A landlord's liability in relation to common areas

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In the recent Court of Appeal case of Samuel Edwards v Baladas Kumarasamy, a landlord was held liable when a tenant tripped on an uneven paving stone in a communal area of a block of flats.

This decision will be of concern to buy-to-let and other intermediate landlords who may unexpectedly find themselves liable for repairs to communal areas even though the head landlord is responsible for their upkeep and they have had no notice of any defect.

A landlord of a residential lease granted for a term of less than seven years has certain repairing obligations implied by statute (section 11, Landlord and Tenant Act 1985 (LTA 1985)). These obligations include an obligation to keep the structure and exterior of the property in repair.

If the lease is of a dwelling house or flat that only forms part of a building, then the landlord's obligations to repair applies to the parts of the building in which the landlord has an interest ie the common areas.

Facts

K had a long headlease of a second floor flat in a block. K's lease granted K the right to use the front hall and the pathway from the front door to a communal bin store. The freehold owner had covenanted in the headlease to keep the pathway and communal areas in good order and condition subject to K giving notice of any defects so that the freeholder had a reasonable opportunity to remedy the defect.

K sub-let the flat to E on an assured shorthold tenancy. E tripped over an uneven paving stone when taking rubbish out to the bin and injured his knee. No notice of any defect had been given by E to K or by K to the freeholder. E claimed K was liable for his injury.

Decision

K's right to use the pathway and bin store was a legal easement. K therefore had an interest in the paved area where E had his accident. It was held that the paved area formed part of the 'structure or exterior' of the part of the building in which K had an interest.

As K had benefitted from an express grant of an easement, it had the ancillary right to be able to repair the right of way.
The Court of Appeal decided that liability arose as soon as the disrepair existed and was not conditional on notice having been given. Giving of a notice was a pre-condition to a landlord's liability to repair only where the defect was within the demised property itself.

Warning

Therefore intermediate landlords may find themselves liable for repairs to communal areas even though the head landlord is responsible for their upkeep and they have had no notice of any defect.

Intermediate landlords may find that they are liable to repair certain external areas which are the head landlord's responsibility, simply because these areas are immediately outside a communal part of the building over which they are allowed to pass.

It would be more practical if the Court of Appeal had decided that notice would need to be given even in the case of defects outside of the demise, before a landlord would be liable. However, landlords seem to be stuck with this decision now unless statute is amended or the Supreme Court overrules this decision.

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