LANDLORD AND TENANT—APPLICATION OF IMPLIED WARRANTY OF HABITABILITY EXPANDED TO ENCOMPASS TENANT SECURITY—*Trentacost v. Brussel*, 82 N.J. 214, 412 A.2d 436 (1980).

The growing concern over rising crime rates in urban areas has prompted the Supreme Court of New Jersey to reconsider the traditional principle that the landlord and tenant relationship does not, by itself, impose a duty upon the landlord to protect tenants from crimes committed on the leased premises.[1] The growth in the crime rate coupled with an increasing dependence on multiple dwellings to fulfill the needs of contemporary urban life led to the suggestion in *Braitman v. Overlook Terrace Corp.*[2] that, in the future, traditional negligence principles may not be the only basis for a landlord's liability to a tenant for damages sustained due to inadequate security.[3] In *Braitman*, it was proposed that the duty to provide adequate security might arise either from the landlord's superior economic position to guard against criminal activity by third parties[4] or from an extension of the implied warranty of habitability to include appropriate security measures.[5] The court refused, however, to endorse the extension of the implied warranty of habitability, choosing instead to ground liability upon traditional negligence concepts.[6] The case of *Trentacost v.*

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[1] Trentacost v. Brussel, 82 N.J. 214, 224, 412 A.2d 436, 441 (1980). *See* Braitman v. Overlook Terrace Corp., 68 N.J. 368, 387, 346 A.2d 76, 86 (1975).

[2] 68 N.J. 368, 346 A.2d 76 (1975). In *Braitman*, tenants brought an action against the landlord to recover for the loss sustained when their apartment was burglarized following the landlord's failure to repair a defective deadbolt lock on their front door. *Id.* at 373, 346 A.2d at 78. *See* notes 45 & 46 *infra*.

[3] This proposition was advanced in a separate point in *Braitman* authored by Justice Pashman and joined in by Chief Justice Hughes and Justice Sullivan. In the view of Justice Pashman, the implied warranty of habitability impressed upon the landlord might be "flexible enough to encompass appropriate security devices." 68 N.J. at 388, 346 A.2d at 87 (separate point of Hughes, C.J., Sullivan & Pashman, JJ.).

[4] *Id.* The *Braitman* court derived this suggested basis for the duty from Kline v. 1500 Mass. Ave. Apt. Corp., 439 F.2d 477 (D.C. Cir. 1970). In *Kline*, it was held that the landlord had a duty to provide adequate security measures to protect tenants from foreseeable criminal acts of third parties and was thereby liable for the injuries a female tenant sustained when she was criminally assaulted and robbed in the hallway of her apartment building. *Id.* at 483. The court based the imposition of the duty upon three sources. First, since there were protective measures in effect at the beginning of the lease term, the landlord had an implied contractual undertaking to maintain these measures. *Id.* at 485. Second, the landlord was in a superior economic position to provide security devices. *Id.* at 484. Last, the court imposed the law governing an innkeeper's duties towards his tenant reasoning that it was more appropriate than the law which emerged from agrarian leases. *Id.* at 482, 485.

[5] 68 N.J. at 374-83, 346 A.2d at 79-84. The court found that "[a] residential tenant can leases was first espoused in New Jersey in Marini v. Ireland, 56 N.J. 130, 144, 265 A.2d 526, 534 (1970). *See* notes 41 & 42 *infra* and accompanying text.

[6] 68 N.J. at 374-83, 346 A.2d at 79-84. The court found that "[a] residential tenant can recover damages from his landlord upon proper proof that the latter unreasonably enhanced the risk of loss due to theft by failing to supply adequate locks." *Id.* at 383, 346 A.2d at 84.

