

How to value quantum in a disrepair claim (Part 2)

Desmond Kilcoyne

Topics:

- (1) General damages: s.9A of the LTA 1985; nuisance; and, PI
- (2) Damages under the Defective Premises Act 1972
- (3) Special damages
- (4) Tenant's failure to mitigate their loss
- (5) Tenant's contributory negligence
- (6) Interest

(1) General damages under s.9A of the LTA 1985

- An implied covenant by the lessor that the dwelling—
- (a) is fit for human habitation at the time the lease is granted or otherwise created or, if later, at the beginning of the term of the lease, and
- (b) will remain fit for human habitation during the term of the lease.

Two questions:

Is an award under s.9A calculated on a different basis to s.11?

Is the award one for discomfort, inconvenience and distress? or loss of amenity?

- ***Will an award under s.9A result in different quantum to s.11?***

Nuisance

- Where there is no physical damage, the loss of amenity of the land, or discomfort and inconvenience, can be compensated by a lump sum award.
- £300pa: *London 7 Quadrant H.T. v Riemy* (2008), LAG
- £3,500pa: *Clark v Wandsworth* (1994), LAG
- 20% of rent: *Harwood Properties v Remuinan* (2011), LAG

(2) Damages under the Defective Premises Act 1972

(3) Special damages

- Personal injury/ill health
- Mental distress and anxiety (*Chiodi v De Marney* (1988))
(Aggravated and exemplary damages?)
- Damage to personal property
- Damage to the demised premises
- The cost of repair work which the landlord should have done

- cost of alternative accommodation/ removals/ storage of furniture
- In practice: Pre-action Protocol for Housing Condition Cases (England), para. 5.2(g)
-

(4) Tenant's failure to mitigate their loss

Taking reasonable available steps to mitigate or prevent loss

But an impecunious tenant will not be required to take unaffordable steps (*Dodd Properties (Kent) v Canterbury C.C. (1980)*)

(5) Tenant's contributory negligence

(6) Interest