

Tenants Beware

The principle of 'caveat emptor', or 'buyer beware' as it is often referred to, is a well established rule applied to the purchase of property.

Case law from the early 1900's has shown us that this principle not only applies to freehold property but also to leasehold. In essence the rule places responsibility upon the buyer to carry out all necessary due diligence on the property to ensure they know its exact state and condition before purchasing. The seller will not be held liable for defects once the sale has completed and therefore the buyer takes the property as they find it.

However, how does this principle apply to tenants entering into a lease? A tenant may carry out surveys and searches of the demised premises, but is the same required in respect of a building of which only part is in demise? The simple answer is 'yes', and this is where the phrase 'caveat lessee' comes into play, meaning 'tenant beware'.

There can be nothing more frustrating than newly occupying a property, only to find six or 12 months down the line that cracks are appearing and things are not as they seemed when you first put pen to paper and signed a contract. Unfortunately for tenants they will have no redress against a landlord if the demised premises are damaged due to a defect present in the building to which they form part. The caveat lessee rule applies and it is the tenant's responsibility to obtain surveys and searches in respect of the whole building and not just the demised premises.

The above situation occurred in a recent case where a tenant found that the flat they were occupying on a 125 year lease suffered from water penetration. This was because of the incorrect laying of concrete on the light wells, part of the property that had been retained by the landlord. The fact that the building was defective was not in dispute, the question was who was liable for the damage caused by the defect? The tenant paid for and completed the works then attempted to sue the landlord for the cost of the repairs as damages. The claim was based on both breach of the landlord's repair covenant and the nuisance.

In respect of breach of the landlord's repair covenant the tenant's claim failed as the court held that the demised premises were in no worse state of repair than they had been when the tenant initially signed for the lease. The court found that neither a landlord nor a tenant who enters into a covenant to repair is under an obligation to improve the demised premises in any way.

The tenant was also unsuccessful in their claim for nuisance. The tenant tried to argue that as occupier of a building where the defect originated, a landlord, aware of such defects, should take reasonable steps to stop the nuisance. The landlord had taken over the reversion of the lease from an original landlord and was aware of the defects but as he had not taken preventative measures the tenant argued that he was liable for adopting or continuing the nuisance.

While the landlord agreed that he had knowledge of the defects he argued that as these were present when the tenant initially took the flat, the caveat lessee principle applied to both the building and the demised premises.

The court agreed the tenant took the flat as they found it and this included any defects to the building. Therefore the tenant was not entitled to any damages.

This case illustrates the importance of tenants finding out the exact state and condition of the premises and the whole building prior to entering into a lease. While carrying out due diligence and obtaining surveys may cost money initially, it will save tenants in the long term if they are later forced to pay for potentially high cost repairs to defective premises and cannot reclaim these costs from the landlord.

Parties are free to grant and take leases of premises even if they are falling down, as long as they have agreed terms. This point is founded on the general rule of English law, 'freedom of contract'. As Lord MacNagthen stated in a 1906 case: "Fraud apart, there is no law against letting a tumbledown house." While some may feel this could be harsher on those tenants in a weaker bargaining position, as far as the courts are concerned, this would be a matter for Parliament.

So tenants beware, be assured that you know the state and condition of not only the demised premises but also the entire premises to which the demise forms part before putting pen to paper.

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