

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCv2021/0187

BETWEEN:

JANELLE BRUNEY

Claimant

And

LYNETTE CHARLES

Defendant

Appearances:

Ms. Siobhan A. Leandro for the Claimant

Ms. Asheen Joseph for the Defendant

2026: March 10; 31.

JUDGMENT

[1] **WILLIAMS, J.:** This claim concerns damages for personal injuries caused by the alleged negligence and/or breach of implied covenants that occurred during an oral tenancy agreement between the parties. At all material times, the Defendant Mrs. Lynette Charles was the owner of premises located at Scott's Hill, St. John's, Antigua. The Claimant Ms. Janelle Bruney was a tenant of the said premises.

[2] In her Statement of Claim filed on 6th May 2021, the Claimant alleges that she entered into an oral tenancy agreement with the Defendant on or about the 29th June 2020. The premises consisted of the downstairs portion of a building at a monthly rental of Nine Hundred Eastern Caribbean Dollars (EC\$900.00). The

Claimant further avers that on 29th July 2020 at about 8 a.m. she stepped out of her bedroom into the adjoining living room area and slipped and fell, sustaining injuries to her head, left knee, right elbow and right shoulder.

- [3] According to the Statement of Claim, after inspecting the premises, the Claimant realized that water from rainfall the night before and into the early morning had seeped into the premises from holes/cracks in the main walls. She immediately reported the issue to the Defendant, who then indicated for the first time that a previous tenant had experienced similar issues.
- [4] The Claimant contends that the pain, injury and loss suffered is due to the Defendant's negligence and/or breach of implied covenants to keep the roof, main walls and main drains in repair and to ensure that the premises were fit for human habitation at the commencement of the tenancy. The particulars of negligence consist of allegations that the Defendant failed to keep the premises in a state of repair which led to injury.
- [5] The Claimant alleges that as a result of the fall she sustained injuries to her head, left knee, right elbow and right shoulder. She further contends that she has suffered severe and debilitating pain, particularly affecting her shoulders, elbows and hands, for which she has undergone and continues to undergo post-operative physiotherapy. It is also alleged that her condition remains ongoing and may require further treatment, including specialised diagnostic studies such as nerve conduction and electromyography testing.

Defence

- [6] By Defence filed on 17th June 2021, the Defendant denied the Claimant's pleaded particulars of negligence and/or breach of implied covenants. The Claimant was also put to strict proof of her particulars of loss and damage. Further, the Defendant contends that the Claimant was responsible for the upkeep and maintenance of the interior of the premises, fair wear and tear excepted.

Reply

- [7] In her Reply filed on 31st July 2022, the Claimant denied any suggestion that she was responsible for the cracks and/or holes to the interior walls of the premises.

She further avers that any issues surrounding the structural integrity of the premises are the sole responsibility of the Defendant.

Trial

- [8] Trial took place on the 10th March, 2026. The Claimant called two witnesses, the Claimant and Ms. Naricca Ballantyne. The Defendant's sole witness was Mr. Ivor Charles, who is the Defendant's husband. Initially, Mr. Ivor Charles was named as a Defendant. However, during case management he was removed as a party on the basis that he was not an owner of the premises and therefore not a proper defendant to the claim. Closing submissions were filed by the parties on 20th March, 2026.

Evidence

The Claimant

- [9] The Claimant's witness statement filed on 25th January 2024, was admitted as her evidence in chief. She testified that after an initial apartment was unavailable, she viewed another unit adjacent to the Defendant's Scotts Hill home. Following discussions, she moved in on 29th June 2020, with a security deposit and first month's rent totaling EC \$1,600.00.
- [10] The Claimant stated that she noticed rotting kitchen cupboards within two weeks of moving in, which the Defendant repaired after she reported it. During cross-examination, she admitted seeing holes and cracks early on but did not mention them to the Defendant, acknowledging the holes were present when she first inspected the property before paying the deposit.
- [11] The Claimant testified that heavy rain associated with a tropical depression began on 28th June 2020 and continued until 29th July 2020. On that day, she woke around 8 a.m., entered her living room and immediately slipped on water covering the floor. She initially did not know what caused her to slip as she had fainted. However, upon recovering consciousness she saw the water. She made a sling for her injured arm and swept the water out of the house. By following ripples, she found a crack at the base of a concrete wall as the source. Under cross-examination, the Claimant admitted she had not previously noticed the crack. She also acknowledged that her submitted photo did not clearly show it.