Brussel[7] presented the court with yet another opportunity to review landlord liability for damages resulting from criminal acts of third parties.[8] In *Trentacost*, the court expanded the implied warranty of habitability to include a duty to provide adequate safeguards for tenant security. Under that expansion, the landlord was found to have breached his duty to the tenant by failing to provide a lock on the front door of the apartment building and therefore was held liable for the injuries attributable to that breach.[9]

On the afternoon of October 31, 1973, Florence Trentacost was attacked in the hallway of the apartment building in which she resided.[10] An unknown assailant accosted the sixty-one year old woman at the top of a flight of stairs and then dragged her down the stairs by her ankles.[11] After stealing her pocketbook, the attacker fled, leaving Mrs. Trentacost lying in the hallway "[c]onscious yet unable to speak."[12] Several minutes later, the woman was discovered by a neighbor and removed to a hospital where she remained for over two weeks as a result of the injuries sustained in the assault.[13]

Mrs. Trentacost instituted an action in negligence against Dr. Nathan Brussel, the owner of the apartment building, seeking recovery for the personal injuries she had incurred.[14] Specifically, she asserted that the attack had occurred due to the owner's " 'failure to maintain the safety of the common areas of access and egress to [the] building, by negligently and carelessly failing to place a lock on the front door entrance.' "[15]

At trial, considerable evidence was presented indicating a high incidence of crime in the area of the apartment building.[16] Mrs. Trentacost herself had previously notified the landlord of unauthorized persons in the building.[17] At the conclusion of the trial,

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[7] 82 N.J. 214, 412 A.2d 436 (1980).

[8] *Id.* at 217, 412 A.2d at 438.

[9] *Id.* at 228, 412 A.2d at 443.

[10] *Id.* at 218, 412 A.2d at 438.

[11] *Id.* The apartment building had a rear entrance which was padlocked but there was no lock on the front entrance. Apparently Mrs. Trentacost's assailant entered through the front door. *Id.*

[12] *Id.*

[13] *Id.* Mrs. Trentacost's injuries consisted "of a dislocation of her right shoulder, fracture of the neck of the left humerus, hemorrage of the left ear, hairline fracture of the mandible and a chipped fracture of the right ankle." 164 N.J. Super. 9, 18, 395 A.2d 540, 545 (App. Div. 1978), *aff'd*, 82 N.J. 214, 412 A.2d 436 (1980).

[14] Trentacost v. Brussel, 164 N.J. Super. at 12, 395 A.2d at 542 (App. Div. 1978), *aff'd*, 82 N.J. 214, 412 A.2d 436 (1980).

[15] *Id.* Defendant Brussel answered by claiming Mrs. Trentacost was contributorily negligent and by denying that he was negligent. *Id.*

[16] 82 N.J. at 218-19, 412 A.2d at 438-39.

[17] *Id.* at 219, 412 A.2d at 439.

Mrs. Trentacost was awarded a $3,000 verdict against Dr. Brussel.[18] After the defendant refused to consent to an additur of $15,000, plaintiff's motion for a new trial regarding damages was granted. The second trial resulted in an award of $25,000 to Mrs. Trentacost.[19]

On appeal the decision was affirmed.[20] Relying on the traditional negligence principles emphasized in *Braitman*, the appellate division determined that due to the high crime neighborhood and the absence of locks on the entrance to the building the trial court was justified in finding a foreseeable risk of harm to the tenants.[21] The court concluded that the question of whether the landlord undertook sufficient precautionary safety measures under the circumstances to protect the tenant was a proper one for the jury.[22]

The New Jersey supreme court affirmed.[23] Writing for the court, Justice Pashman set forth three theories of liability. First, the court employed a basic negligence analysis, similar to that applied in *Braitman*,[24] determining that the absence of a lock on the front door, combined with ample evidence of the existence of a high level of crime in the neighborhood, made the attack on Florence Trentacost a foreseeable result of the landlord's negligence.[25] A related basis of liability was derived from the landlord's violation of an administrative regulation[26] requiring locks on multiple dwelling[27] entrance and exit

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[18] *Id.* The judge denied the defendant's motion for a judgment notwithstanding the verdict. *Id.*

[19] *Id.*

[20] Trentacost v. Brussel, 164 N.J. Super. 9, 395 A.2d 540 (App. Div. 1978), *aff'd*, 82 N.J. 214, 412 A.2d 436 (1980).

