

LAWPACK



PROPERTY SERIES

# RENTING

THE ESSENTIAL GUIDE  
TO TENANTS' RIGHTS



All you need to know about  
property lettings from a  
tenant's point of view

Tessa Shepperson

This is an excerpt from Lawpack's book *Renting: The Essential Landlord's Guide to Tenants' Rights*.

To find out more about tenancy law, tenants' rights and how you and your properties are protected by the law, [click here](#).

Renting: The Essential Guide to Tenants' Rights  
by Tessa Shepperson

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For convenience (and for no other reason) 'him', 'he' and 'his' have been used throughout and should be read to include 'her', 'she' and 'her'.

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# **Rights regarding the condition of the property, repairs and safety**

Your right to have your property kept in good repair is a very important right. It may be the reason why many of you have bought this book. However, unfortunately, this is a very complex area of law. If you have not already done so, I would suggest that you read first the background chapter on the legal system in England and Wales in Part 1, in particular the information on civil law, as this will help you understand the law relating to property repairs.

The main reason why this area of law is so complex is that there are so many different types of law and legal rights involved. Some rights come from the common law and others from statute. Some of these are rights (either contractual or non-contractual) that allow the tenant to sue the landlord direct, and others are repairing and other obligations which come under the criminal law system where the landlord can be prosecuted by the local authority (or some other public body). There are different considerations, procedures and often remedies associated with each of these. Finally, there are some circumstances where the landlord will have a claim against the tenant, if the tenant has not complied with his obligations under the tenancy, and the condition of the property has deteriorated as a result, and this is looked at briefly at the end of this chapter.

Probably the clearest way to set things out is to look at the different individual areas of law involved, which is what I have done below. However, usually any one problem will come within several of these areas, and you will have to choose which of a number of possible courses of action to follow. For this reason, particularly for serious problems, it is important to obtain specialist legal help before any formal steps are taken, as your advisor can help you make the right decision on to the course of action you should take.

#### Note on terminology

**Disrepair:** This is where a property is in a poor state of repair. It is generally used in the context of a tenant claiming against his landlord for breach of the landlord's legal obligations to keep the property in repair.

**Dilapidations:** This is where a landlord claims against the tenant where the condition of the property at the end of the tenancy cannot be justified under the 'fair wear and tear' rule (discussed in Chapter 7) and the tenant is therefore in breach of his obligations under his tenancy.

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## Rights under contract

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If you are a tenant, there will be a tenancy agreement. Either this will be a written document or you will have an 'oral' tenancy, where there is no documentation. In both cases, repairing obligations either will be express terms (i.e. specifically mentioned) in your tenancy agreement, or will be implied into the tenancy by either the common law or statute.

#### Note

Your landlord's repairing obligations are not conditional upon your paying rent and your landlord will be expected to keep the property in repair even if you are in serious arrears. However, bear in mind that if your landlord has not been receiving rent, it may be difficult for him to pay for the repair work to be done.

## Rights at the start of the tenancy

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Under common law, for furnished properties, there is an implied term that the property is fit for habitation on the day the letting starts. This will include things that were wrong with the property at the time you moved in but which you did not find out about for a while. The property will be considered unfit if it:

- is infested with bugs;
- has defective drainage or sewerage systems;
- is infected;
- has a lack of safety; or
- has an insufficient water supply.

The property will also be considered unfit if it fails to comply with the statutory definition of fitness. For properties let before 6 April 2006, this was set out in Section 604 of the Housing Act 1985. For properties let after that date, the relevant law is that found in Part 1 of the Housing Act 2004, which set up the Housing Health and Safety Rating System (see page 153).

Note that any contract terms which seek to exclude this right (e.g. a clause purporting to confirm that you have checked the condition of the property and are satisfied that it is in good condition before you have moved in) will normally be void.

Unfortunately, this right only applies to furnished properties and not to unfurnished properties.

### Remedies

If you move into a property and find that it is not fit, you are entitled to move out immediately and you will not be liable for rent. However, it is important that you leave before paying any rent as payment of rent will be considered an acceptance of the condition of the property. So if rent is paid weekly, you should leave during the first seven days. If you have paid rent in advance of moving in, then it is arguable that this should not be deemed to be an acceptance of the unfitness if you had not had an opportunity to discover the problems.

If you have lost the right to move out, you will still be able to claim compensation for breach of contract. For further information on this, see the section on enforcement in Chapter 3.

## Obligations of the landlord under the tenancy agreement

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### The statutory repairing covenants

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These come under Section 11 of the Landlord and Tenant Act 1985, which inserts obligations or 'covenants' into all tenancy agreements for tenancies for a term of less than seven years. Section 11 is very important and is the basis of tenants' rights against their landlord as regards repairs. Under this section the landlord is responsible for keeping in repair the structure and exterior of the property; and the installations for the supply of water, gas, electricity, sanitation, space heating and heating water.

### Repair work to the structure and exterior of the property

Note that the work must be 'repair'. You will not be able to force the landlord to rectify what might be a design fault in the building, or to improve it. Generally, 'structure and exterior' includes:

- A partition wall between your property and another house or flat.
- The path and steps leading to a house (but not the paving of the backyard).
- The roof of a house, including any skylights and the chimney.
- The walls, together with any cement rendering.
- Any external joinery (and failure to paint this so as to protect it from rot will be covered).
- Windows.
- The outside walls and the outside of inner party walls of flats. Also, the outer side of any horizontal divisions between flats, which can include the roof, if appropriate.

