OKLAHOMA CITY UNIVERSITY
LAW REVIEW

VOLUME 45 SPRING 2021 NUMBER 2

COMMENT

YOU'VE HIT YOUR BOILING POINT, CAVEAT EMPTOR: *SAUNDERS V. SMOTHERS*; A CLOSER LOOK AT THE AFTERMATH

Jonna Vanderslice Malone*

I. INTRODUCTION

Imagine you are Sam, a new tenant moving into a recently renovated two-bedroom home in Oklahoma. Before renting, you looked around the house, and everything seemed to be in perfect working order. Your landlord, Judy (not to be mistaken for Judge Judy, although that might help you in this scenario), seemed kind and helpful, and you are excited to begin your new job in a new city while attending school at night. After taking a week to move in and getting your bearings with the city, it is the Friday before your first day of work on Monday. Beginning to cook dinner, you find that you have no hot water in the house. Letting Landlord Judy know immediately, she ensures that the issue will be taken care of as soon as possible. Four days later, there are still no repairs made, and you have heard no word from Judy. You have to make a good impression on your first day of work. Luckily, one of your neighbors, who brought cookies over to welcome you to the neighborhood, knows how to light the pilot light on your hot water heater. Problem solved.

A few weeks later, you begin to step in the shower when you yelp in

alarm; there is no hot water yet again. Not wanting to take advantage of your neighbor's kindness, you once again let Landlord Judy know that you have no hot water in the house. She replies, "let me see what I can do." It is a week later and, after three more texts to Landlord Judy with no response, you are desperate. Left with no choice, you begin to boil water to bathe in. While carrying the boiled water to the bathtub, your knee buckles, and the boiling hot water scalds your skin as you tumble to the ground. Not only do you miss the first day of work, but you spend a month in a hospital recovering from the burns on your body. At this point, you are frustrated, out of money, and in need of a job all because you were just trying to take a hot bath.

What are your options in the state of Oklahoma if you are a tenant like Sam? Until 2009, the law in Oklahoma provided few options.[1] And while there were various statutes and court-made exceptions that governed Oklahoma landlord-tenant law, the majority of tenants in Sam's situation were frustrated and out of luck.[2] Partly due to the "archaic" nature of the rule followed, as well as the public-policy rationale, landlord-tenant law in Oklahoma took a drastic turn in favor of tenants in 2009.[3]

In a first-year property law course, landlord-tenant relationships have long been prime real estate for testing. As the residential housing market began to rapidly expand after World War II, these relationships have increasingly become under more debate and scrutiny outside of the classroom as well.[4] With rapid expansion came low-quality workmanship and hurried efforts; when a purchaser looked to the law for protection or a

---

* Juris Doctor Candidate, Oklahoma City University School of Law, May 2022; Master of Education, University of Oklahoma. This Comment is dedicated to my late father, who taught me that there is always time to smell the flowers. First, thank you to the superwoman who is my best friend, my teacher, and my greatest role model; Mom, all I am I owe to you. I am also endlessly grateful for my "mom squad," Kelli Litsch, Ashley Hancock, and Brenda Burgess, my Sunday night dinner crew, and my special family and friends; I am forever thankful for your unwavering support and consistent love throughout law school.

1. Lavery v. Brigance, 1925 OK 702, ¶ 3, 242 P. 239, 241. *See also* Godbey v. Barton, 1939 OK 19, 86 P.2d 621; Alfe v. N.Y. Life Ins. Co., 1937 OK 243, 67 P.2d 947; Buck v. Miller, 1947 OK 172, 181 P.2d 264; Arnold v. Walters, 1950 OK 198, 224 P.2d 261; Lay v. Dworman, 1986 OK 85, 732 P.2d 455; and Cordes v. Wood, 1996 OK 68, 918 P.2d 76.

2. Miller v. David Grace, Inc., 2009 OK 49, ¶ 18, 212 P.3d 1223, 1228.

3. *Id.* ¶ 24, 212 P.3d at 1230.

