Browne Jacobson

Landlord and tenant inspections - getting the evidence right

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In September 2014, the tenant had been mowing her lawn when she stepped on an inspection cover which collapsed, causing her injuries.

Under the terms of the tenancy agreement, the landlord was obliged to maintain the structure and exterior of the property. The tenant relied on a report from a chartered civil engineer, which suggested the cover was between 40 and 60 years old, was corroded and that a relatively straightforward 'pressure test' would have revealed the defect. The Council referred to and relied upon evidence of inspections of the property in May 2013 and January 2014.

In reinforcing that the onus was on the landlord to show that it had complied with the duty of care owed under the DPA, the District Judge at the initial trial concluded that while the defect was not known to the Council, it should have known of it as it was a 'clear and obvious safety risk'.

On appeal it was acknowledged that it was a question of fact in each case. The nature and extent of the inspections carried out was not clear and the District Judge was entitled to find that the Council had failed to show that a reasonable inspection of the garden had been carried out.

Having accepted the tenant's evidence as to how the accident occurred, the evidential burden had shifted to the Council and there was no sound evidential basis to enable the judge on appeal to conclude that each inspection had been carried out with reasonable care. There was an absence of evidence to refute the claimant’s expert regarding the nature and longstanding presence of the defect. No inspection had been carried out even after notification of the accident. On the facts found by the District Judge, and accepted by the appeal judge, there was a physical defect which would have been revealed by an uncomplicated pressure test. In those circumstances, the Landlord failed to comply with the wording of s.4(1) of the DPA, namely that the duty was owed if the landlord 'ought in all the circumstances to have known of the relevant defect'.

The case reinforces that actual knowledge of a defect by a landlord is not required for the duty under the DPA to attach – as was the case here, where the landlord has an inspection regime in place a constructive knowledge argument can be pursued and the outcome of the claim will be fact dependant. What is clear is that where landlords are faced with an allegation of constructive knowledge, persuasive evidence of a robust inspection system will be required and in the absence of that the landlord will remain vulnerable.

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