

Inspections: Managing Agent can be liable

A managing agent has a duty of care to the tenant to carefully inspect the rental premises it is managing before the tenant moves in.

The law currently requires that an inspection of residential premises be carried out with due care and the tenant be provided with a condition report at the start of the tenancy. A landlord may be liable to a tenant in respect of defects in a rental property provided the landlord was aware of, or ought to have been aware of, the defect at the time that the lease was entered into.

Landlord may be liable

Case Study: In *Wu v. Carter* 2009 NSWSC 355, a tenant suffered significant injuries when a wooden railing on a unit balcony gave way causing her to fall to the ground.

Expert evidence from an engineer found the railing was in a sub standard and dangerous condition as a result of gradual deterioration. A simple test of the soundness of the railing would have been to grip the top of the railing and any resulting undue movement would have indicated the railing was not sound.



The Landlord's managing agent was a 20-year-old property manager with no qualifications or experience as a builder, architect or engineer. In her role she carried out routine inspections and gave evidence that she checked the property and there were no apparent structural problems. She had walked onto the balcony, shook it, and formed the opinion that it was in good condition.

Premises must be inspected with reasonable care

The Result: The Court did not accept that the inspection had been properly carried out by the managing agent's property manager and apportioned liability twenty-five per cent (25%) against the managing agent. The balance of seventy-five per cent (75%) liability was found against the body corporate.

Practical tips

- Ensure all property inspections are carried out with reasonable care prior to letting.
- Any possible defects must be noted on condition reports and reported to the owner.
- If in doubt, engage an appropriate expert.

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