## Installations for the supply of gas, electricity, water, sanitation, heating and hot water

This will include water and gas pipes (including guttering), electrical wiring, water tanks, boilers, radiators and other space heating installations (e.g. vents for underfloor heating).

### When does Section 11 apply?

Section 11 applies to all tenancies of residential accommodation which started after 24 October 1961 and where the term is for a period of seven years or less. This means the fixed term specified in the tenancy agreement. Many tenancies last for far longer than seven years, but they are still protected by Section 11 as they either have a succession of short fixed terms (such as six months or a year) or they run on from week-to-week or month-to-month after a fixed term has finished.

For all tenancies where the section applies, the provisions of Section 11 will form part of the tenancy agreement, whether or not this is actually mentioned in the written tenancy document. If the provisions of the section are not mentioned in the document, it will be an implied term.

A landlord is not allowed to exclude the provisions of the section unless he has obtained a court order permitting this (which is very rarely done), so any contract term which tries to pass responsibility for the repairing obligations set out in Section 11 over to the tenant, or which tries to reduce the landlord's obligations in any way (e.g. by requiring the tenant to notify the landlord of any repairs needed within a strict time limit) will be void.

#### Note

One of the confusing things so far as tenants are concerned is that tenancy agreements will frequently contain no details of these important rights, so tenants are often unaware of them. The Law Commission has recommended reforming the law to make it a requirement that all landlords provide a written tenancy agreement which will have to include prescribed terms, including details of the landlord's repairing obligations under Section 11. However, at the time of writing this book, there is no indication when or if this will become law.

## Some further comments on Section 11

- It has been said in case law that the landlord should be required to put the premises into repair if it was not in good repair at the start of the tenancy.
- Installations should be in working order at the start of the tenancy.
- The landlord must keep the property and installations in repair throughout the tenancy.
- The requirement under Section 11 is regarding 'repairs' – a tenant cannot require a landlord to make improvements. In some cases it will be difficult to say whether any particular work is repair, improvement, maintenance or renewal. If there is a dispute and no agreement can be reached, then ultimately this will be something for a court to decide. There is a lot of case law on this.
- The Act also specifies that when deciding the standard of repair, the age, character and prospective life of the property and the locality in which it is situated must be taken into account. This means that a tenant cannot expect a property to be put into a perfect condition, unless possibly it is a very expensive letting in an upmarket part of town. For most properties, the landlord will just have to do repairs to a standard that would make the property fit for occupation.
- The landlord is not obliged by the Act to rebuild a property which has been destroyed by fire, flood or inevitable accident.
- The section will not apply to any property of the tenant.
- The landlord cannot be forced to carry out repairs if the damage has been caused by the tenant himself and if he does the repairs, he can claim the reasonable cost of them back from the tenant (e.g. by deducting them from the damage deposit).
- For tenancies which started after 15 January 1989, Section 11 also extends to installations which service the tenant's property, but which are located outside it, so long as the landlord owns or has control of the installation. An example of this is where a landlord owns a building with several flats with central heating and the boiler which services them all is kept separately in the basement (and the basement is not included in any of the lets).

- If a landlord needs to gain access to another property to get repairs done, but is unable to obtain permission to do this, then this will give him a defence to any claim by the tenant. So, if the boiler mentioned above is located in one of the flats and the occupier of that flat will not let the landlord in to repair it, the landlord will have a defence.
- The landlord will not be liable under Section 11 until he has received notice of the disrepair. It is best to give notice in writing by way of a letter, making sure that the letter is dated and that you have kept a copy.
- Where a landlord is bound by Section 11, he will also have a right to enter the property to inspect it at reasonable times, after giving not less than 24 hours' notice.

**Note**

If the landlord's suggested inspection time is inconvenient for you, there is no reason why you should not object, and ask him to arrange another appointment. However, you should not refuse to allow the landlord in at all. If you do this, you may lose your right to claim compensation (as it will be your fault that repairs were not identified and carried out) plus if the property deteriorates because essential repairs are not done, the landlord may be entitled to claim compensation from you.

## The common parts of properties

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Many tenancies involve the tenant using or needing to use property which is shared with other tenants or occupiers (e.g. halls, passageways and paths, stairways and lifts, and shared accommodation). If there are no specific 'express' terms regarding these areas, the following terms will be implied into the tenancy agreement:

- They must be maintained by the landlord so as to prevent injury to the tenant or to the property let to him (e.g. preventing dampness getting into a flat).
- If a tenant is given a contractual right to use another part of the building, not included in the property rented to him (e.g. a shared

toilet or kitchen area), then the landlord must maintain that area.

- The landlord must maintain facilities which are necessary for the tenant's use of the property, such as lifts and rubbish chutes.
- If there is disrepair, this may breach the tenant's right to 'quiet enjoyment' (for more information, see Chapter 13). An example of this is if a landlord fails to keep a property watertight and the tenant's property becomes damaged.
- The parts of the property retained by the landlord must not interfere with the tenant's property.
- For tenancies which started after 15 January 1989, the provisions in Section 11 discussed above apply also to installations which affect the tenant's property but are located outside of it, if they are under the landlord's control.