4. Joseph C. Brown Jr., *The Implied Warranty of Habitability Doctrine in Residential Property Conveyances: Policy-Backed Change Proposals*, 62 WASH. L. REV. 743, 744 (1987).

remedy, the doctrine of caveat emptor stood in the way.[5] With roots in old English law, the doctrine of caveat emptor has been applied to sale of property and, more recently, to landlord-tenant law.[6] The common law theory of landlord immunity said that at the moment the tenants took possession of the premises, they "assum[ed] all risk of personal injury from defects therein," and the landlord could not be held liable for the defects.[7] No matter the extremity of the injury caused by the negligence of the landlord, caveat emptor stood in the way of tenants recovering from their landlord.[8]

For these reasons, courts began to realize the caveat emptor doctrine needed to be replaced with a rule to fit the modern landlord-tenant relationship.[9] When rejecting caveat emptor, many courts justified their reasoning with grounds such as "the widespread enactment of state and local housing regulations that established minimum community standards of habitability . . . the tenant's reasonable expectation that property leased for living purposes will remain fit for that use for the duration of that lease term . . . [and] the fact that tenants possessed little or no bargaining power in regard to contemporary leases."[10] In 2009, Oklahoma abandoned its position on this doctrine when examining residential leases.[11] In its place, the court enacted a duty on residential landlords "to maintain the leased premises, including areas under the tenant's exclusive control or use, in a reasonably safe condition."[12] This decision was intended to encourage landlords to make repairs, maintain the safety of the leased property, and respect the duties outlined in their contracts.[13]

In 2019, the court affirmed and seemingly expanded the landlord's duty in *Saunders v. Smothers*.[14] In its decision, the *Saunders* court reaffirmed its requirement in *Miller v. David Grace, Inc.* that the duty to maintain the leased premises in a reasonably safe condition "requires a landlord to act reasonably when the landlord knew or reasonably should

5. *Id.*
6. *Id.* at 743.
7. Godbey v. Barton, 1939 OK 19, ¶ 5, 86 P.2d 621, 622 (quoting 110 A.L.R. 756 (1937)).
8. Lavery v. Brigance, 1925 OK 702, ¶ 3, 242 P. 239, 241.
9. Mark S. Dennison, *Cause of Action for Breach of Implied Warranty of Habitability in Residential Lease*, *in* 25 Causes of Action 2d 493, § 3 (2020).
10. *Id.*
11. *See* Miller v. David Grace, Inc., 2009 OK 49, ¶ 24, 212 P.3d 1223, 1230.
12. *Id.*
13. *Id.* ¶ 19, 212 P.3d at 1228-29.
14. Saunders v. Smothers, 2019 OK 54, ¶ 2, 454 P.3d 746, 747.

have known of the defective condition and had a reasonable opportunity to make repairs."[15] This Case Comment first discusses the evolution of Oklahoma landlord-tenant law from caveat emptor to the imposition of a duty on a landlord. Then it examines the specifics of the *Saunders* decision. And finally, this Comment considers the potential unanticipated results of the expansion of the landlord's duty to maintain the leased premises based on the *Saunders* decision.

II. THE EVOLUTION OF OKLAHOMA LANDLORD-TENANT LAW

From the early beginnings of property law to today, there have been significant transformations in tort liability between a landlord and a tenant, with different jurisdictions creating their own paths at their own speeds.[16] While Oklahoma moved slowly away from the early common law doctrine of caveat emptor by creating common law exceptions to landlord immunity, a complete destruction of the doctrine occurred in 2009.[17] Caveat emptor was then replaced with a duty of care to maintain the leased premises in a reasonably safe condition.[18]

A. Oklahoma Common Law Caveat Emptor

Under the doctrine of caveat emptor, also known as "lessee beware," a landlord had no duty to provide a tenant with a safe or habitable area.[19] Further, a landlord had no responsibility or duty to the tenant to maintain the premises or make repairs during the lease term because the purchaser of the property took the land *as is*.[20] Together, this lack of responsibility shielded the landlord against tort actions from tenants who were injured by faults in the premises.[21] The public-policy rationale behind this doctrine came from its roots in early property law for land usage and the ease of inspection of the property at the time of the purchase.[22]

---

15. *Id.* ¶ 19, 454 P.3d at 752 (quoting *Miller*, ¶ 24, 212 P.3d at 1230).

16. Jamie M. Powers, *Oklahoma Landlords Beware: Miller v. David Grace, Inc. Abandons Caveat Emptor in Residential Leases*, 63 OKLA. L. REV. 361, 362 (2011).

17. *Miller*, ¶ 24, 212 P.3d at 1230.

18. *Id.*

19. Jerald Clifford McKinney II, *Caveat Who?: A Review of the Landlord/Tenant Relationship in the Context of Injuries and Maintenance Obligations*, 35 UNIV. ARK. LITTLE ROCK L. REV. 1049, 1050 (2013).

20. *Id.*

21. *Miller*, ¶ 13, 212 P.3d at 1227.

