to the bodies.

The man who set this fire was prosecuted along with the owner. In the ensuing investigation, it was determined that floors two and three of the building were allowed to have only one apartment each. Here, the owners partitioned the apartments and, using locking doors, had created six apartments, in violation of law. It was determined that nine tenants lived on the second floor and ten tenants lived on the third floor.

During Grand Jury testimony, one of the tenants testified that the owners (father and son) had warned the tenants of an impending visit by inspectors from the Department of Housing Preservation and Development (HPD) and told them to leave all doors open and unlocked. Ultimately, the building passed inspection. It was clear that the owners did not merely have notice of the illegal conditions but had created the nuisance and hazard.

The owners were indicted, arrested and pleaded guilty. The father will be sentenced in February and is facing between one and three years of jail time. The son will go to jail for six months, followed by five years of probation. His wife was sentenced only to five years of probation.

The City also fined them \$80,000 for the illegal subdivision and the real estate company agreed to pay \$1,000,000 to the family of the severely injured girl who was dropped from the window. I am certain that there are civil lawsuits in connection with the deaths, but their status is unknown. Any assets in the owners personal names may be at risk as well if they do not have enough insurance for such a

catastrophic event. In fact, the insurance company may disclaim and the owners could very well lose the building. However, it is unknown at this point how the insurance company will handle the case.

And, unfortunately, as we went to press, another fire occurred in a Brooklyn building killing a tenant and injuring 16 other people where the tenant, allegedly without the owner's permission, created 11 illegal small rooms that were rented out. There is no doubt, given the circumstances, that there will be a full investigation. In the event those allegations are accurate, it seems likely that the tenant who illegally subdivided the apartment will be arrested. It is also conceivable if the authorities believe that the owner knew or should have known of the subdivision, the owner or managing agent might also be arrested.

Some important rules for owners to remember:

- Never perform work on your building without obtaining the requisite permits and agency sign-offs.
- Use reliable and insured architects and contractors.
- Continually inspect the work being done. Take daily pictures for your records.
- If you suspect or know that a tenant has done any illegal or unauthorized work to their apartment, speak to your legal counsel immediately. Looking the other way, or claiming that it was not authorized after the fact, is not a defense to criminal prosecution.
- If you consent to a residential tenant performing any work (which I counsel against), make sure that you see plans first. Make sure they use only licensed and insured contractors and make sure the contractor provides adequate insurance (including workers compensation insurance) and that the owner and managing agent are named as additional insureds.
- Immediately begin a concerted effort to inspect your properties now.
- Discuss your form of ownership of your properties immediately with your legal counsel.
- Immediately review your current insurance package with your broker or RSA Insurance Brokerage.

Fire safety is no joke. Fire enforcement is essential to the general safety of all New Yorkers. It is now obvious that shortcuts and illegal work will not be tolerated. ■



Opinion provided by Howard Stern, Esq., Administrator of the RSA Legal Plan, who is solely responsible for its content.