

## ***Harris v. Northern Sandblasting Pty Ltd***

**[1995] Aust. Torts Reports 81-365**

### **The Liability of Landlords for Third Parties' Injuries**

**Geoffrey Diehm, Barrister**

*This is a summary of a presentation to a  
Litigation at Sunrise Seminar in Brisbane on 20 March 1996.*

The focus of the paper was on the potential liability of landlords to third parties by virtue of a breach of statutory duty under the *Residential Tenancies Act 1975* or the *Property Law Act 1974*.

The plaintiff in *Harris* was a 9 year old girl who was electrocuted when turning on a tap in the garden of premises rented by her parents from the defendant. The electrocution was caused by:

- (a) negligent repair work done to a stove on the premises two days before; and
- (b) a defect in the greater wiring system. The plaintiff failed against the landlord at the trial.

The plaintiff's appeal was allowed. Fitzgerald P found the landlord liable because of a special non-deligable duty of care owed to the plaintiff. His Honour did not find the landlord liable based on either statutory duty argued to have existed under Section 7 of the *Residential Tenancies Act 1975* nor Section 106 of the *Property Law Act 1974*. His Honour did consider that Section 7 of the *Residential Tenancies Act 1975* indicated a standard of care demanded by the community through the Parliament, and so it was relevant in that respect. The landlord breached its duty to ensure that reasonable care was taken for the safety of the plaintiff (no-one could or did suggest that the landlord had failed to take reasonable care itself to ensure the plaintiff's safety, in that it engaged an apparently competent electrical contractor).

McPherson JA however was of the view that there was a breach of statutory duty as imposed by Section 106 of the *Property Law Act 1974* and was prepared to hold, although it appears he did not, that similarly there was a breach of a duty imposed by Section 7 of the *Residential Tenancies Act 1975*.

Section 7 of the *Residential Tenancies Act 1975* provided that there were implied obligations in every tenancy agreement that the landlord had to provide and maintain the dwelling house in good tenantable repair and in a condition fit for human habitation,

and certain other similar requirements. Section 106 of the *Property Law Act 1974* provided, *inter alia*, that in a lease of premises for a term of three years or less there was an obligation on the part of the lessor, where the premises were leased for the principal purpose of human habitation, to provide and maintain the premises in a condition reasonably fit for human habitation.

Fitzgerald P and Pincus JA (who held the defendant not liable on any cause of action) considered that Section 7 merely implied a term into a contract, and the plaintiff was not a party to it. Similarly, Pincus JA considered Section 106 in the same light. Fitzgerald P reached no firm conclusion on Section 106. McPherson JA considered that it set a statutory duty a breach of which would sound in damages by members of the family of the tenants. The class may have been wider, but McPherson JA did not consider the case one appropriate to consider such a proposition.

On 15 March 1996 the High Court granted leave to the defendant to appeal. There is no clear ratio which can be discerned from the case upon which a landlord's liability in these circumstances is to be determined. It is in the writer's view that if the landlord's liability is to be upheld, it will be on the basis of the reasoning of Fitzgerald P, as it seems to sit with dicta of a number of judgments of the High Court in recent times.

It is finally noted that the *Residential Tenancies Act 1974* under consideration in that case had been repealed, and replaced by the *Residential Tenancies Act 1994*. If the reasoning of McPherson JA with respect to the *Property Law Act* is accepted, it seems that the new wording of Section 103 (being the relevant provision) of the 1994 Act will clearly impose a statutory duty upon landlords, as unlike its predecessor, it does not merely imply a term into the agreement, but merely states that a landlord is under a particular duty. A narrow interpretation however of Section 10 of that Act (being the "application" provision of the Act) might however indicate that the duties are not conferred for the benefit of any one else other than the tenant.

## **APLA HAS MOVED!**

**Our new contact details are**

**Tel: (02) 564 6487**

**Fax: (02) 560 9570**

**GPO Box 2658, Sydney 2001**

**DX 21809 Leichhardt**