22. DENNISON, *supra* note 9, § 2.

Justifications behind the doctrine weakened as the world began to see leases as a contract to provide a place to live instead of land.[23] When signing a lease, a tenant is more interested in a place to lay his or her head instead of land to grow crops.[24] It is more and more difficult for a tenant to find defects prior to signing the lease, so tenants have to rely more and more on landlords for the safety of the premises. In jurisdictions that still adhere to the caveat emptor doctrine, there is possibly a seemingly moral duty for a landlord to protect the tenants from harm to come from the premises, but there is no legal duty.[25]

In Oklahoma, prior to *Miller*, it was perfectly legal to lease a house that had significant issues, such as a gas leak.[26] This was because state law said a tenant who was injured by the leased premises could not hold a landlord liable.[27] Under caveat emptor, a landlord could not be liable for any defective conditions, and the tenant assumed risk for any personal injury from those conditions.[28]

Oklahoma upheld the doctrine of caveat emptor many times, one being in *Godbey v. Barton*.[29] In *Godbey*, the Oklahoma Supreme Court reversed the decision of the district court, ruling that the landlord was not liable to the tenant for the death of an infant who fell in a water-filled pit near the leased house.[30] The tenants acknowledged that they were in possession of the premises and that they knew of the dangerous condition before the accident.[31] Because there was no fraud or concealment by the lessor of a defect known to him and unknown to the lessee, the court determined that when the lessee takes the premises, he or she assumes all risk of personal injury and injury to family from defects on the premises.[32]

The Oklahoma Supreme Court once again upheld the caveat emptor doctrine in *Alfe v. NY Life Insurance Company* when it affirmed the district court's dismissal of the action of a tenant to recover damages for severe

---

23. *Id.*
24. *Id.*
25. Lavery v. Brigance, 1925 OK 702, ¶ 9, 242 P. 239, 241.
26. *See, e.g.*, *Id.* ¶ 7 (denying tenant's "contention that under these statutes it was [landlord]'s duty to make the house 'fit for human habitation,' before being occupied by her, and that said duty was violated…").
27. Alfe v. N.Y. Life Ins. Co., 1937 OK 243, ¶ 10, 67 P.2d 947, 949.
28. Godbey v. Barton, 1939 OK 19, ¶ 7, 86 P.2d 621, 623.
29. *Id.*
30. *Id.*
31. *Id.* ¶ 2, 86 P.2d at 622.
32. *Id.*, ¶ 7, 86 P.2d at 623.

burns that were due to a failure to repair the premises.[33] In *Alfe*, after the tenant moved into a house, he found that the gas heating system was "defective and [in] dangerous condition."[34] When no repairs by the landlord were made after notification by the tenant, the tenant went to light the furnace in a usual manner.[35] Because of the defective gas heating system, the tenant was severely burned and injured by an explosion.[36] Despite the injury, the court held that liability imposed is only derived by statute and found the landlord not liable.[37] Without warranty, fraud, or deceit, the landlord is not liable for injury to person or property of a tenant that arises by reason of failure to repair the demised premises.[38]

B. Exceptions Under Oklahoma Common Law for Landlord-Tenant Rights

During the expansion of apartment living and housing rentals that came after the Industrial Revolution, the caveat emptor doctrine was softened to include exceptions for the growing number of tenants who looked to the law for remedies.[39] Oklahoma carved out six specific exceptions to landlord immunity. These exceptions allowed tenants protection, though only to a certain extent. If a tenant's situation did not fit into the narrow exceptions created, the doctrine of caveat emptor stood tall, and the tenant had no option under the law to recover for the damages.[40]

One exception to caveat emptor came in *Buck v. Miller*.[41] In *Buck,* the Oklahoma Supreme Court affirmed the trial court's denial of the landlord's motion for a directed verdict when a landlord tried to repair a leaking roof multiple times, but after each repair there was more and more damage.[42] The tenant alleged that the defendant was negligent in failing to use proper materials to repair the roof, and, by walking on the roof when

33. Alfe v. N.Y. Life Ins. Co., 1937 OK 243, ¶ 10, 67 P.2d 947, 949.
34. *Id.* ¶ 4, 67 P.2d at 948.
35. *Id.* ¶ 6, 67 P.2d at 948.
36. *Id.*
37. *Id.* ¶ 11, 67 P.2d at 949.
38. *Id.* ¶ 8, 67 P.2d at 949.
39. DENNISON, *supra* note 9, § 2.
40. *Id.*
41. *See* Buck v. Miller, 1947 OK 172, ¶ 21, 181 P.2d 264, 267.
42. *Id.* ¶¶ 23-24, 181 P.2d at 267.

