

## LANDLORDS AND THEIR DUTY OF CARE TO TENANTS

**Introduction** – A Lease is a contract between a property owner and a person wanting temporary enjoyment and use of the property, in exchange for paying rent to the property owner. Where the property is land, a building, or parts of either, the property owner is called a Landlord and the person that contracts to receive the temporary enjoyment and use is called a Tenant. The recent investment property boom has brought to light an unforeseen issue in leases for Landlords - duty of care to Tenants. Liability to Tenants, becoming more defined in light of several recent Court decisions, can result in onerous and extensive obligations.

**Northern Sandblasting v Harris (1997)** - This is a landmark case for the issue. A nine year old girl received an electric shock while turning off a tap, causing severe brain damage. The electric shock was due to faulty electrical work the Landlord had arranged.

Although the electrician was apparently qualified, the works were carried out negligently, which resulted in the water pipes being 'electrically live' because of wiring defects in the home.

The girl successfully sued the Landlord for \$1million in damages. It was found that the Landlord owed a duty of care to the girl and her family, and had not carried out his duty to ensure that the house was fit for human habitation.

All judges accepted that a Landlord owed a duty of reasonable care to the Tenant. Some members of the Court based the decision on the Landlord's duty to inspect the premises and discover electrical and other defects.

**Jones v Bartlett (2000)** - The Plaintiff was the son of a Tenant. The child walked into a glass door and suffered an injury. The house was built in the 1950s and at the time complied with relevant safety standards, which subsequently changed requiring a different glass.

The High Court ruled that the Landlord had not been negligent and that, at least in this case, the Landlord had no duty to have the premises inspected by an expert prior to letting.

It appears that a Landlord is required to avoid foreseeable risks of injury from defects which the Landlord knows or ought to have known existed.

**Insurance** - This is a vital aspect of protection from liability. A Landlord should ensure a Tenant's activities do not affect insurances and should consult with his insurance company and/or broker to ascertain if there is any problem.

A Tenant should have certain insurance cover, which should be spelt out in the agreement. It is always prudent for your Tenant to have insurances for at least all items in the Lease.

Importantly, a Landlord's insurances should be compatible and not be in conflict with any Tenant's insurances and there should be discussion between the parties as to what coverage is needed. A certificate of currency of insurance should be provided to the Tenant upon request.

**Conclusion** - The above decisions emphasise the need for a Landlord to have in place a reasonable system of inspection, and to carefully consider matters of insurance.

Further, aspects of asset protection should be considered and reviewed regularly, in the event insurance does not cover in whole or in part liability. It is recommended business advisers including accountants and lawyers are involved in the process, to ensure rights and obligations are respectively protected and honoured.

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