

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LEROY ALLEN,

Plaintiff-Appellant,

v

A & M PROPERTIES, INC.,

Defendant-Appellee,

and

STEPHANIE BRATTON,

Defendant.

UNPUBLISHED

February 15, 2011

No. 295558

Wayne Circuit Court

LC No. 07-728764-NO

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Before: CAVANAGH, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right the final order closing the case, after the trial court granted summary disposition to defendant A & M Properties. This case arises out of injuries plaintiff sustained when a dog owned by defendant Stephanie Bratton bit him.<sup>1</sup> We affirm.

Plaintiff's mother lived on the upper floor of a two-family house owned by defendant, and Bratton lived downstairs. There was evidence in the record to show that Bratton's dog was known to have a bad disposition and a tendency to chase passersby. Earlier in the day of the incident, the dog had broken a hole in one of Bratton's windows. While Bratton and plaintiff were both standing on the house's shared porch, Bratton opened the window and the dog attacked and injured plaintiff. Plaintiff filed suit, alleging statutory and common law dog bite claims and premises liability. Plaintiff voluntarily dismissed the statutory claim.

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<sup>1</sup> Bratton did not file an answer, and a default judgment was ultimately filed against her. Because she is not participating in this appeal, all references to "defendant" in this opinion refer only to defendant A & M Properties.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). When reviewing a motion under MCR 2.116(C)(10), which tests the factual sufficiency of the complaint, this Court considers all evidence submitted by the parties in the light most favorable to the non-moving party and grants summary disposition only where the evidence fails to establish a genuine issue regarding any material fact. *Id.*, 120.

Plaintiff first argues that the trial court erred in dismissing his premises liability claim because there remains a question of fact whether defendant retained possession and control over the area where the dog attack occurred. We disagree.

A tenant is an invitee of a landlord. *Benton v Dart Properties, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006). Social guests of tenants, as was plaintiff here, are also classified as invitees of the landlord. *Stanley v Town Square Co-op*, 203 Mich App 143, 147-148; 512 NW2d 51 (1993). “In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land.” *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). However, in a premises liability action where a landlord leases property to a tenant, the landlord surrenders possession of the leasehold and holds only a reversionary interest, retaining only the duty to maintain portions of the leasehold still under the landlord’s control. *Williams v City of Detroit*, 127 Mich App 464, 468; 339 NW2d 215 (1983). The dog bite occurred on the porch, an area shared by two tenants. Therefore, the porch is a common area over which defendant retained control and to which defendant’s duties extended. There is some support for the proposition that a premises liability action may be founded on a dog’s presence on the land. *Klimek v Drzewiecki*, 135 Mich App 115, 119; 352 NW2d 361 (1984) (dog treated as a condition on the land).<sup>2</sup>

Indeed, the attack occurred because Bratton intentionally opened her window and ordered the dog to attack. Premises owners generally have no duty to anticipate and prevent third parties’ criminal acts. *Graves v Warner Bros*, 253 Mich App 486, 494-497; 656 NW2d 195 (2002). The dog was open and obvious.

Plaintiff also relies on *Samson v Saginaw Professional Bldg, Inc*, 393 Mich 393, 407; 224 NW2d 843 (1975), which held that a landlord has a duty to insure that common areas are kept in good repair and reasonably safe for the use of his tenants and invitees. In *Samson*, the Court held that although the defendant could not be liable for the act of leasing space to the mental health clinic, there were sufficient questions of fact regarding the defendant’s conduct respecting the common areas of the facility to warrant a claim of negligence. *Samson*, 393 Mich at 410-411. But in this appeal, plaintiff’s only contention is that the trial court erred in dismissing his

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<sup>2</sup> In *Klimek*, this Court held that the defendant landowner had a duty to warn a minor social guest about, or to protect him from, “a loose, unsupervised and dangerous dog” roaming the defendant’s land. *Klimek*, 135 Mich App at 118-119.

premises liability claim. *Samson* is an ordinary negligence case, not a premises liability case, so plaintiff's reliance on it is misplaced here.

To the extent plaintiff argues that defendant breached its statutory duties under MCL 554.139, we disagree. Specifically, MCL 554.139 provides:

(1) In every lease or license of residential premises, the lessor or licensor covenants:

(a) That the premises and all common areas are fit for the use intended by the parties

(b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenant's willful or irresponsible conduct or lack of conduct.

The statute does not require any level of fitness beyond what is necessary to allow tenants to use the premises and common areas as the parties intended. *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 431; 751 NW2d 8 (2008). In addition, "a non-tenant could never recover under the covenant for fitness because a lessor has no contractual relationship with-and, therefore, no duty under the statute to-a non-tenant." *Id.* Because plaintiff is a non-tenant, he cannot recover for a breach of the covenant for fitness, and plaintiff has simply not provided evidence that the porch was not fit for its intended purposes. MCL 554.139(1)(a). A dog would not constitute "an imperfection in the property that would require mending," and in any event, the duty under MCL 554.139(1)(b) does not apply to common areas like the porch. *Id.* at 432, 434.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Cynthia Diane Stephens  
/s/ Amy Ronayne Krause