[21] *Id.* at 16-17, 395 A.2d at 543-44.

[22] *Id.* at 16-18, 395 A.2d at 543-44. The court specifically pointed out the test to be applied was one of probability and not proximate cause. *Id.* at 17-18, 395 A.2d at 544.

[23] 82 N.J. 214, 412 A.2d 436 (1980). Chief Justice Wilentz, Justice Sullivan and Justice Handler joined in the majority opinion in its entirety. Justice Pollock joined in all but Part III A, Justices Clifford and Schreiber concurred in the result and filed separate opinion, with Justice Clifford dissenting in part.

[24] *Compare* Trentacost, 82 N.J. at 222-23, 412 A.2d at 440-41 *with* Braitman, 68 N.J. at 382, 346 A.2d at 84.

[25] 82 N.J. at 223, 412 A.2d at 441. Traditionally, "[n]egligence is tested by whether the reasonably prudent person at the time and place should recognize and foresee an unreasonable risk or likelihood of harm or danger to others." Rappaport v. Nichols, 31 N.J. 188, 201, 156 A.2d 1, 8 (1959) (cited in Trentacost, 82 N.J. at 222, 412 A.2d at 440).

[26] 82 N.J. at 229-31, 412 A.2d at 443-45. The Regulations for the Construction and Maintenance of Motels and Multiple Dwellings Act provide that "[e]very building entrance door or other exterior door permitting access to six or more units of dwelling space shall be equipped with heavy duty dead latching locksets." N.J. ADMIN. CODE § 5:10-19.6(c)(2)(i) (Supp. 10-1-79). *See* Trentacost, 82 N.J. at 231 n.7, 412 A.2d at 445 n.7.

[27] The landlord's eight-unit building falls into the category of a multiple dwelling under the regulation. A multiple dwelling is defined as:

doors as evidence of the landlord's negligence.[28] In that regard the court drew upon well established case law,[29] including *Braitman*,[30] and found the violation of the regulation to be evidence of negligence by the defendant landlord.[31]

The third theory of liability advanced by the court represented an expansion of the implied warranty of habitability to include necessary security devices.[32] In that regard, Justice Pashman declared that the landlord's failure to provide a lock for the door, which opened into the common hallway of the building where the attack occurred, was a lack of adequate security and constituted a breach of the implied warranty of habitability.[33]

In his concurrence, Justice Schreiber, joined by Justice Clifford, stated the landlord's duty should have been based on traditional tort

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> any building or structure of one or more stories . . . and any portion thereof, in which three or more units of dwelling space are occupied, or are intended to be occupied by three or more persons who live independently of each other. . . .

N.J. STAT. ANN. § 55:13A-3(k) (West Cum. Supp. 1980-1981). *See* Trentacost, 82 N.J. at 231 n.6, 412 A.2d at 444 n.6.

[28] 82 N.J. at 231, 412 A.2d at 445.

[29] *Id.* at 229-31, 412 A.2d at 443-45. Case law supports consideration of a landlord's breach of statutory and administrative duties to furnish habitable residential premises as evidence of a landlord's negligence.

In Michaels v. Brookchester, Inc., 26 N.J. 379, 140 A.2d 199 (1958), the New Jersey supreme court held that the Tenement House Act was "comprehensive legislation intended to assure safe habitation" and although the statute did not create a statutory cause of action, the court allowed the intended beneficiary to use the landlord's failure to meet the statutory standard as evidence of his negligence. *Id.* at 386, 140 A.2d at 203 (cited in Trentacost, 82 N.J. at 229, 412 A.2d at 444).

The Tenement House Act provides in part:

> Every joint or several owner of any tenement house shall be jointly and severally liable for any violation of any provision of this subtitle and every lessee of a whole tenement house, or of the building or structure erected on the same lot with a tenement house, shall be jointly and severally liable with the owner or owners of the fee of such tenement house, building, structure and lot for any violation of any provision of this subtitle.

