Newsletter

Edwards v Kumarasamy

Introduction

"Any landlord can now be sued for disrepair to areas that serve his or her property irrespective of ownership"

WATCH YOUR STEP!
An important new decision has emerged from the Court of Appeal which will have an impact on many landlords and the way they manage their properties.

The case is called: ***Edwards v Kumarasamy***

FACTS OF THE CASE:
In this case the tenant was occupying a flat owned by the landlord. The landlord had a long lease of the flat concerned but he did not own the block. The tenant tripped on a path outside which the landlord did not own but which served the block and took a disrepair claim under Section 11 of The Landlord and Tenant Act 1985 ('LTA 1985')

The question to be considered by the judges was whether the paved area is part of the structure of the building or the exterior part of the building in which Mr Kumarasamy had an interest.

WHAT WAS CONSIDERED?
In the case the Court found itself considering Section 11 of the LTA 1985. This piece of legislation inserts a clause into any tenancy agreement specifying the repairing obligations of the landlord. This is usually replicated in most tenancy agreements for reasons of clarity but the basic obligation comes from Section 11.

It has been a general assumption among landlords that Section 11 only applied to the parts of a property which were actually rented to the tenant and also only to the main property and not exterior areas such as gardens. The view was that, until such time as a landlord had been notified of the need for repair, he/she would not be not liable.

It appears that this interpretation is not strictly correct!

The First Issue:
Section 11 states that it applies to the structure and exterior and also to any area which the landlord has an "estate or interest" in. Here the landlord must have held an easement (a right of way) over the path and indeed over parking areas and such other parts as served the property to allow him to access it. Therefore he did indeed have an interest in the property. That meant that he had an obligation to ensure that it was kept in repair.

The Second Issue:
The second issue was notice. The landlord argued that he had not been notified of the problem with the path.

Section 11 says nothing about notice. Case law has implied a requirement of notice into s11 for reasons of practicality where the disrepair is inside the parts of the property which are actually rented to the tenant.

The Court actually questioned whether such a requirement continued to be necessary but did not interfere with it. There is no case law which implies such a requirement of notice for areas not rented to the tenant and the Court was not prepared to create such an implied requirement. This is presumably on the basis that the landlord could access these areas without the tenant's consent anyway and so could ensure that they were kept in good repair.

HEALTH WARNING: What does this mean for landlords and agents?
Clearly the case has serious consequences. Any landlord can now be sued for disrepair to areas that serve his or her property irrespective of ownership. This may be a private drive serving a property over which the landlord has a right of access or common areas of a block of flats. This will mean that landlords will need to actively pursue and chase those they have easements from such as their superior landlords to ensure they keep items in repair in common areas.

Agents who are doing property inspections should also widen their inspection to include areas over which the landlord has rights such as paths and driveways as well as the property itself. There is no obligation on the tenant to report disrepair so it is up to the landlord or his agent to identify it and act to get it resolved!

For further information & advice please contact:

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