

Registered Social Landlord Fact Sheet 3

Disrepair and Claims by Tenants

Repairing Obligations

An RSL is obliged by virtue of Section 11 of the Landlord and Tenant Act 1985 to keep the structure and exterior of a dwelling house in repair, together with any installations for the heating of space and water.

This obligation is implied into all tenancy agreements whether or not in writing and cannot be contracted out of. In addition, your tenancy agreement may impose further obligations on you that go beyond the statutory provisions.

An RSL will also have a duty under Section 4 of the Defective Premises Act 1972 to take reasonable care to see persons are safe from personal injury or damage to property.

When does an RSL 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. You should however check your tenancy agreement in case you have included these items.

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

An RSL will normally have systems in place to monitor the condition of their properties and will want to ensure that any disrepair is attended to at the earliest opportunity, and the tenant recharged under the terms of the agreement if necessary.

When you have been put on notice of the disrepair

An RSL 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 Association. The exception to this rule is where the disrepair can be seen from outside the property, in which case you 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 you must take. Failure to address the situation could result in the Association being prosecuted in the Magistrates Court, fined and ordered to carry out works.

Take Court Proceedings

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

To establish a claim, a Tenant must:

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

What can a tenant claim

- General damages for discomfort and inconvenience
- Damages for Personal Injury
- Special damages for financial losses

Housing Disrepair Pre Action Protocol

Since December of 2003, a “Pre Action Protocol” must be followed when a tenant intends to bring a claim for compensation and /or seek an order for work to be done under the terms of the tenancy agreement.

The Protocol aims to encourage:

- The early exchange of information, so that the Association is told of the strength of the case against him, but is in turn compelled to provide the tenant with the written records they 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).
- Weed out bad claims and encourage the settlement of strong claims without lengthy and costly litigation.

The Protocol does not cover counterclaims for disrepair within possession proceedings or actions in the Magistrates Court under the Environmental Protection Act (statutory nuisance).

What are the main features

The tenant must send a letter of claim to the Association setting out:

- How the claim is being funded
- What the elements of the claim are
- What losses the tenant has suffered
- The tenant's proposals for instructing an expert

The letter will also request

- Disclosure of relevant documents in your possession eg tenancy file, repair records and inspection reports.
- An admission of liability
- Proposals for settlement
- The Associations views on an expert to inspect the property.
- Proposals and timescale for doing repair works

The protocol only allows you 20 working days to

- provide the file/documentation
- agree or object to the proposed expert and/or
- propose a scheme of works

If you do not respond within the 20 working days to the proposal for an expert the tenant can instruct his/her suggested expert to inspect and prepare a report on the property that will be the only expert evidence that can be used in the case, unless the court allows otherwise.

Once the letter of claim has been sent, and either 20 working days have gone by, or there has been a negative response from the landlord, the tenant can issue proceedings.

Where the tenant needs to instruct an expert straight away to preserve evidence or because the matter is particularly urgent, s/he can do so without following the protocol steps in relation to an expert, but s/he does so at the risk of the Court penalising him/her later on in the case.

Practice Issues to consider

House file - check if there has been notification of disrepair either direct or indirection ie via surveyor having visited the property. If there has not been notice of disrepair then reply and confirm that this is the case. Keep up to date repair records

No access - has the tenant refused access or missed appointments.

More time - ask for more time if you cannot reply within 20 working days.

Arrears -check if the tenant is in rent arrears. Inform the tenants solicitor that arrears exist.

Suspended Possession Orders – check to see if the tenant is under a suspended possession order. If the SPO has been breached the tenant becomes a “tolerated trespasser” and you do not have a repairing obligation.

Surveyor – do not necessarily agree a Single Joint Expert. Immediately get your surveyor in and prepare a schedule of works then get the works done. Getting the work done may take the claim out of the fast track and into the small claims track if the case concerns damages of less than £5,000. You should advise the other side to give your surveyor an opportunity to get into the property and for works to be undertaken before they instruct an Expert. Your surveyor should look at all the disrepair carefully. Some disrepair may have arisen as a result of damage or neglect by the tenant. If this is the case you could negotiate to settle the claim by referring to the tenants damage.

Costs – if you settle the case using the protocol costs recovered by the tenant are listed as ‘reasonable’. If the case is settled within the small claims procedure costs are limited to £200 expert fees and £260 legal costs.

Scott Schedule – if you are presented with a Scott Schedule (schedule of alleged disrepair), then go through each points and consider if each are ‘actionable disrepairs’ ie fall within the landlords repairing obligations. Some items may be issues relating to condensation and thus not disrepair, also beware of requests for improvements and not simply repair.

Damages Claims - just because there is or has been disrepair per say it doesn’t mean that a tenant can claim damages. For damages to be relevant the disrepair must have caused the tenant discomfort /inconvenience.

Other options – part 4.1 of the Protocol states that ‘other options should be considered before using the Protocol’. You should ask why the tenant has not used your complaints procedure and the Ombudsman.