- [12] The Claimant reported that after notifying the Defendant about flooding, Mr. Ivor Charles (the Defendant's husband) helped her at the premises by sweeping water and cleaning the floor. She said the Defendant mentioned a previous tenant had blocked a drain hole near the main entrance, which would have allowed water to exit through the house if left unblocked. Under cross-examination, the Claimant admitted she lacked details about the prior incident and had no photos of the drain hole.

Ms. Naricca Ballantyne

- [13] Ms. Ballantyne's witness statement filed on 25th January 2024, was accepted as her evidence in chief. She admitted to being a long-time friend of the Claimant. She also admitted that she was not present when the Claimant fell. She also gave details of a meeting she attended between the Claimant and the Defendant in August 2020. At that meeting, the Claimant sought compensation for her injuries, however, no agreement was reached.

Defendant's Evidence

Ivor Charles

- [14] Mr. Ivor Charles submitted a witness statement filed on 23rd February 2024, which was admitted as his evidence in chief. He is the Defendant's husband. His wife, the Defendant, owns the premises along with her mother. In his testimony, he revealed that he would give evidence on behalf of the Defendant as she was suffering from memory loss.
- [15] Mr. Charles stated that he first met the Claimant on 29th July 2020 when his wife asked him to assist at her apartment. He observed the Claimant with her arm in a sling, which appeared to be purchased rather than improvised. The witness further recalled seeing a pool of water on the floor during his visit and assisted in mopping it up, but denied the water caused the Claimant's injuries. He was unaware of cracks or holes in the property's walls. In response to a question from the Court, Mr. Charles indicated that there had been a problem with flooding in 2014. However, the construction of a retaining wall had rectified that issue.

Findings of Fact

- [16] Having considered the totality of the evidence, the Court makes the following findings of fact on a balance of probabilities:

1. The Court finds that the Claimant entered into an oral tenancy agreement with the Defendant on or about 29th June 2020 in respect of the downstairs portion of the Defendant's premises situate at Scott's Hill, St. John's, Antigua. There is some discrepancy as to what rent was actually payable but this is immaterial for the present purposes.
2. The Court accepts the Claimant's evidence that, within a short period after taking occupation, she observed certain defects in the premises, including small holes and cracks in the walls. The Claimant admitted under cross-examination that these defects were present after she entered the premises on 29th June 2020. The Court finds that these defects were visible but considered minor in nature by the Claimant.
3. The Court further finds that the Claimant did not report the existence of these cracks or holes to the Defendant prior to the incident of 29th July 2020.
4. The Court accepts that on the morning of 29th July 2020, following heavy rainfall, water entered the premises and accumulated on the floor of the living room area. The Court accepts the Claimant's evidence that she slipped on that water and sustained injuries.
5. The Court finds that the source of the water ingress was more likely than not through a crack or opening at or near the base of a wall. However, the Court finds that the defect was minor and not readily apparent. The photographic evidence depicts only a small crack which is barely visible.
6. The Court accepts the evidence of Mr. Ivor Charles that he attended the premises after the incident and observed water on the floor. However, the Court rejects his suggestion that the water did not contribute to the Claimant's fall, preferring the Claimant's account on this issue.
7. The Court finds that there had been a prior issue of water ingress in or about 2014 which had been addressed. However, there is insufficient evidence that the Defendant had knowledge of any ongoing defect at the time of the tenancy.

8. The Court accepts that the Claimant sustained injuries as a result of her fall. However, prior to the incident, neither the Defendant nor her agent had actual knowledge of the relevant defect, and the Claimant did not bring the observed cracks to the Defendant's attention.

Discussion/Analysis

- [17] Both the Claimant and the Defendant relied on the following provisions of the **Registered Land Act**.¹ **Section 52(1)(c)** of the **Registered Land Act** provides as follows:

“(1) Save as otherwise expressly provided it shall be an implied covenant in every lease on the part of the lessor-

(a)...

(b)...

(c) to keep the roof, main walls and main drains, and, where part only of the building is leased, the common passages and common installations, in repair.”

- [18] **Section 54** of the same Act further provides:

“Where an agreement is contained or implied in any lease to keep a building or a particular part of a building in repair”, it shall, in the absence of an express provision to the contrary, mean in such state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building at the commencement of the lease:

“Provided that there shall not be read into such an agreement an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.”

- [19] Both parties are correct to rely on these provisions. It is common ground that the parties entered into an oral tenancy. Accordingly, in the absence of an express covenant to repair, the above-quoted statutory provisions are applicable.

