The Defective Premises Act 1972: A Duty to Inspect?

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This is the first in a series of blogs that I shall be authoring on the Defective Premises Act 1972 ("DPA") and some of the current trends that I am seeing with claims brought against landlords under s. 4.

Introduction

Claims under s. 4 of the DPA have, as a basic ingredient, notice as a precursor to liability. This is because of the interplay between ss. 4(1) and 4(2) (emphasis added):

(1) Where premises are let under a tenancy which puts on the landlord an obligation to the tenant for the maintenance or repair of the premises, the landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or from damage to their property caused by a relevant defect.

(*2) The said duty is owed if the landlord knows (whether as the result of being notified by the tenant or otherwise) or if he ought in all the circumstances to have known of the relevant defect.*

As will be seen from the above, notice (i.e. whether a landlord knows or ought to know) is required before the duty under s. 4(1) is even engaged.

Many cases will therefore turn on whether a landlord was on notice of the relevant defect that caused the Claimant's accident. This will often require a factual inquiry on the part of the judge as to whether the landlord has been told about a defect, whether the tenant or resident has made complaints to the landlord or a managing agent about a defect, and whether the complaint was sufficient to inform the landlord of the nature of the defect.

The question, and the focus of this blog, is that second part of s. 4(2): whether a landlord "*ought in all the circumstances to have known*" of a relevant defect. This, on a plain reading, differentiates the situation from a contractual claim for breach of covenant (in which actual or "*put upon inquiry*" notice would be required: *O'Brien v Robinson* [1973] AC 912) and allows a Claimant to argue that s. 4(2) is satisfied on a purely constructive knowledge basis.

Constructive knowledge will inevitably give rise to questions about systems of inspection and maintenance, as in other

areas of personal injury law.

Is a Landlord Under a Duty To Inspect Tenanted Property?

The orthodox position is that a landlord who has leased possession of a property to a tenant would not be under a duty to inspect that property during the term of the lease. It should also be noted that most tenancy agreements will impose a requirement on the tenant to report defects to the landlord or the managing agent, highlighting the reactive nature of the relationship when it comes to disrepair.

In *Sykes v Harry* [2001] QB 1014 it was held that where a landlord was under a duty to inspect certain items (such as gas installations), and had failed to do so, the landlord had failed to take reasonable care when the tenant suffered carbon monoxide poisoning as a result of a leak from a gas fire. This makes sense in the context of the traditional approach where there is a statutory duty upon landlords to annually inspect gas installations.

But what about the situation where there is no statutory duty to inspect?

In *Lafferty v Newark & Sherwood District Council* [2016] HLR 13, Jay J held as follows at [35]:

… for the purposes of sub-section (1), in establishing the content of the duty, regard must be had to whether the landlord "ought in all the circumstances to have known of the relevant defect." To my mind, this mandates an inquiry by the court into information which the landlord obtained, or ought to have obtained, during the course of carrying out any inspections, and information which he would have obtained had he carried out such inspections as he ought to have performed properly. In my judgment, liability may be established in a sub-section (4) case either in circumstances where a landlord's inspection(s) are negligently performed, or where the landlord fails to carry out proper inspections because he abstains from implementing a reasonable system for performing them. I am not intending to set out exhaustive categories, but these must the paradigm instances.

This would, on its face, appear to proceed on the assumption that landlord *should* be conducting inspections of tenanted property.

The issue next arose in *Rogerson v Bolsover District Council* [2019] Ch 450. In that case, the landlord had in fact been carrying out periodic inspections of the property. Whether a landlord was under a general duty to inspect tenanted property was left open and was viewed through the "*telescope*" of s. 4(1). Males LJ held at [41]:

Thus the question whether a landlord is under a duty to inspect (and if so, with what frequency) does not arise in the abstract, but only as bearing on the question whether he ought in all the circumstances to have known of the defect. Although in practice the two stages will be telescoped, the section envisages two inquiries: first, whether the landlord ought reasonably to have discovered the defect; and second, if so, what reasonable care required him to do about it. Usually of course, once the defect is discovered or if it ought to have been discovered, it will be obvious that a repair is necessary.

Nicola Davies LJ held at [25]:

Does section 4 of the DPA 1972 require a landlord to implement a system of inspection? I do not read any of the authorities cited by the parties as requiring a landlord, without more, as being under a duty to implement a system of regular inspection in order to satisfy the provisions of section 4. In each case it is a question of fact, one aspect of that being the knowledge of the landlord as to any likely or known risks or problems in the property. In this case there had been inspections: one triggered by the commencement of a new tenancy; another by a ten-year stock review. These were occasions when it was reasonable to implement inspections. However, given the facts as they are known to the court, in my view, there is insufficient evidence to provide a sound basis for stating that section 4 required this landlord, without more, to institute a system of regular inspection of the property.

These two sections of the judgment demonstrate that the question of whether a landlord should inspect a tenanted property is left open. It is to be determined on a case-by-case basis as a question of fact. I would also observe that this conclusion does rather side-step the issue.

As such, the answer to the question on the current state of the authorities is the usual frustrating lawyer's answer: 'it depends'.

Since these decisions, there have been developments in this area outside of the courts.

Developments Outside of the Courts

Disrepair is somewhat of a hot topic at the moment due to recent, well-publicised and desperately sad cases in which residents have been injured or died due to the living conditions in their rented homes.

Since the cases in *Lafferty* and *Rogerson* were heard, there have been reforms to this area of law from Parliament, notably the Homes (Fitness for Human Habitation) Act 2018 and the Building Safety Act 2022.

I would consider that it is likely that the court, when approaching the question of whether a landlord should inspect

property, may consider the recent guidance from organisations such as the National Residential Landlord's Association (see here) to be relevant. The NRLA advise that "*regular property inspections are vital*" to comply with the duties under the 2018 Act. This is pertinent to the question of whether a court would consider that a landlord is under a duty to inspect.

The sea-change appears to be broadly towards tenant safety. The Homes (Fitness for Human Habitation) Act 2018 has introduced a statutory implied positive covenant at s. 9A of the Landlord and Tenant Act 1985 that the property "*will remain fit for human habitation during the term of the lease*." The duty here is positive, which does not sit well with a purely reactive system of maintenance. Indeed, Parliament has provided an unlimited right of entry under s. 9A(7) to houses in England for a landlord to "*enter the dwelling for the purpose of viewing its condition and state of repair.*"

Conclusion

Returning to the question posed at the outset of this blog, my answer is on balance that a landlord *may* be under a duty to inspect their tenanted property. For my part, I would note that this is an area of the law that is on the move, and that recent reforms and guidance make the question increasingly likely to be answered in the positive.

For tenants, this is good news as it lowers the bar for bringing claims under the DPA.

For landlords, the comments in *Rogerson* do assist. It could reasonably be said that a landlord is in somewhat of a 'Catch-22' on this issue: (a) if a landlord does carry out inspections, and misses something, they are criticised; (b) if a landlord does not carry out inspections, they are criticised. If a landlord does choose to carry out inspections, such inspections need to be properly documented to defend these claims.