As the common parts of the property are within the landlord's control, the landlord is obliged to carry out any repairs, whether or not he has been informed of them by the tenant (unlike repairs to the tenant's property, where the landlord is only liable after the tenant has given him notice). However, you should still give notice to your landlord of any necessary repairs, and keep a copy of your letter in the normal way.

If there are any 'express terms' in your tenancy agreement regarding any of the matters discussed above in connection with Section 11, note that if your landlord tries to take away any of your rights, those terms in your agreement will be void. They will only be valid if they state accurately what the law is, or if they give you greater rights.

## **Additional obligations under the tenancy agreement**

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If the work that needs to be done is not covered by the sections discussed earlier, then take a look at your tenancy agreement. Sometimes the tenancy will make the landlord responsible for matters over and above the repairing obligations prescribed by law; for example, it may say that he will be responsible for the maintenance of the kitchen 'white goods' (e.g. fridges and washing machines) or the garden. Note that there are many small items which some landlords may routinely deal with but which they

will not be strictly liable for, such as fixing floor coverings and redecoration. Unless your tenancy agreement provides for these you will not be able to force your landlord to deal with them if he chooses not to.

### **Remedies**

The rights discussed here all relate to the tenant's contract with his landlord, so the various remedies appropriate to contractual claims (discussed in Part 1) can be used, such as a claim to the County Court for an order that the repairs be carried out or a claim for compensation. However, it is very important that you notify your landlord of the problem before taking any action, as he will not be legally liable (and you will not be entitled to use any of the enforcement procedures) until you do so. Make sure that you keep a copy of your letter and that you are able to prove that it was sent or delivered to him. Note, also, that the pre-action protocol which is discussed below will apply and must be complied with before any court action is started.

For further information on court action, see the background information on court proceedings in Part 1 and also the general section on enforcement for repairing obligations below. Note also that, provided the proper procedures are followed, you may also have the right to get the repairs done and set off the cost of the repairs against your rent. For more information on set-off, see Chapter 11.

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## **Rights under tort**

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A tort is a civil wrong which is not a breach of contract. I would suggest that before you read this section you read the section on the law of tort in Part 1 (page 15). Bear in mind that generally these rights are less commonly used than the contractual rights discussed here.

### **Negligence**

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This has already been discussed in Part 1. Traditionally, landlords have not had a 'duty of care' towards their tenants. In some cases, for example, if the

landlord is also the builder, a claim can be made. However, because of this traditional immunity, it is wise for claims in negligence to be made in conjunction with another claim and not on their own.

## Private nuisance

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This is where something in one property interferes with the use and enjoyment of a neighbouring property. This legal rule can only be used by property owners. This includes tenants, as they have a legal interest under their tenancy, i.e. they are deemed to 'own' it for the period of their tenancy. However, it does not include family members and visitors, other than the spouse of the tenant.

### Note

You can also claim against your neighbours in nuisance, but this book is looking specifically at your rights as a tenant, so we are only considering claims against your landlord.

So, if your landlord has retained control over part of the building where you rent your flat, then he will be liable under the tort of nuisance if defects in the retained part, or your landlord's use of the retained part, causes interference with your use of your flat. This will also apply if the landlord lives next door; for example, if you rent one of two adjoining houses.

The sorts of thing which can be covered by the tort of private nuisance include disrepair which affects the use of your property, noise, bad smells, and possibly pest infestation if these enter or arise from an area controlled by the landlord. The nuisance must go on for a long time. If your landlord does very noisy repair works every night in the basement of the building where you rent a flat, that will be actionable, but not if he just does it once. There must also be some sort of harm to you resulting from the nuisance for there to be an actionable claim. Therefore, if the nightly noise in the basement prevents you sleeping, you will have an actionable claim, or if the landlord has control of the roof and gutters but does not maintain them, resulting in rainwater leaking into your property and causing damage, you will have an actionable claim.

Unlike personal injury claims in negligence, you will not normally be able to claim in nuisance if you are unusually sensitive. So, if you are an exceptionally light sleeper, then you will not be able to claim regarding the noise in the basement if most people would be able to sleep through it.

However, the intentions of the defendant are important in private nuisance claims. If you can show that the landlord's actions are done deliberately to affect you, you may be able to claim in situations where otherwise the landlord's actions would be reasonable. In one case (not a landlord and tenant situation) a defendant hung metal trays and hammered on the wall to disrupt music lessons given by his neighbour.

#### Note

Remember that you will also be liable under the private nuisance rules. So, for example, if you are very noisy, your landlord would (if he lived next door) be able to claim against you in nuisance, as would your neighbours.

#### Remedies

A claim would have to be made to the County Court for an injunction for the landlord to stop the behaviour complained of. Damages can also be claimed but generally an injunction will not be granted if damages are awarded. In some circumstances you can act to remove the nuisance yourself (e.g. if a radio is left playing loudly in the basement, you can probably go and switch it off). However, in most situations it is wise to take legal advice before taking any action (e.g. before going onto the landlord's property where you do not have a right of access).

## The Defective Premises Act 1972

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This Act gives duties to landlords and builders/improvers to do work safely and properly, and gives landlords liabilities where damage or injury results from disrepair. It is often used alongside actions for negligence and for breach of contract.

Advantages in using this Act are:

- that the tenant does not have to serve notice on the landlord first for him to be liable;
- the rights extend to anybody 'who might reasonably be expected to be affected'. This could include members of the family or visitors.

