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## **Beware: Landlords now owe a higher duty of care to their tenants!**

28 April 2015 • [General](#) by Trish Mackie-Smith

Landlords and their agents (or property managers) now owe a greater duty of care to their tenants and third parties after a recent landmark NSW court decision.

**The court found in favour of the tenant, awarding him over \$840,000 in damages with liability for paying the total bill being split into a 25% share for the owner and 75% share for the managing agent.**

The judge found that the owner and managing agent were responsible for the tenant's injuries because they failed in their duty of care.

What does this mean for property investors and what can they do to protect themselves from liability?

### **Owners have a duty of care to the tenant**

This recent NSW court decision makes it clear that all owners throughout Australia have a 'duty of care' to tenants to provide a safe and habitable property, after more than \$840,000 was awarded to a tenant injured by broken glass.

The ruling clarifies exactly what 'duty of care' an owner and their agent (property manager) owes a tenant, their awareness about potential problem areas in rental properties, and the importance of complying with building codes when conducting even routine maintenance.

The Australian government defines duty of care as "an obligation to take reasonable care to avoid foreseeable harm to another person on their property."

### **New South Wales example**

In this case, a tenant of a rental property in Ashfield, NSW was seriously injured after his hand struck and shattered a large glass panel that formed part of the property's front door. The tenant sued the owner of the

property, the Roads and Traffic Authority, and the managing rental agent, alleging negligence because the door had not been fitted with safety glass contrary to Building Codes.

The court found in favour of the tenant, awarding him \$843,146 in damages plus costs, with liability for paying the total bill being split into a 25% share for the owner and 75% share for the managing agent.

The judge found that the owner and managing agent were responsible for the tenant's injuries because they failed to install safety glass when conducting repairs on the premises.

## **Standby for changing codes**

While the use of safety glass was not mandatory at the time the rental premises were built, the judge found that the owner and managing agent were responsible for the tenant's injuries because they failed to install safety glass when conducting repairs on the premises after it became mandatory.

In March 2005 – one month before the injury was sustained by the tenant – a glass panel in the door to the bedroom was broken during a failed burglary attempt. The judge found that no measures were taken to install safety glass in the property.

So in practical terms, this ruling means that owners and managing agents will have to closely examine the present condition of their properties and review maintenance records to ensure that even work done in the past must meet the Building Codes.

It's worth noting that the court rejected arguments that the tenant 'accepted' the premises as it was at the time the tenancy agreement was signed. The judge said that the owner must still take reasonable care 'in respect of dangers not readily apparent on inspection.'

### **What to do to protect yourself, your property and your tenants**

As property owners it is important that you have the property inspected annually by professionals to ensure that the property is safe and fit for the tenant to live in. This should include:

- Regular professional building inspections
- Regular professional termite inspections
- Regular pool safety inspections

If repairs are required, prompt action must be taken by engaging qualified and insured tradespeople appropriate for the works to protect you and your investment.

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