A “Growing” Problem – Medical Marijuana Laws Create Liability for Lansing Landlords
Dustin McMahon

Lansing, MI – Since the enactment of the Michigan Medical Marihuana Act in 2009, more questions than answers have been provided regarding the appropriate regulation and use of medical marihuana by persons who live in rental housing. Especially concerned are landlords whose tenants are known to grow and use the drug on the premises.

Cultivation and use of medical marihuana is explicitly allowed under the law, while the sale of the seeds, plant, or marihuana itself is prohibited, even if it is sold to someone who has obtained a license to use it themselves. MCL 333.26424(k). Area landlords have raised concerns regarding possible sales of the drug among tenants, and have questioned whether the landlord could be held liable for allowing this activity to take place on the premises. While Michigan law does not state an explicit duty for a landlord to prevent drugs being sold on the premises, the landlord may still be found liable under various theories of premises liability.

It is important for landlords to understand that he or she cannot be held liable for medical marihuana being present in a tenant’s dwelling. However, if a landlord has knowledge that illegal sales of drugs are taking place, especially in common areas of the rental unit, there is potential liability under more general premises liability statutes. For instance, 1460.16(b) of the municipal code says: "The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this Code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this Code. Occupants of a dwelling unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit or premises, which they occupy and control." Essentially, landlords are required to maintain safe and clean conditions throughout the rental property. Knowledge of illicit drug sales within the confines of the premises may be considered as allowing for an unsafe condition to be created, for which a landlord may be found liable.

Furthermore, a landlord has the implied duty to provide a premises that allows for its quiet enjoyment by its occupants. This means that the tenants, by signing the lease, have the right to enjoy and use the premises in peace and without interference. Allowing disturbances such as drug sales in the common areas of a rental property may constitute a violation of this implied duty, creating liability for the landlord due to his or her breach of the lease. Similarly, this principle applies to the implied covenant of habitability that is in every lease. The law dictates that landlords of residential rental property must maintain the leased premises as reasonably suitable for residential use. Situations as described above may constitute a breach of this implied covenant, allowing for the tenant to vacate the premises without a further duty to pay rent, or remain on the premises and sue for damages incurred.

Finally, because Lansing landlords must be licensed by the city in order to legally rent to others, the Office of Code Compliance may retract that license if the property is found to be a public nuisance.
Generally, the Michigan Code says a rental property can be determined to be a public nuisance if its condition is dangerous to human life or is detrimental to health; air, food or drink are rendered unwholesome or detrimental to the health of human beings; or if it is hazardous or unsanitary for its tenants. If the property is determined to be a public nuisance, a landlord may face fines by the City of Lansing, and may face revocation of the rental license if the conditions are not remedied in the prescribed time.

Despite the complications the MMMA have caused landlords since its enactment, the rules regarding providing adequate, clean, and safe housing for tenants have not changed. It is best that landlords take any drug use on the premises seriously in order to avoid potential liability. A landlord can best insulate himself from liability by maintaining a habitable environment and addressing any issues with tenants in a timely manner.