

## **Assessment of Damages Based on Rental Value**

The Court of Appeal recently heard a case in which the question at issue was the correct basis for calculating the damages payable by a landlord to the tenant of a flat for the landlord's breach of the repairing covenant under the lease. The tenant occupied the flat as his home under a 99-year lease, paying only ground rent.

In this instance, the landlord had failed to keep the roof of the property in good repair, which resulted in water coming into the flat in substantial quantities. The tenant put up with this for nearly three years but was eventually compelled to vacate the flat for a period of 21 months.

The tenant sued the landlord. The judge awarded the tenant £20,000 by way of damages for his period of occupation and £10,000 for the period when he was forced to move out. The landlord appealed, arguing that the damages suffered were only in the region of £3,300 and that it was unfair for damages to be on a 'loss of rental value' basis, assessed on the deemed market rent, when the tenant was paying only a ground rent.

The Court of Appeal concluded that whilst there was no general 'tariff' which applied in such cases, the resulting assessment of damages payable to the tenant by the landlord should be made with reference to the reduction in the open-market rental value of the flat and the impact on that of the unrectified roof problem. The fact that the tenant was paying only ground rent was not in point.

The message for landlords is that failing to comply with repairing covenants in leases with tenants can cost more than just the cost of repair, even where the tenant is on a long-term lease paying only a ground rent.