

“Can a landlord be liable for disrepair when he didn’t know about the defect and he didn’t own the property in question?”

Edwards v Kumarasamy [2015] EWCA Civ 20



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What is the case about?

Mr Kumarasamy was a long leaseholder of a second floor flat who let the flat to Mr Edwards on an assured shorthold tenancy. One right that Mr Kumarasamy was granted was the right to use the block’s entrance hall, which led out on to a short pathway.

Mr Edwards was injured due to defective paving on this short pathway on his way to the bin store. He sought damages under section 11 Landlord and Tenant Act 1985. The case rested on this: could the landlord be liable under the ‘extended covenant’ of section 11 (1A), which implies a term in to leases to keep in repair the structure and exterior of any part of the building in which the lessor has an estate or interest?

What did the court decide?

The Court of Appeal (“CoA”) sided with the tenant, Mr Edwards, having decided two key issues in his favour.

Firstly, the defect was to the path. This was not demised to the tenant nor, so the landlord argued, was it part of the ‘structure or exterior’ of the dwelling-house for the purposes of section 11 (1A). The CoA

disagreed. The extended covenant under section 11 (1A) makes clear that the term extends to the structure or **exterior of part of the building** in which Mr Kumarasamy has an **estate or interest**. The landlord’s right over the front entrance hall was an easement, meaning he had an “estate or interest” in it. So, was the pathway part of the exterior of this front hall? Yes: it was an essential means of access to it. As such, the extended covenant applied.

Secondly the landlord was never notified of the defect, so how could he be liable? The established common law position, however, is that, unless the defect arises within the demise, the landlord’s liability is immediate regardless of notification. The pathway was outside of the demise and so, in principle, liability for the defect was immediate. Importantly, the CoA rejected an argument that the extent of the repairing covenant should be gleaned from that which is demised. What constitutes the ‘structure and exterior’ is a factual question, not a question of looking at what has been demised in the lease. Nor did the 1985 Act require notice, despite the pre-existing common law position.

Why is it important?

The case solidifies the principle from O'Brien v Robinson [1973] AC 912 that liability for defects that occur outside of the tenant's demise is immediate, whether or not the landlord has been notified of them.

More importantly, however, there is the fact that the disrepair to the '**structure and exterior**' does not actually have to affect that which is demised to the tenant. What amounts to **structure and exterior** is a factual question and not one to be answered simply by looking at the extent of the demise. The effect will be to extend liability under section 11.

More important still is the aspect of this case concerning easements and landlords who, like Mr Kumarasamy, hold an interest in the property under a long residential lease. The rights enjoyed by Mr Kumarasamy are common and may result in intermediate landlords in his position having '**an estate or interest**' in a part of the building, which

will then have the effect of extending the extent of the '**structure and exterior**' under section 11. There is a clear extension of potential liability as a result, and those representing both tenants and landlords should be checking the rights granted to the landlord by the superior landlord.

Finally, many superior landlords – Mr Kumarasamy's landlord in this case – covenant with their tenants to keep in repair communal areas. Indeed, this was the case here – but it offered no assistance to Mr Kumarasamy because liability under the covenant in question only arose upon notice having been given. If such a requirement had not been in the lease, however, or notice had been given a third party may well have been joined. This, again, is something that advisors should keep an eye out for.

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