

# Health Real Estate Tip of the Week: Defective Premises - When is a landlord liable for a tenant's unsafe premises?

*Published 4 December 2017*

Many parts of the NHS property portfolio are subject to a high volume of footfall from members of the general public, including individuals with impaired mobility. The issue of defective premises is therefore especially relevant to NHS bodies, since if parts of an NHS estate fall into disrepair, then the likelihood of personal injury is somewhat high.

With this in mind, it is worth considering *Dodd v Raebarn Estates Ltd*. Alterations were carried out to a building by a tenant that involved the removal of two existing staircases and the installation of one new staircase. The landlord consented to the works. The planning permission showed the new staircase equipped with a handrail, but when installed the new staircase did not have a handrail. Sadly, a visitor at the building was fatally injured after losing his footing on the new staircase. The Court was asked to determine liability on the part of the landlord.

The lease contained a tenant obligation to keep the premises in good and substantial repair, including the remedying of any inherent defect. The landlord had the right to enter and carry out such works in the event of tenant default. The deceased's widow sought to pursue the landlord relying on section 4(4) of the Defective Premises Act 1972, which applies "where premises are let under a tenancy which expressly or impliedly gives the landlord the right to enter the premises to carry out any description of maintenance or repair of the premises".

The Court of Appeal did not consider the landlord to be in breach of its obligations. For section 4(4) to apply, there had to be a defect. Because the new staircase never had a handrail, there had been no damage or deterioration to give rise to an obligation on the landlord to repair it. The landlord's obligations did not extend so far as a duty to make the premises safe. The case does however serve as a reminder to NHS bodies that, in order to protect yourself against any potential claims under the Defective Premises Act 1972, you should act promptly when tenants are in default of their repair obligations.