

1) Lessor may not disturb Lessee in his possession

Once L property is delivered to L lessee L lessor may not disturb L lessee in his commodus usus unless lawfully eg if he is required to inspect L property or when L lessor needs to effect necessary repairs

STUDY UNIT 7 start here!

Lessor must deliver the thing in a specific condition & maintain it thus.

1) L condition of L property @ L time it is made available

• Where L thing has been let for a specific purpose, it must be delivered in such a condition that it will be fit for that purpose. Where there is an express agreement about L condition of L thing L lessor must comply with it. A lease creates continuous Obligations

• Poynton V Cran L condition in which L thing is delivered must be in accordance with L provisions, express or tacit of L agreement. If L contract contains ~~no~~ no express agreement L lessor must deliver L thing in L condition it was when L contract was entered into.

Therefore when L thing is delivered there must

be no defects contrary to \perp contract. If \perp defects occurred after \perp contract was concluded but during \perp subsistence of \perp lease, \perp lessor is compelled to effect repairs provided no stipulations to \perp contrary.

2) \perp condition of \perp property during \perp currency of \perp lease

Only once \perp property ^{due to wear and tear, deterioration} has reached such a stage where \perp property is no longer fit for \perp purpose for which it was let, \perp lessor compelled to do repairs to comply with \perp contractual obligation of keeping \perp property in a fit state.

wear and tear

fault

\perp lessor is only liable for breach of contract if he was aware that \perp defect occurred after \perp contract was concluded. \perp lessee must give \perp lessor notice unless \perp lessor was aware or ought to have known as an expert.

\perp landlord is only liable for the repairs of structural defects & not structural improvements (except if it is for \perp purpose served by \perp rental property).

If a lessee undertakes to effect repairs must he also repair structural defects?

In Salmon v Deolow

Court held; a lessee will only be required to make repairs which are needed to keep a house in a good condition. He will not be required by contract or common law to make structural alterations.

From all cases a principle is a subsidiary parts of a property must be replaced or renewed by a lessee (if he has undertaken to do repairs), but he doesn't have to renew a whole thing to ensure its continued existence.

lessee not obliged to effect improvements

If a lease contains a clause casting an obligation on a lessee to maintain a lessee is not obliged to improve a thing & return to a lessor in a better condition than what it was when he took occupation.

Where a roof is no longer capable of repair, a lessee will not be obliged to put on a new roof. Such a renewal must be effected by a landlord.

3) Contractual Duty or Ex lege Warranty? ⁽⁸⁾

If it involves ordinary duties i.e. duty to deliver the thing in a specific condition & maintain it (thus), the lessor will not be held liable if the thing was not at any time in the required condition, if the lessor was unaware or the lessor ought to have reasonably been aware or she had taken all precautions against it.

Fault is a requirement for liability for breach of contract but not a requirement by virtue of breach of warranty. When dealing with an ex lege warranty, in the case of the lease, the fact that she was unaware of the reputed defect & it was not possible for him to have reasonably been aware or he/she had taken every reasonable precaution will not avail the lessor.

REMEDIES

4.1) Cancellation

A lease may be cancelled if there is a major breach of contract, if the condition of the property on delivery is unfit for the purpose for which it was let or during the lease it falls into the condition or it cannot be repaired, the lessee may cancel the contract.

4.2 Specific Performance

A tenant may only use this remedy in a case of ordinary repairs & not structural improvements.

In *Marais v Cloete* it was held that an obligation to repair is so vague that a court cannot supervise an order of specific performance.

Although according to our courts he/she cannot enforce specific performance, a lessee may obtain the result of specific performance by making repairs himself & deducting his costs from the rent, provided the lessor has failed to comply with the lessee's demand for repairs. If the lessee does this without notice to the lessor, the lessor is not liable for the cost of repairs.

4.3 Remission of Rent

This can be claimed if the lessee has suffered a minor inconvenience & the lessor failed to comply with his request for repairs. Remission of rent must be claimed in accordance with the degree of inconvenience suffered.

4.4 Damages

may be claimed as a result of a loss suffered due to a defect.

(1) Tenants Knowledge

If a lessee knows about a defect at a time when a contract is entered into, lessee loses claim for damages. Lessee must ask lessor for warranty to safeguard himself. Lessee not required to inspect property before concluding a lease. If he does inspect he will lose his claim for damages in respect of all patent defects that existed at time of inspection.

(2) Landlord's actual knowledge of defect.

If a landlord knows of a defect, he is liable for loss caused by such defect. If a landlord gives a warranty that property is free from defects and he is unaware that there is a defect, nonetheless, he is still liable.

(3) Where a lessor should have known of a defect.

Old writers: hold a lessor is not bound to compensate a lessee for a loss sustained because a lessor failed to maintain premises in a proper condition unless lessor knew or ought to have known of a defect.

Cooper holds a lessor should be liable for loss suffered by a lessee, caused by a defect even if a lessor had no knowledge of a defect.

4) Where a lessor has no actual or constructive knowledge. If landlord has no knowledge he is not liable unless he gave express warranty. Cooper holds that in addition to a lessee's claim for damages for a defect, he may cancel a contract if a defect is serious or claim remission of rent where a defect is less serious.

STUDY UNIT 8 THE LANDLORD MUST GUARANTEE A TENANT AGAINST EVICTION

Warranty against eviction binds a lessor to compensate a lessee who was evicted from a whole or part of a property by a 3rd person with a better title.

If a lessor has no title and a owner ejects a lessee, a lessor is liable for damages, unless a lessee was aware of a lessors lack of title.



Glatthoof V Hussan - Facts

Plaintiff owned a portion of a farm, he sold it to one Coetzee but before Coetzee could acquire ownership, Coetzee let a property to defendant who went into occupation. Coetzee never became owner as he failed to pay a purchase price. After sale was cancelled, plaintiff sued defendant for ejectment. Defendant argued that he was lawfully in position as lessee because he had paid 4 years rent in advance. The plea failed and an order for ejectment was recognised/granted.

Courts decision

Hussan ^{owner of 1 prop} is not void of remedy. It is Coetzee who must make good to Hussan whatever loss he has incurred.

Wessels J said

It is true that if I let you another's land, if I do so you cannot question my title nor can I deny you 1 right to hold 1 land against me; but this in no way will prejudice 1 rights of 1 true owner.

* A lessor may validly let something belonging to another. Furthermore lessor does not guarantee his title. 1 only obligation on 1 lessor is to place 1 lessee & maintain 1 lessee's undisturbed possession.

Law presumes warranty against eviction

As in 1 case of contracts of sale 1 law presumes ex lege warranty in 1 case of contracts of lease as well. For eg: lessor does not guarantee against unlawful hindrances.

So any threats of eviction does not yet constitute breach of contract by 1 lessor.

So a lessee would not have any claims against 1 lessor if she leaves as soon as a 3rd person threatens to evict her.

She must carry on paying 1 rent. If she fails, she breaches 1 contract.

Warranty does not apply to Acts of God & 1 + propnation.

Remedies

Cancellation

Lessee may cancel or rescind contract if totally evicted or evicted to a serious degree

Damages

Lessee will irrespective of his knowledge have a right to damages only when lessor terminates rights voluntarily.

STUDY UNIT 10 (TENANTS DUTIES)

1) THE TENANT MUST PAY THE RENT

CERTAINTY - essential element of a contract

If performance is vague, contract void for vagueness. Contracts in which performance are left by parties or a party to decide @ a later stage are invalid

Certainty of performance can be attained in 2 ways

- 1) Defining performance (obligations parties wish to create)
- 2) Identifying an external standard by which performance should be determined.