

Water woes

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Articles of Law

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Who is to be held liable when an incident in a unit causes flooding in the premises below?

TODAY many homes and businesses are in buildings in which different owners occupy the upper and lower floors. It happens from time to time that water may seep from one floor into the unit below.

More often than not, these are rented premises. The occupant may just be a tenant. When any damage is caused, who is to be held responsible? Is it the landlord or the tenant of the premises from which the problem originated?

Where such occupant is the tenant of the premises, he may have some rights to relief from the landlord in some situations. However, if the occupant is the owner, then he needs to find out who caused the situation which resulted in the damage.

There are in this regard two aspects to the matter. One is the cost of rectification to bring the problem to an end if the situation is a continuing one. The other is the right to relief in the form of compensation for the damage caused.

An example of such a situation is provided by the facts disclosed in Billion Origin Sdn Bhd vs Newbridge Networks Sdn Bhd & Anor; Yap Burges Rawson International Sdn Bhd (third party) involving an event which happened in 1998.

There was a six-day holiday stretch from Jan 28 to Feb 2, in view of the Chinese New Year, Hari Raya and Federal Territory Day holidays.

The occupants of the premises on the ground floor of a building in Kuala Lumpur were shocked when they returned to work after the six-day holiday stretch to find their premises flooded. This was how it happened.

The occupant of the floor immediately above was involved in the telecommunications business. A computer server was installed in a room at its premises. As this server was required to be on 24 hours a day, cooling was necessary to prevent overheating of the server.

Normally, the cool air generated from the central air-conditioning system in the building would be sufficient to keep the server running without overheating. And during weekends, when the central air-conditioning supply was turned off in the building, the server could still function as a cooling fan was placed nearby to cool it.

At about 2am on the day in question, a security guard who was on duty heard the alarm at the building's control centre. Suspecting that there may be a fire, he immediately investigated the floor which triggered off the alarm as identified on the control panel.

Finding no sign of smoke or fire, he contacted the building technician who was not physically in the building. He was on standby at home. After listening to the security guard and without going there personally, he advised him to carry out further investigations and, if no sign of fire or smoke was detected, he should turn off the buzzer at the control panel, which the guard did.

But there was indeed a fire in the premises which contained the server room. The heat caused by the fire activated the sprinkler in the room. If the sprinkler system, controlled by butterfly valve, was not turned off, water would continue to be released from the sprinkler, which was what happened.

When the employees returned to work, they discovered the mess. At 8am on the same morning, the butterfly valve controlling the sprinkler in the server room was reversed by the building management staff. The aggrieved tenant sued the occupant above as the first defendant and the landlord as the second defendant for the damages that it suffered. The tenant above contended that he owed no duty of care to the tenant below and that the damage suffered was not foreseeable. The tenant also sought relief against the landlord on the basis of his rights to be entitled to quiet enjoyment of the demised premises, and that the landlord had fallen short of its obligation under the relevant clause.

The landlord denied liability on the basis of an exemption clause which read: "Save and except in the case of wilful default or a breach of this tenancy by the landlord, the landlord shall not be liable to the tenant, nor shall the tenant have any claim against the landlord in respect of any damage, injury or loss arising out of the leakage of the piping, wiring and sprinkler system in the demised premises and/or the building and/or the structure of the building."

The evidence in court disclosed the fan placed to cool the computer had burned out, causing a fire that triggered the water sprinkler system, which flooded the tenant's premises below. The court held that the tenant above was aware of the potential danger of leaving the fan on for six days and was therefore held liable.

As regards the landlord, the court held that the tenant had been deprived of peaceful and quiet enjoyment of the premises. Though there was an exclusion of liability clause, what had happened did not come within the scope of the clause and the landlord was not entitled to rely on it. The landlord was also held to be in breach and had to contribute half the amount awarded.

The landlord had also brought in the management company as a third party for indemnity. On the facts before the court, it was disclosed that their response in dealing with the situation fell short of expectations. A better response by the management company could have mitigated the damages. They were thus required to contribute half of the damages payable by the landlord.