

## **Tenant Fact Sheet 2**

### **Disrepair in your Home**

#### **What are your rights**

A landlord is obliged by virtue of the Landlord and Tenant Act 1985 to carry out repairs to your home including keeping the structure and exterior of your home 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 whether the agreement specifically refers to repairs or not. A Landlord cannot contract out of his obligation by asking you to sign a tenancy agreement that does not mention repairs. As well as the legal obligation the tenancy agreement may impose further obligations on the Landlord.

#### ***Gas Servicing obligations***

Under the 1988 Gas Safety (Installation and Use) Regulations Landlords must ensure that any gas appliance in your home and any flue that serves that appliance is maintained in a safe condition.

#### **What repairs are covered**

The statutory duty is to keep in repair the:

- Structure and exterior of the dwelling house (including drains gutters and external pipes)
- Installations for the supply of water, gas, electricity and sanitation (baths, sinks etc)
- Installations for space heating and water heating

#### **What is a repair**

*A landlord is only responsible for an actionable repair.*

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 your neglect or default the Landlord would not be responsible for attending to it. A landlord may choose to do a repair that arises as a result of your neglect and recharge you under the terms of the agreement. If you dispute your responsibility you should seek advice.

## **Standard of Repair**

In determining the appropriate standard of repair the law says that regard should be had to the age, character and locality of the property. For example patch repairs to a window may be acceptable unless installation of a new window would be the only effective means of repairing the defect.

## **When does the landlord become liable**

*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. You 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.

You should always try to keep a record of when you report repairs. If your landlord provides you with a "repair receipt" keep this in a safe place.

## **How quickly should 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**

*Negotiate with the Landlord*

You may be able to negotiate with your Landlord to carry out repairs by reminding him that he has a legal obligation. Early resolution of disrepair problems is clearly preferable.

*Inform Environmental Health*

Private tenants can contact the Council's Environmental Health Department for help. The Council has 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 must take. Failure to address the situation could result in the Landlord being prosecuted in the Magistrates Court, fined and ordered to carry out works.

*Formal Complaint*

Tenants of Local Authorities or Housing Associations should consider making a formal complaint under the organisations Complaints Procedure. Before taking legal proceedings

the courts now expect tenants to pursue a formal complaint and will require an explanation if this avenue is not used.

### *Take Court Action - protocol*

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
- Demonstrate that the disrepair has caused inconvenience/discomfort

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).

### **What can a 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. If you wish to make a claim for Special Damages you will need to keep receipts and invoices for expenses.

### *Damages for Personal Injuries*

Any personal injury suffered by the tenant as a result of disrepair or some other defect in the premises.

### **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").

Please refer to our Fact Sheet covering Legal Aid.

### **Gas Servicing**

If your property has any gas appliances your Landlord is 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 you.

Your Landlord 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.

You should allow your Landlord access to carry out the gas safety check. It is clearly in the interests of your own safety and that of your family that the gas appliances are checked regularly. If you do not allow access or keep appointments your Landlord can bring legal proceedings for an injunction to compel you to allow access and possession proceedings for breach of your tenancy agreement.