N.J. STAT. ANN. § 55:11-3 (West 1964 & Cum. Supp. 1980-1981).

[30] 82 N.J. at 230-31, 412 A.2d at 444-45. In *Braitman*, the New Jersey supreme court found that the landlord's breach of the New Jersey Hotel and Multiple Dwelling Law could be considered by the trier of fact in assessing liability. 68 N.J. at 383-85, 346 A.2d at 84-86. This issue, however, was not presented at either the trial or appellate level. Supplementary Brief for Plaintiff at 1-3, Braitman v. Overlook Terrace Corp., 68 N.J. 368, 346 A.2d 76 (1975).

The Multiple Dwelling Law is the successor to the Tenement House Act. The Law's purpose is "the protection of the health and welfare of the residents of this State in order to assure the provision therefor of decent, standard and safe units of dwelling space."N.J. STAT. ANN. § 55:13A-2 (West Cum. Supp. 1980-1981).

[31] 82 N.J. at 231, 412 A.2d at 445.

[32] *Id.* at 225-28, 412 A.2d at 441-43.

[33] *Id.* at 228, 412 A.2d at 443.

principles.[34] He further emphasized that violations of administrative regulations constituted an equally viable means of resolving the liability question.[35]

Dissenting in part, Justice Clifford filed a separate point in which he questioned the majority's interpretation of the implied warranty of habitability.[36] In the opinion of Justice Clifford, the imposition of liability on the landlord in this situation, grounded on the theory of implied warranty of habitability, was ill-founded and served to impress absolute liability upon the landlord based merely on a landlord-tenant relationship and "loose notions of foreseeability."[37]

The *Trentacost* court's application of negligence principles and breach of administrative regulations to impose liability for the injuries sustained by Mrs. Trentacost is well founded in case law.[38] However, the extension of the landlord's implied warranty of habitability to include a duty to furnish reasonable safeguards to protect a tenant from foreseeable criminal activity on the premises is a novel basis for liability.[39]

The implied warranty of habitability traditionally has been employed to cover structural aspects of the premises not specifically referred to in the lease.[40] The warranty was classically defined by the New Jersey supreme court in *Marini v. Ireland*[41] as:

> [A] covenant that at the inception of the lease, there are no latent defects in facilities vital to the use of the premises for residential purposes because of faulty original construction or deterioration from age or normal usage. . . . [and that the] facilities will remain in usable condition during the entire term of the lease.[42]

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[34] *Id.* at 232-33, 412 A.2d at 445-46 (Clifford & Schreiber, JJ., concurring).

[35] *Id.* Justice Schreiber favored following the approach used in Michaels v. Brookchester, Inc., 26 N.J. 379, 140 A.2d 199 (1958). In *Michaels* the court found that an intended beneficiary of the Tenement House Act which set standards of conduct, could "rely upon a negligent failure to meet that standard in a common law action for negligence." 82 N.J. at 386, 140 A.2d at 203 (Clifford & Schreiber, JJ., concurring).

[36] 82 N.J. at 234-35, 412 A.2d at 446-47 (Clifford, J., dissenting in part).

[37] *Id.* at 234, 412 A.2d at 446-47 (Clifford, J., dissenting in part).

[38] *See, e.g.*, Hill v. Yaskin, 75 N.J. 139, 143-45, 380 A.2d 1107, 1109-10 (1977); Goldberg v. Housing Auth., 38 N.J. 578-88, 186 A.2d 291, 296 (1962); Rappaport v. Nichols, 31 N.J. 188, 201, 156 A.2d 1, 8 (1959). *See* notes 29 & 30 *supra*.

[39] *But see* Kline v. 1500 Mass. Ave. Apt. Corp., 439 F.2d 477 (D.C. Cir. 1970); Ramsay v. Morrissette, 252 A.2d 509 (D.C. 1969); Warner v. Arnold, 133 Ga. App. 174, 210 S.E.2d 350 (1974); Johnston v. Harris, 387 Mich. 569, 198 N.W.2d 409 (1972).

