

Disrepair

Housing Review Board
17th September 2020

Introduction

- ❑ **Why disrepair?**
- ❑ **Definition of disrepair-s11 Landlord and Tenant Act 1985**
- ❑ **Pre-action protocol**
- ❑ **Defences**
- ❑ **Access**
- ❑ **Avoiding disrepair claims**
- ❑ **Homes (Fitness for habitation) Act 2018**



Disrepair-Why now?

- End of Personal Injury Fixed costs
- End of Payment Protection Insurance (PPI) claims
- Grenfell Tower
- New legislation from 2018



S 11 Landlord and Tenant Act 1985

- **Section 11 of the Landlord and Tenant Act 1985 implies an absolute and non-excludable obligation upon landlords to carry out basic repairs**
- Keep in repair
- Dwelling house
- Installations in the dwelling house
- Structure and exterior



Picture 1





Picture 2



Picture 3



Picture 4





Picture 5





Picture 6



Picture 7



Picture 8



Picture 9





How does EDDC know about disrepair?

- A good tenant reports disrepair!
- Through our officers and contractors
- Letter from a solicitor
 - Letter of claim-setting out internal disrepair seeking compensation, special damages, legal costs £££ £££ £££



Liability for disrepair

- Landlord cannot be liable unless they have been given notice of the defect(s) (internal)
- Requirement for notice does not apply to the common parts and exterior of the building
- NB s4 Defective Premises Act 1972-covers the communal areas of blocks of flats
 - Duty to “take such care that is reasonable in all circumstances”



Condensation & Mould

- No claim for pure condensation if due to tenant's lifestyle.
- However, if structural defect is causing condensation then it falls within the landlord's obligations
- Tenants must use the heating properly
- No obligation to install or improve a heating system
- The same applies to insulation and ventilation
- However, if Landlord removes heating then he will be responsible for impact and it must be replaced.



The Disrepair Claim-Legal Framework

- Pre-action Protocol-Housing Disrepair
 - Letter of claim
 - Instruct an Expert
 - Issue proceedings (Claim & Particulars)
- Contested trial
 - DEFENCE, Allocation, Case Management Conference
 - Trial
- Settlement Part 36 Offer Civil Procedure Rules OR
- Calderbank Letter- Repairs under £1000



Disrepair within Rent Arrears proceedings- Counterclaims

- Tactic used to off-set compensation against **rent arrears** removing ground for possession
- Beware of low rent arrears possession claims where condition of property is questioned
- If Counterclaim is raised you **MUST** respond by filing and serving a Reply to Defence and Defence to Counterclaim



Defence and Mitigation

- Defects not within s11 L&T 1985
- No notice given by tenant
- Repairs carried out within reasonable time
 - Depends on nature of the repair
- The tenant caused the problem
- **Limitation period**-date of last claim



Defence and Mitigation

- Regard to age, character and locality of premises
- Tenant must use premises in a tenant like manner eg failure to keep dwelling warm
- Failure/refusal to allow access
 - Tenant's failure to mitigate their loss
- Failure to do minor repairs



Access for Landlord to survey

- Written request for access within 14 days of letter of claim.
- Letter before action-reference for disrepair.
- Apply for an Injunction.
- Bring possession proceedings (last resort).



What do we know about our Tenant?

- Equality Act 2010
 - Protected characteristics?
- Mental Capacity Act 2005
 - Do they have capacity to make the claim?
- Rent Arrears?
- Breaches of tenancy?
 - eg Have they entered roof space?

- Stock Condition Survey every 5 years-Know your stock!
- Every officer is a Repairs officer-Ask if there are issues in the property- Rent, Estates Management, MSOs etc,
- Educate your contractors gas and repairs- eyes and ears. They probably have more access than we do! Get feedback!

- Monitor contractors performance=KPIs
- Deal with access issues and liaise with appropriate officers concerning gas safety access-Injunction if necessary
- Check Voids - Inspect all works carried out, ensure “snagging lists” are completed and signed off.
- Consider photographs of each property at sign-up, mutual exchange- eg boiler lights, window surrounds, ceilings

- Difference between Interior and Exterior
- Exterior-Disrepair-the Council is “on notice”- visible from the curtilage. We have Estates Management Officers, MSOs, Contractors and Agents attending on our behalf
- Interior- **Must obtain permission** to view allegations- “breach of covenant of quiet enjoyment” **or Injunction**

- Good communication within the service
- Ensure easy access to repairs records- must be up to date and clear. Detail!!!!!!
- Deal with issues expeditiously- within 5 working days.
- Disrepair claims take priority-delay leads to costs!



Our Response-Dos and Don'ts

- ❑ **DO NOT** ignore notice/warning letters
- ❑ **DO** diarise the dates by which you are expected to respond to warning letters
- ❑ **DO NOT** assume that the defects amount to statutory disrepair
- ❑ **DO** inspect the property as soon as possible
- ❑ **DO** carry out works that will resolve the disrepair/abate any statutory nuisance
- ❑ **Document** advice given to tenant.



Our Response-Dos and Don'ts

- **Do** keep detailed records
- **Do** liaise with Legal Services-early instructions
- **Do** access the property at the earliest opportunity. Prepare an internal Housing Surveyor's report-Cost Repairs early-
- **Do** prepare a Scott Schedule
- **Do** question assertions and assumptions made by Claimant's Expert Witness.



Homes (Fitness for Human Habitation) Act 2018

Now fully in force!




Landlord's obligations

“The dwelling must be fit for human habitation at the start of and for the duration of the tenancy.”

New s9A implied covenant dwelling is fit for human habitation-can't contract out.

Updates and extends LL's obligations under s11 of L&T1985.



S10 H(FHH) Act 2018

- Factors when assessing whether a claim is fit for human habitation pursuant to section 10 L&T 1985 Act. The salient (not exhaustive) points are:
 - Repair
 - Stability
 - Whether damp is present (NB Cavity wall insulation, any condensation)

- Internal arrangement-occupation-use of living accommodation
- Natural lighting
- Ventilation
- Water supply
- Drainage/sanitary conveniences



S10 H(FHH) Act 2018 contd

- Facilities for food prep, disposal of waste water
- England- Housing Act 2004 Health & Safety Regs (HHSR)-prescribed hazards

- Gives T a 'cause of action' if home/building contains a hazard which presents a risk to their health or wellbeing at start of and throughout the life of the tenancy.



Conclusion

- Potential floodgates for legal claims
- No current case law-lawyers will want to test this!
- Assess the risk
- Policy, Procedure, Process