Wherever possible, claims should not rely on this Act alone but should be used in conjunction with another claim; for example, in negligence or (where claims are made under Section 4 of this Act) the landlord's repairing obligations under Section 11 of the Landlord and Tenant Act 1985. I will now have a look at some of the main sections of this Act.

- **Section 1:** Under Section 1 of the Act, people who carry out work to a property on or after 1 January 1974 or who are connected with such work (e.g. landlords, builders, architects, surveyors and specialist subcontractors) are under a duty to ensure that the work is done in a professional manner with proper materials and that the property is fit for habitation when completed.

The term 'fit for habitation' is not defined in the Act but will include safety for occupation, sufficient water supply, infestation by bugs or pests, adequate drainage and infection. The Act can also be used if there is an omission when carrying out repair work (such as failing to incorporate a damp proof course in a newly built wall) or if that work has been carried out badly.

The duty under Section 1 is very strong because the person who carries out the work will not be able to argue as a defence that it was 'reasonable' to believe that the work was adequate. This duty is owed to the person for whom the property was provided and to subsequent tenants and owners and anyone else who has a legal or equitable interest in the property.

Note, however, that the duty is not owed where properties are built or first sold under the terms of a scheme approved by the Secretary of State that provides insurance cover for defects in the state of the building. The only scheme currently approved is that of the National House-Building Council. However, this covers virtually all private residential developments, so effectively in the private sector the Act will only apply to conversions and alterations.

**Note**

Builders may also be liable where, as a result of their negligence, personal injury is caused to subsequent occupiers of the property. Local authorities can be liable if the injury or damage has arisen from its negligent failure to check work plans for the site or to enforce building regulations.

Further information about the National House-Building Council can be found on its website at [www.nhbc.co.uk](http://www.nhbc.co.uk).

- **Section 3:** Under common law landlords were not liable for defective work carried out prior to the letting of a property. However, this was changed by Section 3 of the Act, which abolishes the immunity that landlords had. This means that a duty of care is owed in negligence by the landlord for any repair, maintenance, construction or other work done in relation to a property. The duty of care is owed to the tenant, members of the tenant's household and visitors. It only relates to tenancies that started on or after 1 January 1974.
- **Section 4:** Under this section landlords who are contractually obliged to repair or maintain a property (such as all landlords to whom Section 11 applies) owe a duty of care to anybody who could reasonably be affected by disrepair arising from the breach of their repairing covenants. The duty is also owed if the landlord has a right to enter the property to carry out repairs (again this will apply to all landlords subject to Section 11) and is triggered if the landlord knows or ought to know of the defect (e.g. because he should have spotted it in his inspection visit), regardless of whether or not he had been told about it by the tenant.

However, the duty will not be owed if the loss or damage is not reasonably foreseeable, or if it is caused by the tenant's failure to comply with his obligations, or if the defect is hidden and undiscoverable. It does not cover problems which are not caused by the landlord's failure to do repairs (e.g. condensation).

## **Breach of building regulations**

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A claim can also be made against the landlord if he has done work to the

property which was subject to building regulations which have not been complied with, and this causes harm. A claim can also, in some circumstances, be made against local authorities if they do not enforce the regulations properly.

### **General remedies in tort**

Claims are normally made to the County Court for damages and/or for an injunction. In some circumstances, as indicated above in the relevant sections, self-help is available. However, legal advice should normally be obtained before you use a self-help remedy. For more general information on remedies in tort, see the background information on the legal system in Part 1.

You should also seek professional legal help before attempting to use any of the rights under tort discussed here, and certainly before bringing any legal proceedings.

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## **Rights under public/criminal law**

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As well as his direct liability to you, his tenant, your landlord is also liable under the criminal legal system for various offences under statute. Although these are dealt with through the criminal system, and cases are brought in the Magistrates' Court, they are not normally brought by the police. Most often cases are brought by local authorities, sometimes by Trading Standards Offices, and other organisations such as the Health and Safety Executive (HSE). Sometimes cases can be brought by you!

However, it is important to remember that in all these types of case, the focus is on the landlord's failure to comply with public standards, rather than his direct duty to you. Sometimes, a compensation order may be made as part of the proceedings, but this is incidental to the main purpose of the case, which is punishment by the state for your landlord's failure to comply with the relevant statute. A conviction under one of these statutes also does not necessarily mean that you will then be able to bring a civil claim against the landlord – this will depend very much on whether the subject matter of the prosecution is something for which the landlord is liable to you under the law of contract or tort.

## The Housing Health and Safety Rating System (HHSRS)

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It is not generally realised that all residential property owners (not just landlords) have a duty to maintain their property to certain standards. This was previously set out in Section 604 of the Housing Act 1985, but from 1 April 2006 this was replaced by the new HHSRS in Part 1 of the Housing Act 2004.

This new system is a radical change from the old. Section 604 set out a standard of fitness which all properties had to be assessed against. Under the new system there is no single standard; assessors instead will look to identify hazards and their likely impact on the health and safety of the occupier or visitor. If serious hazards are identified, then there are powers available to local authorities to force landlords to remedy them.

A hazard is any risk of harm (including temporary harm) to the health or safety of an actual or potential occupier of accommodation that arises from a deficiency in the property. The underlying principle is that ‘any residential premises should provide a safe and healthy environment for any potential occupier or visitor’.