[40] *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970); Marini v. Ireland, 56 N.J. 130, 256 A.2d 526 (1970); Reste Realty Corp. v. Cooper, 53 N.J. 444, 251 A.2d 268 (1969); Pines v. Perssion, 14 Wis. 2d 590, 111 N.W.2d 409 (1961).

[41] 56 N.J. 130, 265 A.2d 526 (1970).

[42] *Id.* at 144, 265 A.2d at 534.

Prior to *Trentacost*, the facilities considered by the courts of New Jersey to be vital to safeguard tenants and their possessions included those such as "adequate light, plumbing, heating, sanitation and maintenance."[43] Under *Trentacost*, however, adequate security is now included as a vital facility and the landlord's duty to provide such security is deemed to exist even in the absence of notice of an unsafe condition.[44]

The *Trentacost* court expanded this duty in a situation factually analogous to *Braitman*. In *Braitman*, the tenants brought an action against the landlord to recover for loss sustained when their apartment was burglarized following the landlord's failure to repair the defective deadbolt lock on their front door.[45] The court found that the negligence of the landlord was the proximate cause of the loss.[46] Although posing the possibility of an extension of the implied warranty of habitability to include a duty to provide adequate security, the court founded the landlord's liability upon traditional negligence concepts.[47]

An examination of *Trentacost* in light of the facts in *Braitman* reveals the expansive decision in *Trentacost* was possibly unnecessary. The landlord in *Trentacost*, like the landlord in *Braitman*, was given ample notice of inadequate security and thus could have foreseen the risk of criminal harm to his tenants. Despite this factual similarity, the *Trentacost* court used this case to establish a novel basis for liability based on an implied warranty of habitability.[48]

In seeking to evaluate what prompted the court's decision in *Trentacost*, it is instructive to parallel it to its precursor, *Braitman*, as in both cases affirmance grounded solely upon negligence principles would have been entirely appropriate. Such a review discloses that the expansion of landlord liability in *Trentacost* might have been precipitated by the more compelling facts of that case. The most distinguishing element between *Trentacost* and *Braitman* is the nature of

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[43] Braitman v. Overlook Terrace Corp., 68 N.J. at 387, 346 A.2d at 86. *See* Marini v. Ireland, 56 N.J. at 144, 265 A.2d at 534.

[44] 82 N.J. at 228, 412 A.2d at 443.

[45] 68 N.J. at 372, 346 A.2d at 78. The Braitmans, occupants of an apartment in a 600 unit high-rise complex in West New York, New Jersey, notified the management office of a defective deadbolt lock on their apartment door the day they moved in, March 16, 1971. *Id.* at 370-71, 346 A.2d at 77. No action was taken by the management to fix the lock despite further requests by the Braitmans. On March 24, 1971, the apartment was broken into with no signs of forced entry. *Id.* at 371-72, 346 A.2d at 77-78.

[46] *Id.* at 382, 346 A.2d at 84. The personal property stolen, most of which was jewelry, was valued at $6,100. *Id.* at 372, 346 A.2d at 78.

[47] *Id.* at 382-83, 346 A.2d at 84. *See* Trentacost, 82 N.J. at 222, 412 A.2d at 440.

[48] 82 N.J. at 223, 412 A.2d at 441.

the injuries suffered by the plaintiffs. In *Braitman*, the tenants sustained a monetary loss when their apartment was burglarized due to the landlord's failure to repair a defective deadbolt lock.[49] *Trentacost*, however, presented the additional element of emotional appeal because the sixty-one year old Mrs. Trentacost not only suffered a monetary loss but also sustained severe personal injuries.[50]

In addition to the justified concern for the physical safety of tenants, there also exist various socio-economic considerations which pervade contemporary landlord-tenant relationships and which might have influenced the decision in *Trentacost*.[51] Like most states with major urban areas,[52] New Jersey has an ever increasing need for decent rental housing.[53] This problem, though widespread, is particularly burdensome to those individuals limited to lower income housing.[54] As a result of the housing shortage, a tenant's bargaining power is decreased. Lacking any meaningful choice, a tenant is forced to lease property which otherwise would be unacceptable.[55] The need for further protection of the tenant's interest is manifest.[56]

