Tenants spring into action

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Emma Humphreys provides an overview of recent dilapidations rulings

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Court decisions on disrepair in recent months have, somewhat unusually, focused almost entirely on examining residential landlords? obligations rather than those of tenants. However, these have led to some useful clarifications of the law that can be applied more widely.

Defective premises

Most recently, Sternbaum v Dhesi [2016] EWCA Civ 155 confirmed the law relating to defective premises, after a tenant sued for an injury caused by falling on a staircase that had no banister.

Although the banister had never been present during her tenancy, the tenant argued that the landlord was responsible for addressing this on the basis of its lease covenant 'to keep in repair the structure and exterior of the premises'.

She contended that there had also been a resulting breach of the landlord?s duty of care owed under section 4 of the Defective Premises Act 1972 , which arises where a landlord commits to maintain or repair premises.

While it accepted that the staircase was a hazard without a banister, the Court of Appeal felt unable to conclude that it was 'in disrepair'. It therefore agreed with the landlord that requiring him to install a banister would equate to imposing an obligation to improve or make safe the premises, and that this went beyond the obligations he had to repair and maintain the premises.

Aside from the helpful confirmation, this decision also illustrates the importance of assessing a case on its own facts. The tenant in Sternbaum may have expected to win on the basis that a landlord had been held responsible for an injury arising from the tenant?s removal of a banister in Hannon v Hillingdon Homes Limited [2012] EWHC 1437 . However, the banister in Hannon had been part of the structure for the purposes of the 1972 Act, whereas the court in Sternbaum found that the structure of the premises at the date of the lease was unlikely to have included the missing banister.

Damages without occupation

Moving on to the issue of damages for breaches of landlords? repair obligations, there was good news for tenants from the Court of Appeal in Mansing Moorjani v Durban Estates Limited [2015] EWCA Civ 1252 . Here, the tenant was awarded damages in respect of the landlord?s failure to maintain and repair the common parts of his block of flats, even though the tenant was not then occupying the premises, for reasons unconnected to the disrepair.

The key question here was whether the temporary loss resulting from the landlord?s breaches lay:

> 'in the impairment in the amenity value of the lessee?s proprietary interest in the flat, for which he has paid rent or a premium, or in the experience of discomfort, inconvenience and distress which the lessee actually suffers because of the disrepair'.

In the event of the latter finding, non-occupation by the tenant was likely to reduce the damages significantly.

The court concluded that the loss lay in the impairment of the tenant?s enjoyment of his property rights, of which discomfort, inconvenience and distress were only symptoms. The tenant?s decision to live elsewhere for reasons unrelated to the state of his flat was therefore not fatal to his damages claim. However, the court noted that the extent of a tenant?s use of a property was not entirely irrelevant to the exercise of assessing damages.

When assessing the appropriate level of damages in Moorjani, the Court of Appeal used the market rental value of the flat as a starting point. That value was then reduced significantly to reflect the fact that the common parts were in no more than cosmetic disrepair. There was also a deduction to reflect the tenant?s lack of occupation. At the time of writing, a decision is awaited from the Supreme Court as to whether permission to appeal will be granted to the tenant in respect of certain points on which he was unsuccessful.

Costs recovery

There was also an interesting decision on recovering costs in Fairbairn v Etal Court Maintenance Limited [2015] UKUT 639 . Here, a tenant challenged her landlord?s decision to include in her service charge the settlement and costs it had paid to a neighbouring tenant who had enforced the landlord?s obligations to repair the premises. The tribunal disagreed with the landlord that these sums were incurred for the proper management, administration and maintenance of the flats; they had resulted from the landlord?s failure to comply with this obligation and were therefore inappropriate for recovery via the service charge.

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Further information

- Related competencies include Legal/regulatory compliance , Conflict avoidance, management and dispute resolution procedures
- This feature is taken from the RICS *Building surveying journal* (July/August 2016)