cornerstone barristers

Disrepair in the Supreme Court - Edwards v Kumarasamy

How unusual it is to have a higher Court decision relating to section 11 of the Landlord and Tenant Act 1985 to talk about. How exciting, then, to have a Supreme Court decision on the topic! That is what we have in *Edwards v Kumarasamy* [2016] UKSC 40. It is a decision that will come as something of a relief to landlords who, following the decision of the Court of Appeal, had faced the prospect of extended liability over an uncertain area. How far did the definition of "the exterior" of a property extend? As well as limiting the landlord's liability, their Lordships took the opportunity to re-state some well-known principles of disrepair law.

The claim concerned Flat 10, Oakleigh Court, Boston Avenue, Runcorn. Oakleigh Court was let on a long lease to Mr Kumarasamy, who granted an assured shorthold tenancy of Flat 10 to Mr Edwards. The implied terms contained in section 11 applied to this tenancy. In particular, section 11(1A) applied as this was part of a building: so the reference in paragraph (a) of that subsection 11(1) to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest.

Oakleigh Court had three floors with four flats on each floor. It had a main entrance door leading into a front hallway and then to the lift and staircase which serve the two upper floors. There is a car park in front of it, and, between the car park and the front door, there is a paved area, which is the only or principal means of access to the building. The paved area was also used by occupiers to get to the communal dustbins in the car park.

It was as Mr Edwards was using that path to get to the dustbins that he tripped and fell, injuring his hand and knee. He sued his landlord for damages for personal injuries. The question was whether the paving stones that made up the access path were part of the landlord's repairing obligations under the lease.

The second issue was whether, if so, the landlord was in breach of that repairing obligation: he had not had notice of the unevenness of the paving stones.

The Lords considered that "exterior" of the property had to be given its ordinary meaning – if there is such a thing. It was not right to speak of a path as part of the exterior of the entrance hall; it was merely adjacent. They did not think that too wide a meaning should be given to a landlord's contractual obligations. In *Brown v Liverpool Corpn* [1969] 3 All ER 1345 the Court of Appeal had held that the front steps to a property were part of the exterior; that case was expressly overruled. The exterior of the house or building stops at its outside walls. It does not extend to rights of way, easements, attaching to the property.

This practical, easily understood approach, is good news for landlords – bad news for tenants – although it should be recalled that this is an interpretation of the implied terms of section 11; express terms of many tenancy agreements place the responsibility for maintaining the path on the landlord in any event.

That being so, the other issues considered by the Supreme Court may be of relevance. Is a landlord obliged to repair the common parts that are within his control even if he is not on notice of the disrepair?

The Lords confirmed the general rule that notice is required: "a landlord is not liable under a covenant with his tenant to repair premises which are in the possession of the tenant and not of the landlord, unless and until the landlord has notice of the disrepair" – although, again, the express terms may alter this.

The Supreme Court, rather surprisingly, held that the landlord's repairing obligations (if there had been any) in relation to the path were subject to being on notice of the disrepair. The landlord had an interest in Flat 10 which he had wholly sublet to the tenant. He had a right of way over the path – those interested in easements may spend a happy few minutes reading about the discussion of the landlord's interest in the property. However, under the subtenancy, the right to walk up and down the path became Mr Edwards' right, not Mr Kumarasamy's. "The landlord has effectively lost the right to use the common parts and the tenant has acquired the right to use them, for the duration of the Subtenancy." The tenant was in the best position to spot any disrepair, and the landlord had no such opportunity – even though he had the right to inspect and access the flat for repairs.

This will no doubt extend to other aspects of the common parts; their Lordships had a brief moment of considering voids between flats, for example, but staircases and lighting are a far more common issue. A sensible landlord will still ensure that common parts are inspected and properly maintained – not least for the landlord's own sake. The Defective Premises Act may provide a remedy for tenants or other visitors to the property even if section 11 doesn't.

Catherine Rowlands

Cornerstone Barristers