IN THE SUPREME COURT OF JUDICATURE.
COURT OF APPEAL

Royal Courts of Justice

9th October 1953

B e f o r e :

LORD JUSTICE SOMERVELL
LORD JUSTICE DENNING
and
LORD JUSTICE ROMER

KEEN

-v-

WARREN

(Transcript of the Shorthand Notes of The Association of Official Shorthandwriters Ltd., Room 392, Royal Courts of Justice, and 2, New Square, Lincoln's Inn, London, W.C.2.)

MR H.M. CROOME (instructed by Messrs Merton Jones, Lewsey & Jeffries) appeared on behalf of the Appellant (Defendant).
MR ROGER WILLIS (instructed by Messrs Pengelly & Co.) appeared on behalf of the Respondent (Plaintiff).

HTML VERSION OF JUDGMENT

LORD JUSTICE SOMERVELL: This is an appeal from a decision of His Honour Judge Tudor Rees in which he decided in favour of the Plaintiff, who was the landlord. The issues are clearly set out in the Particulars of Claim. It is there alleged, first of all, that the premises were let to the Defendant on a weekly tenancy, and that the Defendant had become a statutory tenant, but nothing turns on that. Paragraph 2 says: "It was an implied term of the said tenancy that the Defendant would use the said premises in a tenantlike manner, would keep the same wind and water tight and would make fair and tenantable repairs thereto. The Defendant in breach of the said implied term has failed to use the said premises in a tenantlike manner, has not kept the same wind and water tight and has not made fair and tenantlike repairs thereto". The Particulars of disrepair are important! "(a) First floor front room (Large). Walls - plaster damp - stained below window opening. (b) First floor front room (Small). Walla - piaster damp - stained and perished below window opening. (c) External. Front wall - rendering cracked and broken in parts. Front floor window opening - sills not weatherproof, joints and paintwork decayed. (d) Leak in hot water boiler". Then there is an alternative allegation of waste. Then it is alleged, and there is no dispute about this, that by reason of those matters the Plaintiff had a notice served upon her by the Borough of Heston and Isleworth requiring her to remedy the defects. She was bound to remedy the defects, which she did. They cost her £23.5a.0d. and she claims that the Defendant la liable to her in that sum. The Defence quite broadly is a denial that the Defendant is under a liability in

respect of the matters to which I have referred. The learned Judge, according to his written note which he prepared for this Court, held that: "There was an implied covenant that the tenant would keep the premises in a good and tenantable condition and do such repairs as were necessary to this end". He then held that the Defendant was in breach of that implied covenant and had allowed the premises to deteriorate and he held the Defendant liable.

Mr Willis before us did not seek to support the wide form in which the learned Judge set out the obligation which he found was implied upon the tenant. It would in fact mean that a weekly tenant was under a general covenant to keep, and perhaps to put and keep, in repair* No authority was cited for such a proposition and in principle I am quite clear that no such implied obligation rests upon a weekly tenant. It was suggested that the words in the note were wider than those used at the hearing.

The ease for the Plaintiff before us was put in this way - and this is the way it appears in the Particulars of Claim. It was alleged that a tenant from year to year is under an obligation not only to use and cultivate the land or premises in a husbandlike or tenantlike manner but also to keep the buildings wind and watertight. That will be found stated in the Judgment of Lord Justice Swinfen Eady in Wedd v. Porter (1916, 2 King's Bench, page 91, at page 100) and in various other places in cases and in text books* On the other hand, the researches of Counsel have failed to discover any case which throws light on the scope of that obligation, in ether words, any case where a tenant has been held liable for failure to keep wind and watertight where the damage would not be covered by the obligation not to commit voluntary waste or the obligation to use the premises and land in a tenantlike manner. So whether there is an additional obligation of a limited kind with regard to repairs in the case of a tenant from year to year remains at any rate in a state of some doubt.

In a case reported in 5 Carrington & Payne, page 280, of Auworth and Johnson. Lord Tenterden in an interlocutory observation said: "A tenant from year to year is to keep the premises in a little order", and then he said he had done nothing. When he comes to sum up to the Jury he again uses the words the meaning of which is obscure, "to keep the house wind and watertight". The argument is first that that obligation to keep wind and watertight applies to a weekly tenant as well as a tenant from year to year and then, assuming that it does, the next submission is that the matters set out in the Particulars of Claim come within the covenant to keep the buildings wing and watertight. I think that submission tails at both stages. If there is a minor but so far indefinite obligation on a tenant from year to year to do certain minor repairs necessary to keep premises wind and watertight - and I will assume without deciding it that there is some such limited obligation -then I see no ground in principle for applying that to a tenancy from week to week* It is quite true that under the Rent Restriction Acts many tenants from week to week are enabled to remain in premises year after year, and the landlord may find great difficulty in fulfilling the conditions which have to be fulfilled under these Acts if he is to get possession. But that does not to my mind affect the question of what are the implications of a weekly tenancy. It seems to me that it would be absurd to suggest that a weekly tenant was under an obligation to repair. It is difficult to think of repairs which would not in themselves cost more than the weekly rent in many cases and yet it is suggested that he is impliedly liable to expend that money although his right to the premises may be terminated in a week's time. In the second place, I am myself quite clear that the matters particularised in the Particulars of Claim would not fall within the words "wind and watertight". It seems to me clear that the damage here was due to decay of it the walls, and there is no suggestion that that was due to any other cause than fair wear and tear* There is no suggestion that the Defendant started knocking the walls about or anything of that sort, but in the course of time they had become cracked and presumably required re-pointing, because water was seeping in through the cracks which had appeared. The same would appear to have applied to the wood of the window sills. That may have been due not only to age but also to the positive failure to have the external woodwork re-painted every three years, or whatever is the normal time. Those would be both matters which in my opinion could not on any construction come under this formula of keeping the building wind and watertight having regard to the principles which are to be found in the cases with regard to the implied liability of a tenant from year to year. Therefore, for these reasons, I think this appeal succeeds and the claim made by the Plaintiff fails.