making repairs himself, he broke the roofing and caused more leaking.[43] Citing *Alfe*, the court pointed out that a tenant could not recover from the landlord failing to make necessary repairs.[44] Instead, it stated that when a landlord is negligent in making necessary repairs, and the tenant incurs damages from that negligence, a plaintiff could recover.[45] Using *Horton v. Early* and *Crane Co. et al. v. Sears* as directive, the court reaffirmed that "the general rule is . . . where the landlord is under no obligation to make repairs, but undertakes to make them gratuitously, he will be liable for his negligence in making such repairs."[46]

Another exception to the common-law doctrine came in *Arnold v. Walters*.[47] In *Arnold,* the Oklahoma Supreme Court affirmed the judgment of the district court in favor of a tenant who was injured on an unsafe walkway leading to the rental house.[48] Because this walkway was reserved for the common use of multiple tenants, the court found that the landlord had a duty to exercise reasonable care to keep this area safe. If the landlord was negligent, and there was an injury to a tenant, the landlord would be held liable if the walkway was being used in the manner intended.[49] The court reasoned that because not one single tenant was in control of the walkway, the landlord retained the possession of that portion of the premises.[50]

The court carved out another exception in *Lay v. Dworman*.[51] In *Lay,* the Oklahoma Supreme Court reversed and remanded the Oklahoma Court of Civil Appeals dismissal of a case where a tenant, who was assaulted and raped in her apartment, brought an action against the landlords alleging negligence.[52] She stated that this occurred because of a defective lock; she had repeatedly informed her landlords of the necessary repair.[53] The court found a landlord has a "duty to use reasonable care to maintain the common areas of the premises . . . to insure that the likelihood of criminal activity [is] not unreasonably enhanced by the condition of those common

43. *Id.* ¶ 7, 181 P.2d at 265.
44. *Id.* ¶ 20, 181 P.2d at 267.
45. *Id.*
46. *Id.* ¶¶ 21, 24, 181 P.2d at 267.
47. *See* Arnold v. Walters, 1950 OK 198, ¶ 15, 224 P.2d 261, 263.
48. *Id.* ¶ 2, 224 P.2d at 262.
49. *Id.* ¶ 15-17, 224 P.2d at 263.
50. *Id.* ¶ 17, 224 P.2d at 263.
51. *See* Lay v. Dworman, 1986 OK 85, ¶ 18, 732 P.2d 455, 460.
52. *Id.* ¶¶ 1, 20, 732 P.2d at 456, 461.
53. *Id.* ¶ 4, 732 P.2d at 457.

premises."[54]

In both *Lay* and *Arnold*, the exception turned on whether the landlord had control over the defect and if they were aware of it. In *Cordes,* the court reversed summary judgment for a landlord and remanded the case for the genuine issue of material fact of foreseeability of an attack on a tenant when the apartment had ineffective locks.[55] Here, there was a genuine issue of material fact as to whether the landlord's behavior was reasonable when there was a dispute as to if landlord told the tenants that they could not put deadbolt locks on the doors.[56] There was also a genuine issue of material fact as to the foreseeability of the attack when expert testimony said the neighborhood had high levels of crime, and whether prior attempted break-ins were reported to the landlords.[57] These disputes were enough to reverse summary judgment.[58]

While these common law exceptions to landlord tort immunity gave an opportunity for protection to tenants, if the tenant's specific situation did not fit into one of these specific examples, no matter how terrible the injury to the plaintiff was, the doctrine of caveat emptor still controlled, and the landlord was immune from suit despite neglecting the tenant's basic needs and safety.[59] It was not until 2009 when the Oklahoma Supreme Court rejected the caveat emptor doctrine and moved away from the reliance of tenants on specific common law exceptions in *Miller v. David Grace, Inc.*[60]

C. Oklahoma Supreme Court Rejects Caveat Emptor in Miller

In *Miller*, a tenant, Lora Ann Miller, moved into an apartment on the second floor of a building.[61] This apartment had a balcony with a railing that Ms. Miller discovered to be loose.[62] On two separate occasions, Ms. Miller informed the apartment manager of the defect in the railing.[63]

