

Landlord Fact Sheet 2

Repairing Obligations and Gas Servicing

Repairing Obligation

A landlord is obliged by virtue of the Landlord and Tenant Act 1985 to keep the structure and exterior of a dwellinghouse in repair, together with any installations for the heating of space and water.

This obligation is implied into all tenancy agreements whether in writing or oral, and cannot be contracted out of. In addition, the tenancy agreement may impose further obligations on the Landlord.

Gas Servicing obligations

Under the 1998 Gas Safety (Installation and Use) Regulations Landlords must ensure that any gas appliance and any flue that serves that appliance is maintained in a safe condition.

When does a Landlord become liable for repairs?

When there is an “actionable disrepair”

An actionable disrepair would not include any improvements, or items such as condensation caused by imbalance between heating, ventilation and insulation. Likewise items such as fences, sheds and pathways not leading directly to the access doors to the property may not be included.

If the disrepair has been caused by tenant neglect or default the Landlord would not be responsible for attending to it.

Responsible landlords who monitor the condition of their properties will want to ensure that any disrepair is attended to at the earliest opportunity, and the tenant recharged under the terms of the agreement.

When the Landlord has been put on notice of the disrepair

A Landlord cannot attend to a repair or be held responsible for failing to attend to it, unless s/he has had notice of it. The tenant must be able to establish that either by oral notice in person or telephone, or in writing, that the repair was communicated to the Landlord. The exception to this rule is where the disrepair can be seen from outside the property, in which case the Landlord will be deemed to have had notice of it.

How quickly should the repairs be done?

The law requires that repairs should be carried out within a reasonable time of receiving notice. What is reasonable will depend on the type and severity of the repair.

Action a tenant can take

Inform Environmental Health

The Local Authority have a duty to investigate properties in such a state so as to be prejudicial to health, which can include matters which go wider than disrepair, such as infestation or condensation, and can serve a Notice outlining remedial action the Landlord can take. Failure to address the situation can result in the Landlord being prosecuted in the Magistrates Court, a fine and an order to carry out works.

Take Court Proceedings

A tenant can take Court action against the Landlord for compensation for breach of contract, and/or an Order for works to be carried out.

Failure to carry out an actionable repair that the Landlord has had notice of within a reasonable time can expose the Landlord to risk of a civil action for damages, and for injunctive orders to carry out any repairs still in existence.

To establish a claim, a Tenant must:

- Prove that there is an “actionable disrepair”
- Prove that the Landlord has been put on notice of the disrepair
- Show that the Landlord has not completed the repairs within a reasonable time

In many cases expert opinion is required as to whether an item is a disrepair, what caused it, and what remedial action would be necessary to correct it. Current court guidance much prefers a “joint expert” to be used, to try to restrict the costs of both parties, and to avoid the need for excessive technical argument.

Since December of 2003, a “Pre Action Protocol” must be followed before proceedings are issued.

The Protocol encourages the early exchange of information, so that the Landlord is told of the strength of the case against him, but is in turn compelled to provide the tenant with written records s/he retains in relation to the tenancy, which would include details of complaints received, repair records, rent account, tenancy agreement etc.

The Protocol will ensure that this information is provided quickly (within 20 days of the request).

Legal Costs

A tenant's claim may be funded by the Legal Services Commission, with a Public Funding Certificate (formerly Legal Aid certificate) or by a Conditional Fee Agreement (also known as "no win no fee").

If it is the former, then the Landlord needs to be aware that even if the claim proves to be without merit, the Tenant is "shielded" against having to pay the Landlord's costs.

A Landlord should also be aware that if the Tenant is successful, then the Landlord is likely to be paying compensation to the tenant, together with his legal costs, on top of the Landlord's own costs.

Because of the nature of disrepair litigation, costs can be high. This is due to the expert evidence required, and the often complex nature of the factual evidence which may relate to different items of disrepair over a long period of time.

Early resolution of disrepair claims is for obvious reasons desirable.

What can the Tenant claim for?

General damages – Awarded for the inconvenience and discomfort of putting up with the disrepair, general damages can be either based upon a reduction in the value of the property to the tenant (for example calculated at 25% of the level of rent over the period of the disrepair suffered) or as a global amount, which not uncommonly can run at £1500 to £2500 per year for a moderate case of disrepair

Special damages – Awarded for any losses that the tenant can quantify, whether for furnishings, clothing or effects damaged as a result of the disrepair, or other expenses such as increased fuel bills, travel expenses etc.

Damages for Personal Injuries – any personal injury suffered by the tenant as a result of disrepair or some other defect in the premises.

Landlords should always check their insurance cover to see if any aspect of the Tenant's claim is covered, or whether legal expenses may be met. Insurance companies tend to have panel solicitors that they will direct their insureds to, but it is usually open to the individual to appoint the solicitor of his or her choice, to ensure they receive a local and personal service.

Gas Servicing

If your property has any gas appliances you are required to instruct a Corgi registered gas fitter to undertake a gas safety check of that appliance and any flue that serves it every 12 months.

A copy of the gas safety certificate should be given to the tenant.

You will be committing a criminal offence if the gas safety inspection does not take place on or before expiry of 12 months since the last gas safety inspection.

Managing Agents

You may employ a managing agent to look after your property. If the managing agent does not arrange the gas safety check as required by the regulation then the managing agent may be prosecuted. The Landlord will still however remain responsible and would still be prosecuted.

Non Co-operation by the Tenant

Failure of the tenant to allow the Landlord access is not a defence to a criminal prosecution. If the tenant does not keep appointments you will need to bring legal proceedings for an injunction to compel the tenant to allow access and possession proceedings if appropriate.