

## PROPERTY UPDATE

The Court of Appeal considered the nature of the tenant's loss resulting from a claim for damages for the landlord's breach of covenant in the case of ***Moorjani v Durban Estates (2015) EWCA Civ 1252 WLR (D) 509***

### Introduction

The court considered whether a residential long leaseholder ("the tenant") had suffered loss arising from the landlord's breach of its repairing and insuring obligations which had caused disrepair to the tenant's flat.

### The facts

The nature of the disrepair emanated from a flood in an area of the building within the landlord's demise which caused damage to the inside of the tenant's flat rendering it uninhabitable and also, to the common parts of the block of flats ("the block").

The tenant elected to reside elsewhere during the periods under consideration.

### The essence of the appeal

The principal reason for the appeal lay in whether the tenant's temporary loss during that period comprised in;

- the impairment of the amenity value of the tenant's proprietary interest in his flat;
- whether discomfort, inconvenience and distress was suffered by the tenant.

### The judgment

In reaching its decision, the court considered the cases of *Calabar Properties Ltd v Sticher (1984) 1 WLR 287*; *Wallace v Manchester City Council (1998) 30 HLR 1111*; *Earle v Charalambous (2007) HLR 93* and, *Shine English v Churches Housing Group (2004) HLR 727* from which the following conclusions emerged;

- (a) loss consisted in the impairment to the rights of amenity afforded to the claimant in the lease, of which discomfort, inconvenience and distress were only symptoms;

- (b) it was not a fatal obstacle to a claim for damages that the claimant chose not to make full or partial use of the flat;
- (c) to reside elsewhere may be relevant to mitigation as a measure of loss;
- (d) notwithstanding the relevance as to mitigation of loss, residing elsewhere may not detract other measures of loss for 'impairment of amenity' and in certain instances, the court may measure damages in excess of the current rental value.

The Court of Appeal held that, amongst other things, the judge had been wrong to treat a tenant's non-occupation of his flat during the majority of the period of disrepair as being fatal to his claim for his claim for general damages and then proceeded to assess damages measured on the notional rent of the flat based of various periods of time.

***George Patros***  
***Barrister***  
***Patros@clerksroom.com***  
***Contact me anytime.***  
***Clerksroom***  
***218 Strand***  
***London***