54. *Id.* ¶ 9, 732 P.2d at 458.
55. Cordes v. Wood, 1996 OK 68, ¶ 17, 20, 918 P.2d 76, 80.
56. *Id.* ¶ 17, 918 P.2d at 80.
57. *Id.*
58. *Id.*
59. Lavery v. Brigance, 1925 OK 702, ¶ 3, 242 P.2d 239, 241.
60. *See* Miller v. David Grace, Inc., 2009 OK 49, 212 P.3d 1223.
61. *Id.* ¶ 2, 212 P.3d at 1226.
62. *Id.* ¶ 3, 212 P.3d at 1226.
63. *Id.*

Despite promises of repair, the loose railing was never repaired.[64] One day, while standing on the balcony, Ms. Miller unfortunately leaned on the railing, which collapsed and sent her falling from the second floor to the ground below, where she suffered multiple injuries.[65] She filed suit against the landlord, claiming that the landlord "owed her a duty to repair the defective railing."[66]

When Landlord moved for summary judgement based on *Godbey*, alleging that he owed no duty to Ms. Miller and that she had exclusive control of premises, the trial court granted the motion and appellate court affirmed.[67] On appeal, Ms. Miller urged the Oklahoma Supreme Court to overrule *Godbey* and adopt a rule that "removes a veil of landlord immunity and instead treats the landlord as any other property owner imposed with a general duty of care of their premises."[68] In a surprising turn, the Oklahoma Supreme Court overturned the "archaic" caveat emptor doctrine and in its place installed a

> general duty of care upon landlords to maintain the leased premises, including areas under the tenant's exclusive control or use, in a reasonably safe condition. This duty requires a landlord to act reasonably when the landlord knew or reasonably should have known of the defective condition and had a reasonable opportunity to make repairs.[69]

The court reasoned that considerations of landlord reasonableness and foresight, along with tenant's health, safety, and welfare, should be important when considering a residential landlord's duty to his or her tenant.[70] Further, the court found it "unreasonable to allow a landlord to seek refuge under the cloak of immunity after intentionally turning a deaf ear to a tenant's pleas to make necessary repairs."[71] As a result of this decision, the landlord was no longer immune from a tenant's lawsuit and was held to a higher standard.[72] This decision left issues, such as the scope

64. *Id.*
65. *Id.* ¶ 4, 212 P.3d at 1226.
66. *Id.* ¶ 6, 212 P.3d at 1226.
67. *Id.* ¶ 7, 9, 212 P.3d at 1226.
68. *Id.* ¶ 9, 212 P.3d at 1226-27.
69. *Id.* ¶ 24, 212 P.3d at 1230.
70. *Id.* ¶ 19, 212 P.3d at 1228-29.
71. *Id.* ¶ 19, 212 P.3d at 1229.
72. *Id.*

of a landlord's duty, unresolved.[73] This led to the grant of certiorari in 2019 of *Saunders v. Smothers*.[74]

III. SAUNDERS V. SMOTHERS

A. Facts and Procedural History

Shalalah Saunders, a mother with two children (ages three and seven years old), leased a house from Marcella Smothers.[75] The three lived in the home together. Ms. Saunders discovered an issue in her house on October 20, 2011; the house had no hot water.[76] By six o'clock the same day, she notified Ms. Smothers of the issue and asked her to fix the problem.[77] Ms. Smothers responded and told her she "would see what she could do," but there was no attempt to fix the defect.[78] After four days with no repair or assistance from Ms. Smothers, Ms. Saunders "still had no running hot water in the home and she needed to take a bath" for work.[79] On October 24, 2011, she boiled water on the stove and then carried the hot water to the bathtub, so she didn't have to take a cold bath.[80] When she was carrying the water, she slipped and fell, spilling water on herself and inflicting third degree burns on her body.[81] Because of these injuries, she was hospitalized for more than a month.[82]

Both Ms. Saunders and Ms. Smothers were participants in the Oklahoma Housing and Finance Agency (OHFA) program.[83] On October 25, 2011, OHFA informed Ms. Smothers by letter that because there was no running hot water at the leased home of Ms. Saunders, the home did not meet the "Housing Quality Standards set for by the Department of Housing and Urban Development" and that it was a "serious health hazard" to Ms. Saunders and her family.[84] It was only after OHFA's letter that on October 28, 2011, a full eight days after the first notification, Ms.

