

I let a dwelling house on an assured shorthold tenancy. The only express landlord repairing obligations in the AST repeat section 11 of the Landlord and Tenant Act 1985. The tenant is obliged to "keep all parts of the interior of the Premises and all appurtenances belonging to the Premises and all additions to the Premises and the sanitary and water gas electrical and central heating apparatus in the Premises in good clean and tenable repair and condition throughout the Term". The ceiling in the pantry has fallen down, possibly due to leaks in the bathroom grouting. Who is liable to repair it?

In the absence of express stipulation, the obligations of the landlord and tenant relating to the fabric and management of demised premises are limited except for when statute intervenes. In order to determine how the parties are to apportion responsibility for the fabric and management of the premises, recourse must be had firstly to implied obligations, and secondly to express covenants to repair. These obligations differ for landlords and tenants. In order to ascertain the respective responsibilities of the landlord and tenant in our scenario, implied and express obligations are considered separately below.

(1) Landlord's Repairing Obligations:

We are told that the only express landlord repairing obligation is section 11 of the 1985 Act. This section is also a repairing covenant implied by statute and would bind the landlord even if the tenancy agreement did not expressly provide for it. The following considers the extent of the landlord's obligations implied by section 11 of the 1985 Act and at common law.

(i) Covenants at common law

In general there is no implied covenant by the lessor of an unfurnished house or flat that it shall be fit for habitation or occupation or for any purpose for which it is let. Nor is there any covenant that the lessor will do any repairs whatever. Further, there is no implied obligation that the house will endure during the term, even though fair wear and tear is expected from the tenant's covenants to repair. Finally, the landlord is not liable at common law for defects in the premises demised rendering them dangerous or unfit for occupation. This strict position at common law is subject to a number of exceptions, some which have developed through common and others which are the result of intervention by statute.

(ii) Covenants implied by Statute

Of particular relevance here are the repairing obligations implied by section 11(1) of the Landlord and Tenant Act 1985. Under this provision there is to be implied into every lease of a dwelling-house to which this section applies a covenant by the landlord:

(a) *"to keep in repair the structure and exterior of the dwelling house including drains, gutters and external pipes;*

(b) *to keep in repair and proper working order the installations in the dwelling house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but*

not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity); and
(c) to keep in repair and proper working order the installations in the dwelling house for space heating and heating water.”(emphasis added)

It is important for our purposes to note that although the covenant is expressed in unqualified terms, it takes effect as a covenant by the landlord to repair on notice of a defect (*O’Brien v Robinson* [1973] AC 912, HL), even when the defects are latent and could not have been discovered by the tenant. Furthermore, section 11(2) of the 1985 Act states that the covenant implied by section 11(1) shall not be construed as requiring the lessor “*to carry out works or repairs for which the lessee is liable by virtue of his duty to use the premises in a tenant-like manner, or would be so liable but for an express covenant on his part*”.

When considering the landlord and tenant’s respective obligations in our scenario the following factors deserve separate consideration (a) what is the applicable disrepair and what caused it; and (b) whether the tenant was responsible for this by failing to treat the premises in a “tenant-like manner”.

a. What is the applicable disrepair in this case and what caused it?

The damage requiring repair in this case is the collapsed pantry ceiling as opposed to the condition of the bathroom grouting. The state of the bathroom grouting is relevant for the purposes of establishing the cause of the ceiling collapse and the question of whether the tenant should be held responsible for the disrepair for failing to treat the premises in a “tenant-like manner”. Therefore, although it is arguable that the landlord has a duty to maintain the bathroom grouting in “repair and proper working order” under section 11(1)(b) of the 1985 Act, on the facts of this case, the relevant question is whether the landlord has a duty to repair the pantry ceiling under the section 11(1)(a) and the duty to keep in repair the structure of the premises.

It would be uncontroversial to state that the pantry ceiling falls within the definition of “structure” under the 1985 Act. The word structure usually refers to subsidiary parts of the premises, will usually involve more than simply the load bearing elements and comprises the basic fabric and parts of the demised premises distinguished from its decorations and fittings. It has also been considered to consist of those elements which give the dwelling house its essential appearance, stability and shape. The word does not extend, however, to the various ways in which a dwelling house will be fitted out, equipped, decorated and generally made habitable (*Irvine v Moran* [1991] 1 E.G.L.R. 261).

If it can be established that the damage to the pantry ceiling was caused by leaks in the bathroom grouting and that the leak was not as a result of the tenant’s failure to use the premises in a tenant-like manner (considered below), it would be reasonable to conclude that the landlord is under a duty to repair the pantry ceiling under section 11(1)(a) of the 1985 Act. The landlord’s liability to repair the ceiling would arise from the time that the tenant provides notice of the damage.

b. Can the Landlord's liability be expunged by section 11(2) of the 1985 Act and/or the tenant's express covenant to keep the premises "in good clean and tenantable repair and condition"?

