

Landlord & Tenant Liabilities

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Overview

- When looking at the obligations of a Landlord and/or a Tenant it is necessary to consider four key areas which may give rise for a potential claim for damages and/or a claim for personal injury.
 - Contract (via the Tenancy Agreement)
 - Landlord and Tenant Act 1985
 - The Defective Premises Act 1972
 - Common law negligence

In addition, the provisions of the Occupiers Liability Act will need to be considered briefly, specifically whether a landlord can be held liable for injuries of a third party sustained in a rented property.



Duties of landlords

It is well known that landlords owe their tenants various duties and responsibilities to ensure that the rented properties safe and free from health hazards.

As an example, landlords are legally responsible for the safety of their tenants in relation to gas safety, and by law are required to:

- Repair and maintain gas pipework, flues and appliances in safe condition
- Ensure an annual gas safety check on each appliance and flue
- Keep a record of each safety check

However, these duties are not necessarily confined to specific issues such as gas safety, and extend to general safety of the premises. These duties are set out in both statute and the common law.

These duties cover not only the condition of the premises, but may extend to consequential issues such as individuals injured (including tenants) by any failures of the part of the landlord.



Duties of landlords under a tenancy agreement

The tenancy agreement between tenant and landlord is a contractual agreement which will set out various obligations between the tenant and landlord.

As an example, the tenancy agreement will confirm who is responsible for insuring the building. In most instances, the landlord will agree to insure the property in its own name, and recover the cost of the insurance from the tenant or tenants – as they will benefit from the coverage.

The tenancy agreement may prevent the tenant from insuring the property in its own name on the same basis, but will not prevent the tenant from taking out their own insurance to cover additional risks. For example, this may cover contents (*residential and business tenants*) and business interruption (*business tenants*).

There are also various statutory duties that the landlord owes the tenant which cannot be contracted out of – which we address in detail throughout this presentation.



Duties of tenants under a tenancy agreement

The tenancy agreement, whilst imposing obligations on the landlord, is not necessarily weighted in the favour of the tenant.

Tenants will carry their own obligations as part of the tenancy agreement. For example, depending on the terms of the tenancy agreement, a tenant may be expected to:

- Pay rent in the agreed amount and on time;
- Report any repairs needed to the landlord.
- Carry out minor maintenance such as checking smoke alarms and changing light bulbs



Duties of landlords – contractual

Can a breach of the tenancy agreement offer a route to a successful damages claim (for example for property damage) and/or personal injury claim against the landlord?

In summary, yes. **However**, and perhaps inevitably, the terms of the tenancy agreement are likely to be of key significance in any personal injury claim brought against the landlord.

- Firstly, the tenancy agreement will need to be obtained.
- Secondly, and perhaps most vital of all for personal injury claims, any proposed claim for breach of contract can only be brought by people who were parties to the contract. This means the tenants themselves.

Cavalier v Pope [1906] AC 428 sets out in detail how the above applies.



Contractual claims for personal injury/damages

- Therefore, in order to pursue a damages/personal injury claim in which a breach of contract is alleged, the named tenants will be the party pursuing.
- The starting-point is to identify what has caused the damage/injury and then to consider what coverage (if any) that issue is given in the contractual terms.
- The simplest example is where the damage/injury has been caused by some kind of defect in the property (say some faulty stairs). That fact of itself requires us to look at what (if anything) the tenancy agreement says about repairs
- The agreement may say nothing at all but it also may have some kind of repairing provision. Local authority or housing association agreements are highly likely to.
- Looking at the repairing obligations placed upon the landlord in each case will tell you whether the particular defect in question is something which the landlord was obliged to deal with



Contractual claims – repair and maintenance

- As a final and significant point to make, it's important to understand the meaning of the concept of “repair” and/or “maintenance” within the confines of the tenancy agreement.
- It is now established beyond doubt by a line of key authorities that obligations to repair and maintain premises are not the same as an obligation to make premises safe.
- A landlord who is expressly or impliedly obliged to repair the property is not under an obligation to introduce improvements to its safety.
- See *Alker v Collingwood Housing Association* [2007] 1 WLR 2230
- And *Sternbaum v Dhesi* [2016] EWCA Civ 155