Coupled with the decline in available urban housing is the increase in the crime rate in poor urban areas.[57] The growing presence of crime has prompted many multiple dwelling seekers to consider the security measures available in an apartment building as a critical factor in choosing a place to live.[58] It is this growing threat of crime which forces greater reliance on multiple dwellings "to meet contemporary housing needs"[59] and perhaps best justifies the imposition of a strict duty on the landlord to protect his tenants from the criminal acts of others. The decision in *Trentacost* requires that a landlord must provide adequate security to protect his tenants from

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[49] *See* notes 45 & 46 *supra* and accompanying text.

[50] Mrs. Trentacost's assailant stole her purse after dragging her down the stairs. The value of the property loss was apparently undetermined. 82 N.J. at 218, 412 A.2d at 438.

[51] *Id.* at 226, 412 A.2d at 442. Considerations specifically mentioned by the court were increasing urbanization, population growth and inflated construction costs. *Id.*

[52] *See generally* PRESIDENT'S COMMITTEE ON URBAN HOUSING, A DECENT HOME 96 (1968).

[53] *See* Inganamort v. Borough of Fort Lee, 62 N.J. 521, 527, 303 A.2d 298, 301 (1973). *See also* Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151, 158, 336 A.2d 713, 716 (1975) (cited in Trentacost, 82 N.J. at 225-26, 412 A.2d at 442).

[54] *See generally* S. BURGHARDT, TENANTS AND THE URBAN HOUSING CRISIS 3-7 (1972).

[55] *See* Javins v. First Nat'l Realty Corp., 428 F.2d 1071, 1079 (D.C. Cir. 1970).

[56] In New Jersey, the legislature has recognized the need to protect the health and welfare of residents of multiple dwellings as evidenced by the Hotel and Multiple Dwelling Law. *See* N.J. STAT. ANN. § 55:13A-1 to -28 (West 1967 & Cum. Supp. 1980-1981).

[57] 68 N.J. at 387, 346 A.2d at 86. *See* 82 N.J. at 227, 412 A.2d at 443. *See generally* L. RADZINOWICZ, THE GROWTH OF CRIME 13 (1977).

[58] *See* 82 N.J. at 227, 412 A.2d at 443.

[59] 68 N.J. at 387, 346 A.2d at 86.

foreseeable risk of crime.[60] In essence, such a requirement places virtually the entire burden of the unfortunate conditions of modern urban life upon the landlord. Indeed, in some situations, this could effectively result in the landlord being the insurer of the tenant's safety.[61]

The imposition of the duty upon landlords to provide security measures to the common areas of the leased premises may be supported by the notion that in reality the rent charged includes the maintenance of the common areas,[62] and is consonant with the classic landlord-tenant doctrine.[63] In a similar regard is the argument that it would be unreasonable for the tenant to incur the major expense of maintaining such an area.[64] Further, since the landlord has control of the common areas, his responsibility to provide security for the tenants arises from "the logic of the situation itself."[65] Other proposed justifications concern the changing economic and social needs which require a re-examination of the traditional landlord-tenant relationship.[66] Most of these justifications encompass the notion that in a residential lease, a tenant is seeking a dwelling which is habitable and fit for living, not merely a barren place of shelter.[67]

Despite a recent judicial trend to expand the scope of a landlord's duty with respect to tenant security,[68] courts have continued to effectively apply negligence principles to prevent landlords from insulating themselves from liability.[69] Negligence principles, properly applied, will prevent the landlord from escaping liability to his tenants for injuries resulting from foreseeable criminal acts of third persons.[70] In an area where crime is prevalent, it is reasonably foreseeable that inadequate lighting or locks will create conditions conducive

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[60] 82 N.J. at 228, 412 A.2d at 443.