Therefore, all properties should:

- be designed, constructed and maintained with non-hazardous materials;
- be free from both unnecessary and avoidable hazards; and
- provide adequate protection from all potential hazards.

At the time of writing there are 29 identified hazards against which properties will be assessed. These fall within the following areas:

- Physiological requirements, such as damp and mould growth and excess heat and cold.
- Non-microbial pollutants, such as asbestos, carbon monoxide and lead.
- Psychological requirements, such as overcrowding, unauthorised intruders, lighting and noise.

- Protection against infection, i.e. hygiene, sanitation and water supply.
- Protection against accidents, such as falls, electric shocks and burns, collisions, cuts and strains.

As the system is looking at general safety, hazards are assessed on the basis of their effect on the most vulnerable class of occupiers rather than on the actual people living at the property. For example, when looking at the hazard of excess cold (perhaps the hazard which will have the most impact and which many properties are least likely to comply with) the assessor will be looking at its effect on the elderly rather than on (for example) the group of four 18-year-old students living there at the time of the inspection.

If you think that your property is likely to contain any of the hazards indicated above (and your landlord refuses to take any action), you should contact someone in the Environmental Health Department of your local authority (sometimes this is dealt with by a department called Private Sector Housing). The department will arrange for an Environmental Health Officer (EHO) to come out and inspect your property. If you put your complaint in writing, it is legally obliged to do this.

When doing his inspection the EHO will give each hazard a rating which will be expressed through a numerical score. These will be entered into a computer program which will work out the result of the inspection for the property. If the result shows that there are hazards at the property, the action taken by the local authority will depend on whether the hazards assessed are Category 1 or Category 2. If they are Category 1, the department must take action. If they are Category 2, then it only has a discretion to take action if it considers it appropriate. It is not legally obliged to take action.

The normal action taken will be to serve an improvement order on the landlord, ordering him to carry out remedial works. If these works are not done within a specified time, then the landlord can be prosecuted in the Magistrates' Court. Note that in some areas it may take the local authority some time to arrange for an inspection, so if the disrepair needs urgent action you should use the remedies under contract and tort discussed above, or use your right of set-off discussed in Chapter 11.

## HHSRS and social landlords

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It is not possible for a local authority to enforce the powers under the Act against itself. However, it should carry out inspections of its own property where asked to do so.

Other registered social landlords (RSLs) are subject to inspection and enforcement in the same way as private landlords.

Note, however, that there is an official standard – the Decent Homes Standard (see further below) – which all social landlords (including local authority landlords) are supposed to comply with. Part of this standard provides that properties must be free of Category 1 hazards. Local authorities when receiving a complaint about a dwelling owned by an RSL, should first consider their plans for complying with the Decent Homes Standard, before deciding what action to take.

### Further information

There is a vast amount of information on the Communities and Local Government website at [www.communities.gov.uk](http://www.communities.gov.uk) and this is the best place to look for further help and guidance. You should be able to find a long PDF guidance document for landlords and property-related professionals on the HHSRS, plus there is a whole subsection of the 'Housing' section of the site devoted to decent homes. This is particularly recommended for tenants of all social landlords.

### The Decent Homes project

The government is looking to generally improve the standard of housing in the public sector and this is being implemented under the Decent Homes Project. This sets out a general standard of what is a decent home, and aims to make all social housing comply with this by the end of 2010.

The standard provides that a decent home will meet the following criteria:

- It meets the current statutory minimum standard for housing (i.e. it would satisfy an inspection under the HHSRS).
- It is in a reasonable state of repair.

- It has reasonably modern facilities and services (in particular, kitchens and bathrooms).
- It provides a reasonable degree of thermal comfort (i.e. it has effective insulation and effective heating).

Private landlords are also expected to conform to the Decent Homes Standard, but as the standard is not specifically enforceable by tenants, for example, through the courts, it is less helpful in the private sector.

For more information, see the Communities and Local Government's website at [www.communities.gov.uk](http://www.communities.gov.uk). There is a whole subsection of the 'Housing' section on decent homes, including some helpful FAQs.

## **The Environmental Protection Act 1990**

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This Act deals largely with various aspects of pollution and statutory nuisances and measures to control them. So far as landlords and tenants are concerned, the most important section of the Act is Part 3, which looks at statutory nuisances. A statutory nuisance is where premises are in a state which makes them prejudicial to health. Specific nuisances include:

- Premises in such a state as to be prejudicial to health or a nuisance.
- Smoke emitted from premises.
- Fumes or gases emitted from premises.
- Accumulation or deposits of noxious waste.
- Animals kept in such a manner or place as to constitute a nuisance.
- Noise emitted from premises.

Local authorities (generally via the Environmental Health Departments) are generally the organisation which will enforce this Act. They have a duty to investigate complaints and if, as a result of their inspection, they find that there is a statutory nuisance, they are legally bound to take action.

Generally, the local authority will serve an informal notice first, and if this is not acted on, proceed to the service of an abatement notice. This can be done even if the nuisance is not in existence at the time of the service of the

notice, so long as it is reasonably likely that it will reoccur. There is a right of appeal against an abatement notice. However, if it is not complied with, the landlord can be prosecuted in the Magistrates' Court and if convicted, fined.