73. POWERS, *supra* note 16, at 362.
74. *See* Saunders v. Smothers, 2019 OK 54, 454 P.3d 746.
75. *Id.* ¶ 4, 454 P.3d at 747.
76. *Id.*
77. *Id.*
78. *Id.* ¶ 4, 454 P.3d at 747-48.
79. *Id.* ¶ 4, 454 P.3d at 748.
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.* ¶ 5, 454 P.3d at 748.
84. *Id.*

Smothers attempted to re-light the pilot light, but she failed.[85]

Ms. Saunders filed suit against Ms. Smothers, asserting two causes of action.[86] First, Ms. Saunders claimed that Ms. Smothers owed her a duty of care to keep her home in habitable condition, that duty was breached, and that her injuries were proximately caused by the breach.[87] Second, Ms. Saunders asserted that Ms. Smothers failed to comply with the OHFA's requirements and that Ms. Smothers was liable to Ms. Saunders through negligence per se, seeking actual and punitive damages.[88] Ms. Smothers requested summary judgment, alleging there were no material facts in dispute and that she owed Ms. Saunders no duty to protect her. She argued that her failure to repair the hot water heater did not change the safety of the house but resulted in a condition of only cold water.[89]

The district court granted summary judgment in favor of Ms. Smothers, finding that she owed no duty to Ms. Saunders, her conduct was not the proximate cause of Ms. Saunders's injuries, and there was no negligence per se because Ms. Saunders's injuries were not the type intended to be prevented by the statute.[90] The Oklahoma Court of Civil Appeals affirmed the holding; the court held that Ms. Smothers owed no duty to Ms. Saunders but did not address the other findings made by the trial court.[91]

B. Analysis

In an opinion authored by Justice James E. Edmondson, the Oklahoma Supreme Court upheld its overturn of the doctrine of caveat emptor in *Miller* by enforcing a general duty of care of landlords to tenants.[92] Examining the trial court's entry of summary judgment, the court ultimately reversed the ruling of summary judgment in favor of the landlord, finding the landlord had a duty that arose from the contractual relationship and determined that while there was no dispute to the material facts, when taking all facts viewed in the light of the non-moving party, the evidence supported an inference that Ms. Saunders's actions were

85. *Id.* ¶ 6, 454 P.3d at 748.
86. *Id.* ¶ 7, 454 P.3d at 748.
87. *Id.*
88. *Id.*
89. *Id.* ¶ 8-9, 454 P.3d at 748-49.
90. *Id.* ¶ 16, 454 P.3d at 751.
91. *Id.*
92. *Id.* ¶ 19, 454 P.3d at 752.

foreseeable.[93] The court remanded the case for further determination.[94]

The court used a *de novo* standard of review of the appellate ruling of summary judgment, noting that summary judgment should be granted only if there is no dispute as to the material facts and reasonable minds would not reach a different conclusion from the facts.[95] To start its analysis of the case, the court stated that to defeat a summary judgment motion claim, the plaintiff must show that there is a genuine issue of material fact as to if there was a duty of care, if that duty was breached, and if the breach was the proximate cause of her injuries.[96]

Going straight to its reasoning behind its decision of imposing a general duty of care upon landlords instead of upholding the caveat emptor doctrine in *Miller*, the court mentioned that due to the evolution of residential leases, there was a demand for "reformation of [the] archaic rule."[97] The court explained that the duty of a landlord comes from a contractual relationship, which holds a landlord liable.[98] Citing *Prosser and Keeton on Torts,* the court noted the "disparate equities" between a landlord and tenant and their duties in their contract was one of the reasons for the shift from the doctrine of caveat emptor.[99]

The court began its analysis of the contract between Ms. Saunders and Ms. Smothers through OHFA and whether a landlord duty arose. In the contract, one of the rules stated was that the landlord would provide hot running water to the tenant.[100] Because of this contract, the court reasoned that Ms. Smothers had a legal duty to act reasonably when Ms. Saunders contacted her on October 20, 2011 to inform her that she did not have hot running water.[101] The court acknowledged the reason for this duty of a landlord to act reasonably when she knew of a defect and had reasonable opportunity to make the repair.[102] The court focused on the communication between Ms. Saunders and Ms. Smothers and the length of time it took Ms. Smothers to attempt to repair the defect.[103]

---

93. *Id.* ¶¶ 19, 22, 454 P.3d at 752-53.
94. *Id.* ¶ 22, 454 P.3d at 753.
95. *Id.* ¶ 17, 454 P.3d at 751.
96. *Id.* ¶ 18, 454 P.3d at 751.
97. *Id.*
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.* ¶ 19, 454 P.3d at 752.
102. *Id.*
103. *Id.*