Landlord & Tenant Act 1985

Landlord & Tenant Act 1985

- As set out above, the tenancy agreement will contain those express terms which the landlord and tenant have agreed to as part of the tenancy.
- However, there are certain statutory duties that the landlord will be subject to where the property rented is a residential premises.
- The Landlord and Tenant Act (“the LTA 1985”) relates to these residential tenancies and has several relevant sections which landlords will need to be aware of when considering their obligations.
- For example, **Section 9A** of the LTA 1985 sets out that there is an implied covenant given by the landlord that the premises:
 - Is fit for human habitation at the time the lease is granted
 - Will remain fit for human habitation during the term of the lease



Landlord & Tenant Act 1985 – Relevant Sections

Section 9A

- Similarly, the landlord (as lessor) is not required:
 - To carry out works or repairs for which the tenant (as lessee) is liable
 - To rebuild or reinstate the dwelling in the case of destruction or damage by fire, storm or flood
 - To keep in repair or maintain anything which the lessee is entitled to remove from the dwelling
 - To carry out works or repairs which would put the lessor in breach of any enactment
 - To carry out works or repairs which require the consent of a superior landlord or other third party



Landlord & Tenant Act 1985 – Relevant Sections

- The implied covenant is also not to be taken as imposing on the landlord any liability in respect of the dwelling being unfit for human habitation if the unfitness is wholly or mainly attributable to:
 - the tenant’s own breach of covenant; or
 - disrepair which the landlord is not obliged to make good because of an exclusion or modification under section 12* of the LTA 1985

*Section 12 of the LTA 1985 grants county courts the power to authorise exclusions or modifications in leases in respect of the repairing obligations which are required of the landlord ordinarily under section 11.



Landlord & Tenant Act 1985 – Relevant Sections

Section 11 of the LTA 1985 sets out a landlord's repairing obligations as follows:

In a lease to which this section applies* there is implied a covenant by the lessor:

- to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes)
- to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity), and
- to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water

*Sections 13 and 14 of the LTA 1985 set out further details of those leases which are applicable



Landlord & Tenant Act 1985 – claims?

So what kind of claim might arise from an alleged breach of these repairing obligations?

- a claim for damage to the tenant's personal chattels caused by the disrepair.
- personal injuries caused to the tenant again caused by the disrepair.

How should a claim brought pursuant to the provisions of the LTA be dealt with?

The first step is to consider whether the tenant's complaint falls within the landlord's repairing obligations under the LTA 1985.



Landlord & Tenant Act 1985 – claims?

After consideration of the tenancy agreement and the LTA 1985, it will be necessary to consider whether or not the landlord has a possible defence to the claim.

For example:

- Where the tenant is in breach of their duty to behave in a ‘tenant like’ manner. For example, if the tenant has elected to carry out work to the property without permission but causes damage to the property, then the landlord has no obligation to rectify the damage caused by the tenant.
- If the tenant fails to give notice of the disrepair.
- Concepts of “notice” can also be quite strict (e.g. it may well be that, to be valid, notice could only be given in a particular way, or to a particular person). This point often overlooked. In the right case, the absence of notice may defeat a claim entirely
- *Edwards v Kumarasamy [2015] Ch 484*



Landlord & Tenant Act 1985 – claims?

Furthermore, even if the defect in question does fall within the landlord's express or implied obligations to repair, then there is an old but important common law rule that where a defect has arisen within the demised premises the landlord is not to be regarded as having breached a contractual repairing obligation until he has had notice (actual or constructive) of the defect and a **reasonable opportunity to repair** it. (Section 11 3(A))

This means the landlord is entitled to:

- Make reasonable efforts to gain access to deal with the disrepair but is unable to do so
- Have a 'reasonable period' to effect the repair – this 'reasonable period' or time can be dependent on the type of repair, and the urgency of the repair (such as burst water pipe for instance).



Landlord & Tenant Act 1985

In terms of the standard of repair – this will depend on a number of issues – the age and location of the property for instance will be an issue.

The decision in *Proudfoot v Hart* sets out what will be defined as ‘good tenantable repair.’

