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Housing Law BULLETIN

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An unusual set of facts permits the Court of Appeal to review the legal basis for damages to be awarded for disrepair to premises let on a long lease.

Case law update : Mansing Moorjani v Durban Estates Limited [2015] EWCA Civ 1252

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In *Wallace v Manchester* City Council [1998] 30 HLR 1111 the Court of Appeal held that damages for disrepair to premises let to a tenant were damages for distress and inconvenience which could be calculated either by reference to a notional reduction in the rent payable throughout the period for which the disrepair existed or by reference to a global award of general damages for discomfort and inconvenience. In *Earle v Charalambous* [2007] HLR 8 the Court of Appeal held that the starting point for the assessment of damages for disrepair to leasehold premises was the reduction in the rental value of the premises for the relevant period. It was held that distress and inconvenience caused by the disrepair were not freestanding heads of claim but are symptomatic of interference with the lessee's enjoyment of his asset.

In broad terms therefore damages for disrepair to premises let on a secure or assured tenancy were damages for distress and inconvenience which could be calculated by reference to the 'Wallace tariff' of about £3,300 per annum or, more usually by reference to a notional percentage rebate of the rent paid during the relevant period. Damages paid to long leaseholders however were generally damages for interference with the leaseholder's amenity rights and were assessed by calculating the difference between the market rent which could have been obtained had the freeholder carried out his repairing obligations and what could have been obtained for the premises in their unrepaired state. In practice this meant that the damages payable to a long leaseholder could be very much higher than the damages payable to a tenant in social housing as the former are calculated according to the market rent which could be achieved for the leasehold premises, whereas damages for disrepair in the social sector are usually calculated by reference to the rent actually paid.

In *Moorjani v Durban Estates Limited*, Mr Moorjani was a leaseholder of a flat in a mansion block in central London. In 2005 the premises were damaged by water ingress for which the freeholder was liable. The freeholder caused some works of repair to be carried out to Mr Moorjani's flat but these were substandard. In addition the freeholder had failed to maintain the common parts so they became dilapidated shabby and dingy. From 2005 to 2008 Mr Moorjani lived rent free with his sister

for reasons which the trial judge found were unconnected to the disrepair to his flat and the failure to maintain the common parts. At trial his claim for damages for the period during which he had not resided in the premises was dismissed. He appealed to the Court of Appeal.

Lord Justice Briggs formulated the essential question which the court had to answer in the following terms;

> "The underlying issue of principal is whether the loss caused by such a breach (which being temporary causes no damage to the capital value of the lessee's interest) lies in the impairment of the amenity value of the lessee's proprietary interest in the flat for which he has paid a rent or a premium, or in the experience of discomfort, inconvenience and distress which the lessee actually suffers because of the disrepair"

He noted the past cases had not needed to consider the basis upon which damages were awarded in any great depth because in those cases cases the leaseholder had either remained in situ or had moved out due to the disrepair and therefore the authorities had not really focused on this question.

It was held that damages awarded for disrepair to leasehold premise are damages for impairment to the rights of amenity afforded to the lessee by the lease of which discomfort inconvenience and distress are only symptoms. Therefore the fact that the lease may not be using the premises at the relevant time is not fatal to the claim. However the fact that the leaseholder may not be living at the premises for reasons unconnected to the disrepair is not irrelevant; it could be considered as akin to mitigation of loss and would be grounds to reduce the award of damages. On the facts of this case the Court thought it was appropriate to reduce by half the damages that would have been paid to the Claimant had he been living in the premises.

The Court of Appeal also held that the loss for which compensation is payable is the same regardless of whether the claimant is a long leaseholder or a assured or secure tenant; namely interference with the value of his propriety rights. Although the appropriate basis for the calculation of damages for disrepair to tenanted premises was not addressed we would tentatively suggest that the 'notional rent reduction' method would sit more easily with Lord Justice Briggs's observations than an award of general damages calculated with reference to the 'Wallace tariff'.

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