LORD JUSTICE DENNING: 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 premises in a husbandlike, or what is the same thing, a tenantlike manner. That is how it was put by Sir Vicary Gibbs, Chief Justice, in Horsefall v. Mather. Holt's Nisi Prius, at page 7, and by Lord Justice Scrutton and Lord Justice Atkin in Marsden v. Edward Heyes Ltd., 1927, 2 King's Bench, at pages 7 and 8. But what does it mean, "to use the premises in a tenantlike manner"? It can, I think, best be shown by some illustrations. 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 landlord sought to put upon the tenant a higher obligation. He said that the duty of the tenant was to keep the premises wind and watertight and to make fair and tenantable repairs thereto. That seems to be based on Hill and Redman on Landlord and Tenant, page 186. I do not think that is a correct statement of the obligation.

Take the first branch, "to keep the premises wind and watertight". Lord Tenterden in one or two cases at Nisi Prius used that expression and it was followed by the Court of Appeal in Wedd v. Porter. 1916, 2 King's Bench, at page 100: but it is very difficult to know what "wind and watertight" means. I asked Counsel whether there was any ease to be found in the books where a tenant had been found liable for breach of that obligation. I wanted to see what sort of thing it had been held to cover. But there was no such case to be found. In the absence of it, I think that the expression "wind and watertight" is of doubtful value and should be avoided. It is better to keep to the simple obligation "to use the premises in a tenantlike manner".

Take the second branch, "to make fair and tenant-able repairs". Lord Kenyon used the expression in the case of Ferguson v. Anon., 2 Esp., 590, which is only reported by Esplnasse, who was notoriously defective. If you read the whole sentence used by Lord Kenyon, however, it is clear that he was only referring to cases where a tenant does damage himself, such as breaking the windows or the doors. Then, of course, he must repair them. The sentence used by Lord Kenyon was explained by Lord Justice Bankes in Marsden v. Heyes by saying that if a tenant commits waste — that is, if he commits voluntary waste by doing damage himself — he must do such repairs to the premises as will enable them to exclude wind and water. So explained, it does not support the proposition stated in Redman.

It was suggested by Mr Willis that an action lies against a weekly tenant for permissive waste. I do not think that is so. It has been held not to lie against a tenant at will, see the Countess of Shrewsbury's case, 5 Coke's Reports, 13bt and in my opinion it does not lie against a weekly tenant.

In my judgment, the only obligation on a weekly tenant is to use the premises in a tenantlike manner. That does not cover the dampness and other defects alleged in the Statement of Claim. The appeal should be allowed accordingly.

LORD JUSTICE ROMER: I also agree and can express in a very few words why I think the learned Judge came to a wrong conclusion in this case. He is reported (although inaccurately as we were told) to have said in his Judgment with regard to the original contract of tenancy, which was a weekly tenancy, "There was an implied covenant that the tenant would keep the premises in a good and tenantable condition and do such repairs as were necessary to this end". That language (had it been used) would be attributing to a weekly tenant a degree of liability in the matter of repairs which is higher than that imposed by the law on tenants from year to year, as has been shown by Lord Justice Swinfen Eady in Wedd v. Porter. Lord Justice Bankes in Marsden v. Edward Heyes Ltd. and in other cases to which my brethren have referred. Accordingly, Mr Willis is unable to support the degree of liability which the learned Judge was reported to have laid down.

From the cases I have mentioned I gather that, whatever may be the precise extent of the liability of a tenant from year to year, he is not liable for deterioration due to fair wear and tear and, if so, a fortiori, a weekly tenant is not so liable. Mr Willis then submitted (and he

has authority to support him) that a yearly tenant is at all events liable to keep the demised premises wind and watertight, whatever that may mean, and that this obligation is also imposed upon a weekly tenant. There is no authority supporting that proposition so far as weekly tenants are concerned and I, for my part, find difficulty in accepting it. But, at all events, it is only really necessary for me to say in the present case that in my opinion the deterioration of which the Plaintiff complains and on which she is suing in these proceedings is deterioration due to fair wear and tear or failure to paint, or both, and a weekly tenant is certainly not answerable for deterioration of that character. Therefore, the learned Judge, in my opinion, was in error, because whatever the liability of a weekly tenant may be it does not extend to the damage which is complained of in this particular ease which, as I say, is due to ordinary deterioration by wear and tear. I accordingly agree that the appeal should be allowed.

LORD JUSTICE SOMERVELL: The appeal will be allowed and judgment entered for the Defendant with coats here and below.