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PROPERTY MATTERS

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Landlords NOT liable

The case of Edwards v Kumarasamy rocked the rental world with the decision in the Court of Appeal that the landlord was responsible for the disrepair to a communal footpath in a block of flats on which the tenant tripped and injured himself. Mr Kumarasamy only owned one flat in the block and, to the benefit of all leasehold landlords, he appealed that decision.

Every case turns on the facts and it can be dangerous to expand any case too far. The facts of this case were that Mr Kumarasamy purchased flat 10 when it was first converted in 2006, with a 199 year lease. The lease, including giving the landlord the right to use the hall, lift, staircase and landings giving access to the flat, and the right to use the access road, communal bins and a specific parking place. The lease included a provision for the freehold to keep in good and substantial repair:

1) all entrances, passages, landings, stairs, fire escapes, bin store (if any) and other parts of the building intended to be enjoyed or used by the owners or occupiers of the building in common with others and 2) other areas of the building not capable of being let as flats. However it was stipulated that the freeholder was not liable for any disrepair until written notice of the need for repair was provided and that reasonable time for the freeholder to carry out the repair has been given.

On the 6 April 2009 Mr Kumarasamy granted Mr Edwards a tenancy till the 5th October 2009. The tenancy included the right to use the common areas. This case was argued under Section 11 of the Landlord and Tenant Act 1985. This implies repairing obligations into leases of less than seven years. Whilst these obligations did not apply to the landlord's lease from the freeholder (as the lease is longer than seven years), it was common ground that it did apply to the letting to Mr Edwards.

In simple terms there were three questions before the Supreme Court in this appeal. In order for the judgement to be made in favour of the tenant, he would have to win on all three points. Fail on any point and the decision would be for the landlord.

The first question was can the paved area which leads from the front door to the car park be described as part of the front hall?

The second question is did the landlord have an estate or interest in the path on which the tenant fell?

The third question was could the landlord be liable to the tenant for the disrepair without the tenant having even notified the landlord. When these questions were posed to the Court of Appeal the court decided that the path, outside, was 'an extension of the hall' and therefore fell within the repairing obligations of section 11. They decided that the landlord did have an interest in that area of the path (as it was necessary to use it to access the bins). They also decided that as the landlord had only granted a licence to the tenant for those common areas (i.e. he did not grant the tenant the right to exclude others), the landlord was still allowed to access those areas and therefore the tenant did not need to give the landlord notice, the landlord could visit anytime he wanted to inspect the state and condition.

This left a significant danger for landlords of leasehold property where they were liable for repairs, that they knew nothing about and where they had no right to carry out the works.

The Supreme Court overturned the Court of Appeal decision and held that the landlord was not liable to the tenant for the accident he suffered.

In response to question one they felt that no normal interpretation of the 'outside of the building' could include the path. It was 'outside the building' but was not part of the 'outside of the building'. This made the decision for the case, though the Supreme Court also gave answers to the other two questions.

Their decision on the second question was that the landlord did still have an interest in that part of the property. The third question was decided that the landlord would have needed to have been told of the need for repair before the liability could arise. This is important for other repairs that might be in the common areas inside the building, so that the answer to the first question would not excuse the landlord from liability.

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