

Number 05

Landlords' Liability for injury

PROPERTY DISPUTE

It is well known that a Landlord's liability to repair will depend on the contractual obligations under the Lease and/or statute. What is not so well known is the Landlord's liability to those injured as a result of disrepair arising under the Occupiers Liability Act or the Defective Premises Act.

Under the Occupiers Liability Act 1957, a person injured whilst visiting another's property may seek compensation from the occupier (rather than the owner). Where premises are let, the claim would therefore be brought against the Tenant, save where the injury occurs because of disrepair where the Landlord has a duty to repair. In such a case the visitor will have the same rights against the Landlord as the Tenant would¹. However, a Landlord will only face liability if he has been notified of the relevant defect that caused the injury i.e. was on notice as to the disrepair.

Under the Defective Premises Act 1972, where premises are let under a tenancy pursuant to which the Landlord is obliged to undertake repair, the Landlord will have a duty to take reasonable care to see that anyone who might reasonably be expected to be affected by defects is safe from personal injury or damage to property. The duty arises where the Landlord knew, or ought in the circumstances to have known, of the relevant defect.

The extent of this duty has recently been considered by the Court of Appeal².

In Sykes, a residential tenant suffered brain damage as a result of carbon monoxide poisoning from a defective gas fire. The Landlord was liable to maintain and repair the gas fire as a result of the provisions of the Landlord & Tenant Act 1985. However, the obligation under the 1985 Act applies only where a Landlord has knowledge of a defect.

The Judge at first instance held that a breach of covenant could not be established on the facts of this case and further that there was no 'relevant defect' as required by Section 4. The Landlord was therefore held not to be liable.

However, on appeal the Court of Appeal held that where a Landlord ought to have known of a defect, that would be sufficient for liability to arise under Section 4. The Landlord was therefore liable. Although he did not know that the fire here was defective, he should have known that it required regular maintenance, and in default would be dangerous.

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¹ Section 4 Occupiers Liability Act

² Sykes -v- Harry [2001] 17EG221

Comment

Whilst it is therefore clear that a Landlord will be responsible for defects causing injury in respect of which he is on notice, the Landlord may also face liability under the Defective Premises Act if the disrepair which caused injury is such that, in all the circumstances, the Landlord ought to have known of.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property disputes or litigation please contact:

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