Having established that Ms. Smothers in fact did owe a duty of care to Ms. Saunders because of their contract with OHFA, the court turned again to *Miller* to determine how to treat the regulatory violation as well as the delay in repairing.[104] The court acknowledged that if the imposed duty on the landlord was neglected or violated when she knew or reasonably should have known of the defective condition, coupled with a reasonable opportunity to make repairs, then the negligence claim could be actionable.[105] Further, the court noted that the landlord's liability could still be reduced or taken away in light of a tenant's contributory negligence, but this was a question for the jury.[106]

The court then moved to the question of whether Ms. Smothers was liable to Ms. Saunders for her injuries. Noting that all facts and inferences were to be examined in favor of the non-moving party, the court recognized that whether an event's injuries were foreseeable is a jury question unless there is no causal connection between the alleged wrong and injury, in which case the issue of proximate cause would turn to a question of law.[107] Despite Ms. Smothers's argument that Ms. Saunders carrying a pot of boiling hot water for a bath was an unforeseeable intervening cause and therefore she should not have any liability for her injuries, the court found that because Ms. Smothers took no action for four days after being notified, had previous personal experiences of heating hot water on a stove, and was notified by OHFA, her failure to provide running hot water was a serious health hazard. There was "overwhelming evidence" to support an inference that it was foreseeable that Ms. Saunders might have resorted to boiling water and carrying it to her tub.[108] The court expressed no opinion on whether the tenant would be ultimately able to recover against the landlord for negligence, but instead remanded the decision for a jury as to whether Ms. Smothers breached the duty of care owed and whether that breach was the proximate cause of the injuries that Ms. Saunders incurred.[109]

---

104. *Id.* ¶ 20, 454 P.3d at 752.
105. *Id.* (citing Miller v. David Grace, Inc., 2009 OK 49, ¶ 28, 212 P.3d 1223, 1231).
106. *Id.*
107. *Id.* ¶ 21, 454 P.3d at 752 (citing Schovanec v. Archdiocese of Okla. City, 2008 OK 70, ¶¶ 38, 41, 188 P.3d 158, 171, 173).
108. *Id.* ¶ 22, 454 P.3d at 752-53.
109. *Id.* ¶ 23, 454 P.3d at 753.

IV. ARGUMENT: HAVE THE FLOODGATES OPENED?

It goes without question that *Saunders* was another large win for residential tenants in Oklahoma following *Miller*. By finding that landlords have a contractual duty to a tenant and remanding the question of breach and proximate cause to a jury, *Saunders* opened the door for future tenants to recover for personal injuries and hold landlords accountable to their contracts.[110] This decision seems to check many boxes for public-policy, including encouraging the wellbeing of tenants, implementing a civic responsibility on landlords, and allowing for a fairer bargaining power in contracts between landlords and tenants. However, the Oklahoma Supreme Court's ruling in *Saunders* could potentially unleash the floodgates of tenant claims due to the expansion of a landlord's duty to his or her tenant, leading to the potential for overcrowding courts due to this expansion and the potential negative effect of pushing low-income tenants out of the housing market.[111]

First, there was an expansion of the landlord's duty from *Miller* to *Saunders*. In *Miller*, the court-crafted duty of reasonable care was one described "to maintain the leased premises … in a reasonably safe condition. This duty requires a landlord to act reasonably when the landlord knew or reasonably should have known of the defective condition and had a reasonable opportunity to make repairs."[112] In *Saunders*, the court does not specifically describe how failing to provide hot water is an unsafe condition; instead it only cites OHFA's determination that the lack of running hot water to be a "serious health hazard."[113] Instead of focusing on the duty of reasonable care outlined in *Miller*, the *Saunders* decision focused on the legal duty that simply "arises out of the contract relationship."[114] Despite the public-policy win of holding a landlord liable, this duty expansion made what a landlord is liable for much broader than ever before. The court should have described more of the reasoning behind its choice to leap to a duty from a contractual relationship instead of a duty imposed by the court in *Miller*.