The test in *Proudfoot v Hart* was of ‘tenantable repair’. The Court of Appeal in that case found:

“Good tenantable repair’ is such repair as, having regard to the age, character and locality of the house, would make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it”



Landlord & Tenant Act 1985

Some interesting points

Taking the findings in *Proudfoot v Hart* further:

- The landlord is only obliged to keep all systems and structures in good working order. They are not required to upgrade any part of the property, or to improve it in favour of their tenants. That is left to the discretion of the property owner. It can be negotiated in the tenancy agreement, but not demanded by law.
- The property must be free of all hazards **before** a tenant moves in to the property. Hazards like faulty electrical wiring, leaking gas pipes or unstable supports endanger human lives



What makes a successful claim under LTA 1985?

Based on the previous slides, if a tenant wishes to pursue a claim against a landlord – whether for damage to property or personal injury resulting from an alleged breach of the Landlord and Tenant Act 1985, then the following will need to be established:

1. The property was suffering from disrepair at the relevant time for which the landlord was liable
2. The landlord was given notice of the defect, and provided with reasonable access
3. The landlord failed to conduct/complete the repairs within a ‘reasonable period of time’
4. The claim is within the appropriate limitation period.



Defective Premises Act 1972

Common Law Negligence and Occupiers Liability Act 1957

- Within the confines of circumstances in which a landlord faced a liability for dangerous premises, prior to the implementation of the Defective Premises Act, common-law duties of care rarely arose in this context
- The best-known statement of principle is to be found in Lord Macnaghten's judgment in *Cavalier*.
- "The law laid down by the Court of Common Pleas in the passage quoted by the Master of the Rolls from the judgment of Erle CJ in *Robbins v Jones* (1863) 15 CB (NS) 221 is beyond question: '*A landlord who lets a house in a dangerous state is not liable to the tenant's customers or guests for accidents happening during the term: for, fraud apart, there is no law against letting a tumble-down house; and the tenant's remedy is upon his contract, if any*'"



Common Law Negligence and Occupiers Liability Act 1957

Occupiers Liability Act

- Similarly, there was no liability for landlords when considering the Occupiers Liability Act.
- We see the Occupiers' Liability Act 1957 being pleaded by tenants and/or third parties against landlords regularly but this is almost always misguided.
- The reason is that, in demising his premises to the tenant, the landlord is invariably treated as having surrendered the practical control of the premises which is the essential ingredient of the status of "occupier" under the Act. The tenant, and not the landlord, will almost certainly be the "occupier" of the premises
- See *Wheat v E Lacon & Co Ltd* [1966] AC 552



The Defective Premises Act 1972 (DPA 1972)

- The DPA 1972 was enacted to fill these gaps in the law.
- Often, the only cause of action available for third party claimants for damage/injury was against the tenant as occupier, which was often not viable.
- The DPA was enacted as it was considered that the landlord, in making money from the property, ought to carry the basic responsibilities of maintenance and upkeep.
- The most important part of the DPA 1972 is section 4 which provided for landlords to owe a duty of care arising by virtue of obligations and rights of entry in respect of maintenance and repair



The duty

Landlords may have a duty to repair premises under Section 4 of the DPA 1972

- s 4(1):
 - Where premises are let under a tenancy which puts on the landlord an obligation to the tenant for the maintenance or repair of the premises, the landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect
- s 4(2):
 - The said duty is owed if the landlord knows (whether as the result of being notified by the tenant or otherwise) or if he ought in all the circumstances to have known of the relevant defect



The duty

- What is the duty?

- The duty is to take reasonable care in all the circumstances to see that people are reasonably safe from personal injury or damage to property caused by a lack of repair or maintenance
- The landlord is only liable for a defect which results from a failure to carry out repair or maintenance work – no liability for design defects or inherent defects
- No duty on a landlord to carry out improvements to the premises

- To whom is the duty owed?

- The duty of care is owed to anyone, including the tenant who might reasonably be expected to be affected by the defect
- The range of the duty is therefore wide ranging and applies to those persons living in, staying at and visiting tenanted properties at all times.