#### Note

The statutory nuisance rules discussed here are different from the private nuisance rules discussed in the tort section (on page 149). Private nuisance is a civil wrong and you can sue in the civil courts. Statutory nuisances under the Environmental Protection Act are a criminal offence and are dealt with through the criminal law system. They could, of course, be about the same thing (e.g. the noisy repair works in the basement discussed before). In law, there are often different ways of dealing with the same problem.

#### Remedies

If you consider that your property comes within the definition of a statutory nuisance, you should contact the Environmental Health Department of your local authority and ask it to carry out an inspection. Once this has been done, depending on the results, it will have to decide, if the property is problematic, whether it is best to bring proceedings against the landlord under the HHSRS or under the Environmental Protection Act.

## Using the Act against local authority landlords

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If the landlord is the local authority, then EHOs will not be able to bring a claim, as this would be against their own authority! However, in these circumstances you can, if necessary, take action yourself.

If you decide to do this, you must take legal advice first before taking any action. These proceedings are complex and you will need independent expert evidence (e.g. from an EHO (not one from the local authority concerned)) and medical evidence (e.g. if your health has been affected by the nuisance). Also, after taking advice, you may find that this is not the best course of action for your particular problem. However, basically this is the procedure:

- You serve a notice of intention on the person responsible for the nuisance (for local authorities this is normally the Chief Executive or

Town Clerk). The notice must be in writing, containing details of the matter complained of, and it must make it clear that unless the nuisance is abated or a reasonable proposal for abating the nuisance is given, proceedings will be commenced without further notice. The notice must be for 21 days, and court proceedings cannot be commenced until the notice period has elapsed.

- Note that the nuisance must be continuing at the time the summons is issued. If it has stopped you are unlikely to succeed, even if it is probable that the nuisance will occur again.
- If this is ignored, you should apply for a summons in the Magistrates' Court. This is called the 'laying of information'. You will need to complete a form providing details of the problem and the person or organisation responsible. You will need legal help at this stage as an incorrectly completed application can affect your right to compensation.
- There will then be a hearing, at which independent witnesses (such as neighbours or EHOs) may be called upon to verify the existence of the statutory nuisance. This must be proved to the criminal standard of proof (i.e. beyond reasonable doubt). If it is proved, then the court must make a nuisance order against the landlord requiring works be carried out either to abate the nuisance within a specified time limit, or to prevent a recurrence of the nuisance. The court can also impose a fine on the defendant landlord and order compensation. Note that the nuisance must be continuing at the time the summons is issued. If it has stopped, you are unlikely to succeed, even if it is probable that the nuisance will occur again.

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## **Other specific hazards/problems**

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### **Gas safety**

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Gas safety is very important – tenants have died due to carbon monoxide poisoning from faulty gas appliances. Under the Gas Regulations, landlords are obliged, where there are gas installations in the property, to have these checked by a CORGI-registered gas installer. He will provide a certificate, a copy of which must be given to tenants when they first go into

the property. The landlord must also arrange for further inspections annually (again by a CORGI-registered installer) and for copies of the certificates to be provided to you, the tenant.

#### Note

If you are unhappy about the service provided by the person who carried out the check (e.g. if you think he has missed a problem), CORGI will sometimes arrange for appliances to be re-checked, by way of monitoring the service provided by its installers. For further information, contact CORGI.

It is most important that you co-operate with your landlord in allowing access for these inspections to take place. They are for your safety. Also, if you do not co-operate, the landlord will no longer be liable if you suffer loss and injury (such as personal injury) as the problems will have been largely caused by your failure to allow the inspections to take place.

The landlord is also responsible for the cost of maintaining gas installations and the flues supplying them, the cost of the inspections, and of any necessary repairs. Any attempt to transfer any of these obligations to the tenants, such as by way of a contract term in the tenancy agreement, will be void.

#### Remedies

If your landlord has not provided you with your certificate or you feel that the regulations are not being complied with, you should contact your local HSE. It administers these regulations and will contact your landlord and, if necessary, bring a prosecution against him.

#### Further information

You can find contact details of your local HSE in the telephone directory or via its website at [www.hse.gov.uk](http://www.hse.gov.uk). You can find out more about CORGI via its website at [www.trustcorgi.com/consumers.htm](http://www.trustcorgi.com/consumers.htm).

There is also a gas safety advice line you can ring on 0800 300 363.

**If you smell gas or are worried about gas safety, you can ring National Grid Transco on 0800 111 999 at any time.**

## Electricity

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Strangely, there are no specific regulations regarding safety checks for electrical installations (apart from those in HMO properties, see page 165 below), unlike gas. Therefore, your main recourse will be under the landlords repairing covenants under Section 11 (see page 142).

However, there are regulations regarding the condition of electrical equipment in the Electrical Equipment (Safety) Regulations 1994. Under these regulations, suppliers (e.g. the landlord or letting agent) have a statutory duty to ensure that they only supply electrical equipment that is in a safe condition, so as to prevent risk of injury and/or damage to property. However, there is no mandatory requirement for equipment to be safety tested or for a safety certificate to be issued. There are also regulations regarding the safety of plugs and sockets.

### Remedies

If you have any complaints regarding the condition of electrical appliances in your property, which the landlord refuses to deal with, you should speak to your local Trading Standards Office, which administers these regulations. It can contact your landlord and, if necessary, bring a prosecution in the Magistrates' Court.