[61] *Cf.* Kline v. 1500 Mass. Ave. Apt. Corp., 439 F.2d 477, 481 (D.C. Cir. 1970) (landlord not insurer of tenant's safety although not mere bystander) (cited in Trentacost, 82 N.J. at 231, 412 A.2d at 445; Braitman, 68 N.J. at 375, 346 A.2d at 80).

[62] 82 N.J. at 228, 412 A.2d at 443.

[63] W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 63, at 405-08 (4th ed. 1971).

[64] 82 N.J. at 226, 412 A.2d at 442.

[65] Kline v. 1500 Mass. Ave. Apt. Corp., 439 F.2d 477, 483 (D.C. Cir. 1970).

[66] Historically a lease was viewed as a sale of an interest in land and the doctrine of *caveat emptor* applied. In the absence of an express agreement otherwise, or misrepresentation by the lessor, the tenant took the premises "as is." 1 AMERICAN LAW OF PROPERTY § 3.45, at 267 (A.J. Casner ed. 1952); W. PROSSER, *supra* note 63, § 63, at 400-02. *See* Michaels v. Brookchester, Inc., 26 N.J. 379, 382, 140 A.2d 199, 201 (1958).

[67] Marini v. Ireland, 56 N.J. at 144, 265 A.2d at 534.

[68] *See* 2 R. POWELL, THE LAW OF REAL PROPERTY § 234[2][g], at 359-67 (Rohan ed. 1974).

[69] *See* 68 N.J. at 376-82, 346 A.2d at 80-84.

[70] *Id.*

to criminal acts.[71] Likewise, where there is evidence of a tenant's request for additional protective measures due to previous security problems, there is sufficient notice to the landlord of the inadequacy of the existing security devices.[72] Under such circumstances, the foreseeable consequences of negligence can be employed to impose liability on landlords without impressing upon them an unreasonable duty which would effectively constitute strict liability.[73]

The result in *Trentacost* is flawed in a number of significant respects. The cost of providing adequate security could be phenomenal in some areas.[74] Further, it may be questioned why landlords must be forced to bear the burden of crime which should be properly charged to local government and law enforcement authorities.[75]

To some extent the *Trentacost* court seems to base its departure from traditional property law on the premise that the present forces of the market place are not satisfactory to accomplish the purpose of a contemporary residential lease.[76] An assessment of the court's action, however, raises the issue whether there was any real need to reconsider the obligations incident to a landlord and tenant relationship regarding a landlord's duty to safeguard the tenant from crime. In the past, the use of traditional negligence principles and violations of administrative regulations governing the conditions of multiple dwellings have served satisfactorily to find a landlord liable to the tenant for crimes committed by third parties under appropriate circumstances. Although no one can deny the need for better protection of tenants or home dwellers, it remains to be seen whether the extension of the implied warranty of habitability will better accomplish that protection or simply place an unnecessary and unreasonable burden on the landlord.

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[71] *See generally* Johnston v. Harris, 387 Mich. 569, 198 N.W.2d 409, 410 (1972) (cited in Braitman, 68 N.J. at 376, 346 A.2d at 80).

[72] *See* Warner v. Arnold, 133 Ga. App. 174, 210 S.E.2d 350, 353-54 (1974) (cited in Braitman, 68 N.J. at 377-78, 346 A.2d at 81).

[73] *Cf.* 82 N.J. at 234, 412 A.2d at 446-47 (Clifford, J., dissenting in part) ("[i]n practical effect this exercise predicates what amounts to absolute liability solely upon . . . relationship between . . . landlord and tenant and upon loose notions of foreseeability").

[74] *Id.* at 231, 412 A.2d at 445 (responsibility of landlord undiminished by cost required to provide adequate security).

[75] *See* Goldberg v. Housing Auth., 38 N.J. 578, 589-90, 186 A.2d 291, 297 (1962) (cited in Braitman, 68 N.J. at 379-80, 346 A.2d at 82).

[76] 82 N.J. at 225, 412 A.2d at 442. *See* note 66 *supra* and accompanying text.