

Residential landlords' responsibility as to repair of premises

Case note – *Shields v Deliopoulos* [2016] VSC 500

7 November 2016

In an appeal from the Residential Tenancies list of VCAT, the Supreme Court of Victoria has clarified the scope of a landlord's duty to maintain residential premises under the *Residential Tenancies Act 1997* (Vic) (**Act**). Landlords are under a positive duty to put premises into a state of good repair at the beginning of a tenancy and must ensure that the premises remain in good repair throughout the tenancy.

History and facts

The tenant, Shields, sought compensation under s.452 of the Act for breaches by the landlord of s.68 of the Act, which places a landlord under a duty to maintain premises in good repair. Shields' application was rejected by VCAT. She appealed to the Supreme Court.

Shields entered into a residential tenancy agreement with Deliopoulos for a house in Port Albert. The premises were in an extremely poor state of repair when the tenancy commenced, to the extent that:

- holes were in the ceiling and floor throughout the building;
- significant mould was on the ceiling and walls throughout the building;
- there were infestations of rats and other pests in the building;
- there were serious issues with the electrical wiring;
- several doors were rotting or unable to function properly;
- the clothes line was not in working order;
- the kitchen cupboards were stained with rat urine and faeces;
- the hot water system was faulty;
- the gas heater leaked;
- there were no seals on the oven; and
- the property was generally unclean and untidy, and the previous tenant had not removed all of their possessions.

Throughout the five and a half years that the tenancy ran, the property fell further into disrepair, for example:

- a shed on the property was destroyed by a storm but never replaced;
- the property was regularly inundated with water such that the woodwork was rotting and the carpets damp, and sinkage was evident;
- the mould extant at the commencement would invariably return due to the damp, notwithstanding the tenant's efforts to remove it;
- it took four years for a window to be replaced; and

- the smoke alarms were faulty and took five years to replace.

In finding against the tenant at first instance, VCAT's view was that a landlord cannot be in breach of its obligations under s.68 of the Act if a tenant remains in occupation of the premises.

Decision of the Supreme Court

Daly AsJ allowed Shields' appeal on the grounds that VCAT misinterpreted the requirements of a landlord under s.68 of the Act. Her Honour made clear the scope of a landlord's duty under s.68, in that a landlord must put premises into good repair at the beginning of a tenancy. Although what constitutes 'good repair' may in some way be referable to the age and character of the premises, a landlord's duty to keep premises in good repair can in no way be qualified or made relative to the state of the premises at the beginning of the tenancy or the amount of rent charged for the premises.

The language in s.68 also points to the landlord's duty as being a positive duty. Landlords must 'make sure' or 'make certain' that rented premises are in a good state of repair. A landlord cannot simply point to a previous tenant's failure to complain as evidence that premises are in good repair. Further, any information contained in the condition report will put a landlord on notice that the premises are not in good repair.

Her Honour also made some more general comments about the Act. Firstly, landlords and tenants cannot contract out of the Act or modify any of its provisions. Secondly, a tenant cannot absolve a landlord of a failure to comply with s.68 or other duty provisions in the Act. Although a tenant cannot absolve a landlord of its duties, it may be the case that a tenant's failure to complain about the state of repair or continued occupation will affect the amount of compensation a tenant would be entitled to under the Act.

Ramifications

Landlords must take steps to ensure that rented premises are put into and kept in good repair. It is not enough to maintain premises in the same state of repair they were in at the beginning of the tenancy; if the premises were not in good repair at the beginning, landlords must bring the premises into good repair. Liability for failure to comply with s.68 of the Act is strict and absolute, and may result in an order to pay compensation to an affected tenant.

Should you need any assistance or further clarification, please contact:



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