Note that due to changes in the building regulations, most electrical work must now be done by a competent electrician rather than your landlord, or indeed you (unless of course either of you are an electrician).

See also page 165 on Houses in Multiple Occupation regarding electrical inspections for HMOs.

### Further information

NICEIC acts as the electrical contracting industry's independent voluntary regulatory body for electrical installation safety matters throughout the UK and maintains and publishes registers of electrical contractors that have been assessed against the scheme requirements. You can find out more about them and about electrical safety generally on its website at [www.niceic.org.uk](http://www.niceic.org.uk).

## Furniture and furnishings

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All furniture provided by landlords in properties let to tenants must comply with the furniture regulations (the Furniture and Furnishings (Fire) (Safety) Regulations 1987 and the amendments made in 1988). Basically, these provide that all furniture must be fire safety compliant and carry the proper labels. Items covered include padded headboards, sofas, mattresses, pillows, cushions, nursery furniture and cloth covers on seats.

Some items are exempt, in particular, furniture made before 1950, curtains, carpets, duvets and sheets.

### Remedies and further information

The best people to speak to about these regulations are your local Trading Standards Office, who will generally have some very helpful leaflets explaining the regulations in more detail. It also enforces the regulations, so if your landlords are not complying, it will deal with this for you. You can find details of your local Trading Standards Office in the telephone directory or on its website at [www.tradingstandards.gov.uk](http://www.tradingstandards.gov.uk).

## Radon gas

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This is a clear, odourless, naturally occurring radioactive gas that escapes naturally from the rock beneath the earth's surface and can cause lung cancer if it builds up in high concentrations. It is a hazard that can be rated under the HHSRS, whose operating guidance indicates that radon levels in excess of  $200\text{Bqm}^{-3}$  in a dwelling would be considered a Category 1 hazard.

### Further information

See the Radon Council website at [www.brad.ac.uk/acad/envsci/radon\\_hotline/HOME.HTM](http://www.brad.ac.uk/acad/envsci/radon_hotline/HOME.HTM).

## Asbestos

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This is a group of fibrous materials which in the past was widely used in building, but which is now banned. Sometimes it can produce very small fibrous dust particles that can cause asbestosis, lung cancer, mesothelioma and eventually death. It is still found in many older buildings. If you think that you may have asbestos in your building, you should contact your local authority and ask it to test for it (asbestos is a hazard under the HHSRS). You should also tell your landlord. Even if the asbestos is not in a dangerous condition, your landlord has a duty to manage the risk. He should label the asbestos, seal it or remove it depending on its condition. Any repair work lasting more than two hours must be done by someone licensed by the HSE.

If your landlord is a social landlord, then joining together with other tenants to complain and demand action is often more effective than one tenant complaining alone.

### Further information

See the section on asbestos on the HSE website at [www.hse.gov.uk/asbestos/index.htm](http://www.hse.gov.uk/asbestos/index.htm).

## Vermin

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If these were in the property from the start, or the infestation is due to disrepair, or the vermin have entered your property from property controlled by your landlord (e.g. the common parts), then they are the responsibility of the landlord. However, local authority Environmental Health Departments also have a duty to control vermin so if your landlord fails to take any action, you should contact them. Some infestations may also come within the definition of a statutory nuisance and you may be able to take action under the Environmental Protection Act 1990. Local authority tenants and tenants of RSLs may also be able to exert pressure on their landlords through their local councillor (for more information on this, see Part 4 on complaints).

## Damp

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This is often a problem in rented properties. The responsibility for sorting it out depends on the cause of the dampness. If it is caused by a structural defect (such as a lack of damp-proof course, poor ventilation or a hole in the roof), the landlord may be responsible under the HHSRS. If the dampness is caused by damage to the structure of the walls, your landlord will be responsible for repairs under Section 11. However, dampness can also be caused by condensation produced by drying clothes indoors or the heating system not being used effectively. In this case it may be you who is wholly or partly to blame. If you have a problem with damp, it is best to get some professional advice; for example, by consulting the Environmental Health Department's Housing Officer at your local authority.

**Q** This is my second year living in a student house. The house does not have gas central heating and does tend to get cold in the winter months. However, this year we have noticed that some rooms are much colder than last year already. The bathroom is particularly cold, so cold in fact that you can see your breath in there, even in the middle of the day, and the walls have started to get black mould growing on them. We believe this may be due to the fact that nothing in the bathroom dries out as it is so cold. This is the first year that this has happened, and we fear that it is only going to get worse. What are the legal requirements surrounding the heating of a rented student property? There is a heater in the bathroom, but it is electric, and is very old, and we are frightened that it may set on fire if it is switched on due to the damp environment. Please help!

**A** I would suggest that you contact the Housing Officer at your local authority and ask that an EHO comes out and assesses your property under the HHSRS. Under this system, properties are assessed against various hazards – one of which is excess cold. If the hazard is found to be in the Category 1 level (i.e. serious), the local authority will serve an improvement notice on your landlord, asking him to carry out works to bring your property up to the required level. If this is done, ask the EHO for a copy of the report as you may be able to claim compensation from your

landlord. You should, however, seek independent legal advice before bringing any legal claim against your landlord – your Students' Union may be able to assist.

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## **Additional rules for Houses in Multiple Occupation (HMOs)**

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Before reading this section, you should read the general section on HMOs in Part 1. Note that this section will only apply to the private sector as social landlords are exempt from the HMO legislation under the Housing Act 2004.

