

## **LANDLORD & TENANT LAW BULLETIN 2 September 2016**

### **How a landlord can reduce its exposure to repairing obligations?**

The Supreme Court has recently considered whether an intermediate landlord was in breach of the statutory covenant to keep the structure and exterior of a dwelling-house in repair. The intermediate landlord had sublet his second floor flat to a tenant under an assured shorthold tenancy. The tenant tripped and injured himself on some uneven paving when taking rubbish out to the communal bins.

Under the terms of the headlease, the freeholder was responsible for keeping the communal areas in good condition, subject to being given notice of the defect. Neither the intermediate landlord nor the freeholder had received notice of any defect. The court held that the intermediate landlord was not in breach of the statutory obligation to repair because the paved area did not fall within the scope of the repairing obligation.

### **What are a landlord's repairing obligations?**

A landlord of a residential lease granted for a term of less than seven years has certain statutory repairing obligations. These include an obligation to keep in repair the structure and exterior of a "dwelling-house", including "drains, gutters and external pipes". The term "dwelling-house" is not limited to a house, it also includes a flat.

If the lease is of a dwelling-house that forms only part of a building, then the landlord's obligation to repair applies to the parts of the building in which the landlord has an interest. In these circumstances, the landlord has a defence to a claim if it can prove that it used all reasonable endeavours to obtain, but was unable to obtain, rights that would allow it to carry out the works.

### **How can a landlord limit its repairing obligations?**

Where possible, landlords should try to limit their repairing obligations in any leases by requiring that the tenant give notice of any disrepair first. It may be possible for a landlord to require the tenant to give notice if it sees disrepair, without attempting to restrict its repairing obligations. This might at least give the landlord some warning that repairs are needed. However, a landlord might have trouble enforcing such a provision.

The position on when notices of disrepair are required is still rather unclear. Landlords should therefore monitor their buildings and watch for any possible repair work that might be needed. This is particularly important for landlords who have more than just a lease of an individual flat, as the Supreme Court's decision suggests that they might be liable for some types of repairs, with no right to be notified first.

It is good practice for buy-to-let and other intermediate landlords to visit their properties occasionally to check for disrepair, rather than relying upon the tenant having to give notice. They should then inform whoever is responsible for carrying out the repairs under the terms of their lease.

If you have any queries about the content of this e-mail, please contact me on the details below or if you would like information about other legal services we offer, please visit our website [www.swinburnemaddison.co.uk](http://www.swinburnemaddison.co.uk)

Kind regards



**David Low**

**Partner**

Tel 0191 384 2441

Fax 0191 386 0171

[djl@swinburnemaddison.co.uk](mailto:djl@swinburnemaddison.co.uk)

[swinburnemaddison.co.uk](http://swinburnemaddison.co.uk)

0191 384 2441

[swinburnemaddison.co.uk](http://swinburnemaddison.co.uk)

**property. corporate. commercial. employment. dispute resolution. family. private client.**

Venture House, Aykley Heads Business Centre, Durham DH1 5TS DX: 60206 Durham

Swinburne Maddison LLP is a limited liability partnership incorporated in England and Wales with company registration number OC356032. The registered office of Swinburne Maddison LLP is at Venture House, Aykley Heads Business Centre, Durham DH1 5TS. A list of members is available for inspection at this address. Authorised and regulated by the Solicitors Regulation Authority under number 551177. For details of the Solicitors Code of Conduct please visit [www.sra.org.uk](http://www.sra.org.uk).