Second, because of this expansion of the landlord duty, it is possible that there could be an overwhelming case load for the courts due to the

110. *Id.* ¶ 18, 454 P.3d at 751.
111. *Id.*
112. Miller v. David Grace, Inc, 2009 OK 49, ¶ 24, 212 P.3d 1223, 1230.
113. Saunders v. Smothers, 2019 OK 54, ¶ 18, 454 P.3d at 751-52.
114. *Id.* ¶ 18, 454 P.3d at 751.

potential for more and more claims to be brought against landlords. Imposing a duty from the mere existence of a contractual relationship could allow any question of foreseeability to go to a jury. For example, in *Saunders*, the court stated there was "overwhelming evidence" that it was foreseeable for Ms. Saunders to boil water and carry it to a tub for a bath when she didn't have running hot water. But the court did not mention if it was foreseeable that she would trip and fall on that walk.[115] Was it possible she had inadvertently left her shoes out the night before, forgotten, and remembered only after the scalding hot water hit her skin? Was it foreseeable if Ms. Saunders previously had contacted someone to assist her in a repair the last time an issue arose? Was it foreseeable that Ms. Saunders would use a large pot or small pot? When viewing all evidence in the light most favorable to the non-moving party, along with the leniency the *Saunders* decision provided, claims against landlords could potentially flood in if courts continue to uphold this standard of summary judgement. Tenants would have the opportunity to file claims in a similar manner to pinning the tail on a donkey blindfolded; because of *Saunders,* there is more unknown in terms of what could potentially be seen as foreseeable or related to safety from a tenant's view.

Finally, the expansion of this duty could possibly leave tenants who cannot afford the housing provided without a place to live. In theory, abolishing caveat emptor would seem to encourage landlords to make repairs, reward attentive and responsive landlords, and provide a possibility for a tenant to recover from a landlord's disregard of the tenant's "health, safety, and welfare."[116] But when the duty a landlord must provide a tenant is increased, this possibly could come with an increase in the cost of housing. If landlords are pressured into providing more and more to their tenants, their costs could be higher and, as a consequence, push people out of the housing market. Because of the contractual duty of a landlord described in *Saunders*, it is possible that Oklahoma will be pushing tenants out instead of simply providing a potential remedy.

V. CONCLUSION

The *Saunders* holding has reaffirmed Oklahoma's turn away from caveat emptor as stated in *Miller*, once again protecting the rights of

115. *Id.* ¶ 22, 454 P.3d at 753.
116. *Miller*, 2009 OK 49, ¶ 18, 212 P.3d at 1228.

residential tenants who want to recover from their landlords.[117] The court's decision in *Saunders* acknowledged the "evolving nature of residential leases," and its decision in *Miller* to "unequivocally disavow[] [the] inequitable and archaic doctrine" of caveat emptor applies a contractual duty for landlords to tenants.[118] By reaffirming Oklahoma's rejection of the caveat emptor doctrine as well as the expansion of the duty in *Miller*, the court pushed the landlord-tenant law evolution in favor of tenants, as well as added confusion to how far a landlord's duty can be now expanded.

It is clear based on *Miller* and *Saunders* that residential landlords have a duty of reasonable care, and Oklahoma has disavowed the doctrine of caveat emptor. But the *Saunders* opinion should have detailed more specifically the reasoning behind its choice to leap to a duty formed from a contractual relationship instead of a specific duty of a landlord to maintain the premises in a reasonably safe condition imposed by the Court in *Miller*. This would provide more guidance for tenants who are looking to determine whether they can hold their landlord liable.

The court also should have more narrowly defined the standard for summary judgment in cases involving claims of negligence by landlords based on a contractual duty in terms of foreseeability after finding the duty for a landlord. Oklahoma currently follows that the question of whether, when examining all facts in light of the non-moving party, summary judgement should be granted is a question of fact unless there is an overwhelming majority of the evidence.[119] The court should have taken the opportunity in *Saunders* to examine the totality of the evidence for foreseeability and determine the extent of what should be considered in the foreseeability analysis.

Finally, in an attempt to allow tenants more opportunity to hold landlords liable for their negligence, *Saunders* could increase the pricing in the housing market by holding landlords to a higher standard of their property and in return, decreasing the opportunities for some potential tenants to rent because of the increase in cost. At last, Oklahoma has rejected the common law doctrine of caveat emptor and now expanded the duty of a landlord to one of reasonable care or under a contract; but has *Saunders* inadvertently pushed potential tenants out of the housing market and courts past their boiling point?

---

117. *See Saunders*, 2019 OK 54, 454 P.3d 746.

118. *Id.* ¶ 18, 454 P.3d at 751 (citing *Miller*, 2009 OK 49, ¶ 24, 212 P.3d at 1230).

119. *Miller*, ¶ 10, 212 P.3d at 1227 (citing Davis v. Leitner, 1989 OK 146, ¶ 9, 782 P. 2d 924, 926).