If it can be established that the leak in the bathroom grouting occurred as a direct result of the tenant failing in his implied and express duty to use the premises in a tenant-like manner, any obligation of the landlord under section 11(1)(a) to repair the pantry ceiling as part of the structure of the premises would be cancelled out. This scenario is considered in more detail below under the heading of tenant's obligations.

(2) Tenant's Repairing Obligations

(i) Express Obligations:

The tenant in our scenario is expressly required to "*keep all parts of the interior of the Premises and all appurtenances belonging to the Premises and all additions to the Premises and the sanitary and water gas electrical and central heating apparatus in the Premises in good clean and tenantable repair and condition throughout the Term*".

Section 11(4) of the 1985 Act provides that a covenant by the lessee for the repair of the premises is of no effect so far as it relates to the matters mentioned in section 11(1)(a)-(c) of the Act. As such, the tenant's express obligation of repair under the lease needs to be read in light of section 11(1)(b) of the 1985 Act and the landlord's repairing obligation as regards the installations for the supply of water and whether this can reasonably extend to the damaged grouting. If it can, this would exclude the tenant from responsibility of repair as long as the requisite works do not fall under the definition of tenant-like use.

It has been held that the obligation under section 11(1)(b) is not merely to keep the installations in repair but extends to keeping them in "proper working order", which includes the physical and mechanical condition of the installation (*Wycombe health Authority v Barnett* [1982] H.L.R 84). It is *prima facie* arguable that a bathroom with leaks in grouting is not kept in "proper working order". However, this conclusion is likely to be trumped by the requirement of the tenant to remedy the leak in the grouting as part of his duty to keep the premises in "good clean and tenantable repair" once he became aware of it.

(ii) Implied Obligations:

Apart from express contract, a tenant owes no duty to the landlord to keep the premises in repair. The only duty of the tenant is to use the demised premises in a tenant-like manner (*Edward Marsden v Heyes* [1927] 2 K.B. 1, CA). In *Regis Property & Co v Dudley* [1959] A.C. 370, 407, it was held that the obligation of tenant-like use is a common law obligation of the tenant separate and distinct from that imposed by a

covenant to repair (whether express or implied) and giving rise to separate and distinct remedies.

Lord Denning in *Warren v Keen* [1954] 1 Q.B. 15 provided some helpful illustrations of the type of jobs that fall within the scope of the obligation of tenant-like use:

“The tenant must take proper care of the place. He must, if he is going away for the winter, turn off the water and empty the boiler. He must clean the chimneys, when necessary, and also the windows. He must mend the electric light when it fuses. He must unstop the sink when it is blocked by his waste. In short, he must do the little jobs about the place which a reasonable tenant would do. In addition, he must, of course, not damage the house, wilfully or negligently; and he must see that his family and guests do not damage it: and if they do, he must repair it. But apart from such things, if the house falls into disrepair through fair wear and tear or lapse of time, or for any reason not caused by him, then the tenant is not liable to repair it.”

The question of what comprises tenant-like use thus falls to be determined on a case by case scenario in light of all the circumstances. The issue of whether the leaking grout in the bathroom falls under the obligation of tenant-like use would largely depend on whether the tenant was aware of the fact that the grout required attention due to leaks (for example if water patches were visible on the pantry ceiling for a period of time before it collapsed). If he was, it is reasonably arguable that he should carry out some remedial works to the grouting to stop the leak although this duty would not necessarily extend to repairing the water damage to the ceiling. It is also arguable that, at the very least, the required tenant-like use extends to promptly informing the landlord of the leak so that the relevant repairs could be carried out (assuming that the landlord would agree to this). On the other hand, if the tenant was not reasonably aware of the leak in the bathroom grouting (because the water damage was not apparent) then it could not be argued that he has a duty to attend to the grouting.

Further, depending on the condition of the grouting when the tenant first occupied the premises, it could also be argued that the deterioration of the grouting was as a result of reasonable wear and tear. However, as stated above, the tenant would reasonably be expected to inform the landlord of any leak as soon as he became aware of it.

Conclusion:

So who is liable to repair the pantry ceiling? Aside from applying common law principles and the legislative framework the courts will consider the factual scenario leading up to the disrepair and the actions of tenant and landlord in this respect. As indicated above, the answer to the question of liability is dependent on a number of variables, some of which cannot be answered with the limited facts available. However, generally speaking, liability will largely depend on whether the tenant was aware of the leak and its cause before the ceiling collapsed. In the event that he was not and had no warning of the

impeding damage to the ceiling, it is likely that the landlord would be held liable to repair the ceiling as part of the structure of the premises. On the other hand, if the tenant was aware of the leak and the fact that this was the cause of water damage in the house, then it is arguable that he will have failed to treat the premises in a tenant-like manner by neglecting to address the cause of the leak with remedial repairs, which would prevent the inevitable disrepair to the pantry ceiling.

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