Relevant defect

- Under s 4(3), a ‘relevant defect’ is:
 - *“a defect in the state of the premises existing at or after the material time and arising from, or continuing because of, an act or omission by the landlord”* which would constitute a failure in his obligation to carry out maintenance/repair
- “the material time” means:
 - where the tenancy commenced before this Act, the commencement of this Act; and
 - in all other cases, the earliest of:
 - the time when the tenancy commences
 - the time when the tenancy agreement is entered into
 - the time when possession is taken of the premises in contemplation of the letting



‘Relevant defect’

Alker v Collingwood Housing Association [2007] EWCA Civ 343

- Use of annealed glass in door considered to be a safety hazard after house was built, but glass not damaged or in disrepair
- Court of Appeal:
 - S 4 ensures a statutory mechanism by which persons were protected from the effects of a landlord’s failure to comply with its repairing obligation; it does not provide a statutory warranty that the property is reasonably safe
 - The presence of annealed glass did not constitute a defect and therefore there was no breach of the landlord’s duty under s 4



‘Relevant defect’

Dodd v Raeburn Estates Ltd [2016] EWHC 262 (QB)

- A man died after falling down the Defendant’s staircase and hitting his head
- The Court found:
 - even though the stairs were potentially dangerous as they were steep and there was no handrail, this was not the test for a relevant defect that a landlord had a duty to repair under s 4
 - for s 4 to apply, the staircase would have to be out of repair, but it was well-constructed
 - a wide construction of s 4 would place too substantial a burden on a landlord

Sternbaum v Dhesi [2016] EWCA Civ 155)

- Although a very steep stairway with no handrail was a hazard, it was not in disrepair
- The landlord’s obligation did not extend to improving the premises or putting them into a safe condition



What if the lease does not confer such an obligation?

- S 4(4):

“where premises are let under a tenancy which expressly or impliedly gives the landlord the right to enter the premises to carry out any description of maintenance or repair of the premises, then...

he shall be... as if he were under an obligation to the tenant for that description of maintenance or repair of the premises.”



Defective Premises Act - Summary

The key requirements are:

1. An express or implied obligation for maintenance or repair;
 - Check lease and / or S11 LTA 1985
2. There must be a relevant defect
 - Element of disrepair – no obligation to improve or be ‘safe’
3. That the landlord knows, or ought to have known, of the relevant defect
 - Beware of constructive knowledge and any impact of agents acting on Landlord’s behalf .



Subrogated recovery actions

Subrogated recoveries

Where an insurer has paid out money to an insured, the doctrine subrogation enables the insurer to recoup all or some of that money from a third party who caused or contributed to the loss.

This means that once an insurer has paid out under an insurance contract, the insurer can "step into the shoes" of the insured.

However, how does that doctrine relate to issues between the landlord, tenant and third parties?



Subrogation and recoveries in landlord and tenant actions

If damage has been caused to the property – which is covered by the building policy – but that damage was caused by the tenant’s negligent actions, what are the recovery options?

- Insurance arrangements;
- If the tenant has paid or contributed to the insurance premiums, a court will usually hold that the landlord has insured the premises for the benefit of himself and his tenant either jointly or for their respective rights and interests.
- This was the conclusion reached in *Mark Rowlands Ltd v Berni Inns* where the lease provided, in addition, that the tenant was to be relieved from his obligation to repair in the event of fire.
- This decision also meant that the buildings insurer could not pursue a subrogated action in the name of the landlord against the tenant.
- This has been referred to as the *Berni Inns* principle in subsequent case law – which has set out the limit of such actions.



Subrogation and recoveries in landlord and tenant actions

The case of *Prezzo Ltd v High Point Estates Ltd* indicated that are limits to the *Berni Inns* principle in landlord/tenant disputes and subrogation.

- In this instance, a landlord's obligation to obtain insurance on behalf of itself and the tenant only extended to the part of the building occupied by the tenant, not to the whole building.
- The tenant had the benefit of the insurance in respect of a fire that had damaged the part that it occupied, but the landlord (and by extension the insurer) could recover from the tenant for loss and damage caused to the rest of the building within an action (or subrogated action).
- This would be relevant in circumstances where a landlord own various flats, and leases them to individual tenants.



Recovery claims against third parties

- More viable and common recovery route
- Has the injury / property damage / disrepair issue been caused by a third party's actions or omissions?
- Are they good for the money?
- Is there a cause of action - .e.g breach of contract / negligence / Civil Liability (Contribution) Act 1978?
- Do you have evidence to support the claim?



Subrogation and recoveries in landlord and tenant actions

Bear in mind limitation periods on the recovery claim:

- For a contractual claim the limitation period is six years from the date of the breach of contract
- For a tortious claim it is generally six years from the date of the damage
- Civil Liability (Contribution) Act claims – 2 years from the date on which damages in the underlying claim are agreed



Questions?



Thank you

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