

TENANT NOT LIABLE FOR DAMAGE CAUSED BY SUB-TENANT

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A recent decision of the Court of Appeal has found that a tenant was not liable to a landlord for damage caused by a sub-tenant (*Alamdo Holdings Pty Ltd v Australian Window Furnishing (NSW) Pty Ltd*).

The case is quite interesting for commercial landlords. The lease between the landlord and the tenant provided that the tenant was not liable for any structural maintenance, replacement or repair unless it had been caused by an “act or omission or default” on the part of the tenant. In this case, the damage had been caused by the sub-tenant and the landlord had given consent to that arrangement.

The Court held that where a tenant parts with possession of land to a sub-tenant the subsequent activities of the sub-tenant cannot be regarded as a use of the premises by the tenant.

We are updating our lease documents to reflect this and other changes in the law.