¹ Revised Laws of Antigua and Barbuda (Cap. 374)

[20] The Court accepts on a balance of probabilities that water entered through the walls of the house and accumulated on the floor. This leads to a reasonable inference that the premises were not in a state of repair. The Claimant admits observing small cracks and holes in the walls in the two weeks preceding the accident. However, she did not mention these to the landlord. At trial the Claimant also showed a photograph of a crack in the wall where she says the water came from. The photograph shows a very small crack which is barely visible. Mr. Ivor Charles admitted that there had been flooding of the premises in 2014 (about six years prior to the accident) but stated that the flooding had been addressed by the construction of a retaining wall. There is no evidence that he or the Defendant had prior knowledge of the cracks and holes in the walls.

[21] The Court accepts that a landlord may be liable for personal injuries suffered by a tenant due to failure to keep the premises in repair as required by **section 52(1)(c)** and **section 54** of the **Registered Land Act**. However, if the alleged disrepair is not patent, the landlord's obligation is ordinarily engaged only upon notice, whether actual or constructive. Accordingly, liability will generally arise only where the landlord knew, or ought reasonably to have known, of the defect and failed within a reasonable time to take steps to remedy it.

[22] In **O'Brien v Robinson**² the tenants of premises were injured when the ceiling of their bedroom fell on them. The fall was caused by a defect of which both parties were unaware. The tenants sued, contending that the landlord was in breach of the implied statutory covenant to keep the premises in repair. The House of Lords held that landlord's obligation to carry out any works to repair the premises did not arise until he had notice of the defect as would put a reasonable man on enquiry that repairs were needed. After considering the relevant authorities, Lord Diplock stated as follows:

“..... I think you are compelled to hold that this appeal must fail unless the tenant can show that before the ceiling fell the landlord had information about the existence of a defect in the ceiling such as would put him on enquiry whether works of repair to it were needed.”³

[23] The UK Supreme Court more recently came to the same conclusion in the case of **Edwards v. Kumarsamy**.⁴ In that case a subtenant was taking rubbish from his

² [1973] 1 All ER 584

³ [1973] 1 All ER 584, 593

⁴ [2017] 2 All ER 624

apartment to communal dustbins, when he tripped on an uneven paving stone and suffered injury. He commenced proceedings against the head lessee contending that his injury was caused by the head lessee's failure to keep the paved area in repair, in breach of the covenants implied by the **Housing Act 1985 (UK)**.

- [24] The Supreme Court upheld the finding that the head lessee would have had no knowledge of the uneven paving stone. Lord Neuberger giving the lead judgment stated as follows:

"[46] I agree with Lewison LJ that this submission must be rejected. It is clear from *Morgan, McCarrick* and *O'Brien* that the repairing covenant implied by s 11 is to be interpreted and applied in precisely the same way as a landlord's contractual repairing covenant. As I have sought to explain, the rule in relation to such covenants is that, until he has notice of disrepair, a landlord should not normally be liable for disrepair of property in so far as it is in the possession of the tenant. I can see no basis as a matter of principle for departing from the rule when it comes to covenants implied by s 11, which is what Dowding and Reynolds suggest. And, as a matter of practicality, once one departs from the clear rule, there is a real risk of uncertainty and confusion—for instance, it could be difficult to resolve whether, on particular facts, it is more likely that the tenant or the landlord should have noticed the disrepair."⁵

- [25] The Court has already found it more likely than not that the Defendant was unaware of the defect in the wall which led to water entering the premises. The Claimant has also admitted seeing the cracks and holes in the premises but did not bring the matter to the Defendant's attention. Further, the crack exhibited by the Claimant's photograph was not sufficiently apparent to have put the Defendant on enquiry that repairs were required.

- [26] Accordingly, despite the Court having much sympathy for the Claimant due to her injuries, her claim against the Defendant must be dismissed. The relevant authorities are clear that in order to be liable for the Claimant's injuries, the Defendant must have had actual or constructive knowledge of the defect in the premises. The difficulty for the Claimant is not the occurrence of the accident, nor the fact of injury. It is the absence of proof that, before the accident, the Defendant

⁵ [2017] 2 All ER 624,638

knew or ought reasonably to have known of the relevant defect so as to trigger liability under the implied covenant to repair or in negligence.

Costs

[27] The Defendant is entitled to prescribed costs pursuant to **CPR Rule 65.5(2)(d)**. This being a claim with no stated value, the default value of \$50,000.00 will be used as the value of the claim leading to costs of \$10,000.00. However, pursuant to **CPR Rule 64.6(3)(c)** this will be reduced to \$5,000.00, as trial proceeded substantially on liability.

Order

[28] The Court therefore orders as follows:

1. The claim is dismissed.
2. Costs of \$5,000.00 to the Defendant.

Rene Williams

High Court Judge

By The Court

Registrar