

## ARE WINDOWS WALLS?

Are windows part of the main walls of a house? The Court of Appeal in England decided in *Holiday Fellowship, Ltd. v. Hereford* [1959] 1 W.L.R. 211, [1959] 1 All E.R. 433, that the question was one of fact and not one of law.

In the above case the tenant covenanted in a lease "To maintain and keep the demised buildings and the said fixtures and fittings therein (except the roofs and main walls of the said dwelling-house)...in good repair and condition." Complementary to this the landlord covenanted in the lease "To keep the main walls roofs...in good repair and condition." The tenant sought a declaration that the landlord was liable to paint and repair the main walls (including the windows and window panes) of the demised premises.

The Court of Appeal held that the question as to whether or not windows formed part of the main walls of a building was a question of fact or degree and not a question of law. The Master of Rolls considered the following sentence appearing in Woodfall on *Landlord and Tenant*, 25th ed., p. 760, "It would appear that windows in the outer walls of a building are themselves to be regarded as part of the walls and therefore of the external parts" to be an overstatement or over-simplification of the matter. He said, "It would be correct to say: 'It would appear that windows in the outer walls of a building may, in certain contexts and for certain purposes, be regarded as part of the walls.'" Where, however, the walls are built so much of glass for the purpose of letting in light it may be impossible to say whether they are walls or windows.

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