### **Management regulations**

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HMOs are subject to all the legal requirements regarding the condition and repair of the property as set out above. They are also subject to additional regulations, such as the management regulations (mentioned also in Part 1) which apply to all HMOs, and not just those which are licensed. The management regulations provide, so far as the condition of the property is concerned, the following:

- **Fire safety:** The landlord/manager must make sure that all means of escape from fire are kept free from obstruction and maintained in good order and repair. Any fire-fighting equipment must be kept in good working order, and (unless there are four or fewer occupiers) notices indicating the location of means of escape from fire must be displayed in prominent positions so that they are clearly visible to occupiers.
- **General safety:** The landlord/manager must take reasonable measures to protect occupiers from injury, with regard to the design of the HMO, its structural condition and the number of occupiers. In particular, he must ensure that roofs and balconies are safe or take measures to prevent access, and windows with low sills have bars or other safeguards.
- **Water supply:** The water supply and drainage system must be kept in good, clean and working condition. In particular, cisterns and tanks

must be covered, and fittings must be protected from frost damage. The landlord/manager must not do anything to interfere with the supply of water or drainage.

- **Gas safety:** The gas regulations will apply as they do to all residential lettings, and the landlord/manager must supply a copy of the latest gas certificate to the local authority within seven days of receiving a written request.
- **Electrical safety:** Every electrical installation must be inspected and tested at least every five years by a qualified electrician and a certificate obtained. This must be supplied to the local authority within seven days of receipt of a written request. The landlord/manager must not do anything to interfere with the supply of electricity.
- **The common parts:** The landlord/manager must maintain the common parts of the HMO in good and clean decorative order, in a safe and working condition, and reasonably clear from obstruction. In particular, all handrails and banisters must be kept in good repair and additional ones added, if necessary, for safety. Stair coverings must be kept securely fixed and in good repair. Windows and other ventilation must also be kept in good repair. There should be adequate light fittings and all fixtures, fittings and appliances used in common by occupiers must be kept in good and safe repair and in clean working order. However, this does not apply to items of occupiers (including tenants and licensees), which they are entitled to remove (e.g. their own possessions).
- **Outside areas:** Outbuildings, yards and forecourts used by occupiers must be maintained in good repair, clean condition and good order, and gardens must be kept in a safe and tidy condition. Boundary walls, railings and fences, etc. must be kept in good and safe repair so that they are not a danger to occupiers.
- **Unused areas:** If any part of the property is not in use, the landlord/manager needs to ensure that areas directly giving access to it are kept clean and free from rubbish.

Note that the 'common parts' for which the landlord/manager has responsibility include entrance doors (including to the occupiers' own rooms), stairs, passages and corridors, lobbies, entrances, balconies, porches and steps – basically, the parts of the property used by

occupiers to gain access to their own accommodation and any other part of the property shared by occupiers.

- **Living accommodation:** The landlord/manager must ensure that living accommodation and furniture for the occupiers' own use is in a clean condition at the start of the tenancy, and that the internal structure and any fixtures, fittings or appliances are maintained in good repair and clean working order, including windows. However, this does not apply to damage caused by the occupier failing to comply with the terms of his tenancy agreement or if he fails to conduct himself in a reasonable manner, or to things he is entitled to remove from the property (e.g. his own possessions).
- **Rubbish disposal:** The landlord/manager must ensure that suitable and sufficient litter bins and/or bags are provided, and to make arrangements for the disposal of rubbish with regard to the local authority collection services.

Note that standards of maintenance and repair required by these regulations will depend on the age, character and prospective life of the property and the locality in which it is situated. So, posh central London shared properties will need to be maintained to a higher level than tatty bedsits in rundown inner city areas.

Perhaps the most important new requirement under these regulations is the requirement for the checking of electrical installations every five years. However, there is no requirement that the electrician should have any particular qualification (e.g. by NICEIC). Neither is there any right for the tenant to be provided with a copy of a certificate of inspection. However, local authorities can require a copy to be provided to them. So if you suspect that the electrical checks are not being done, you should speak to the Housing Officer at your local authority.

Although these regulations place requirements on landlords and their managers, they also place obligations on you, the tenant, as follows:

- Not to do anything that will hinder the landlord/manager from meeting his duties.
- To allow the landlord/manager to enter the units of accommodation at reasonable times to carry out his duties.

- To provide any information to the landlord/manager that he may reasonably require in order for him to meet his duties.
- To take reasonable care to avoid damage to anything which the landlord/manager is under a duty to supply, maintain or repair.
- To store and dispose of litter in accordance with the arrangements made by the landlord or manager.
- To comply with reasonable instructions in respect of means of escape from fire and fire precautions.

## **Licensing**

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Some HMOs, mostly the larger HMOs, need to be licensed with the local authority. At the time of writing, buildings consisting of three or more storeys and occupied by five or more tenants in two or more households have to be licensed. However, individual local authorities have the power to order that additional classes of property be licensed. To find out whether your property needs to be licensed, contact your local authority.

Before a property can be licensed, a local authority will have to be satisfied that the person managing the HMO (which may not necessarily be the landlord) is a suitable person, that the property is suitable for the proposed number of occupants, and that the property meets the standards set out in the regulations. The local authority can also set additional standards for its area. This is a summary of the basic standards in the regulations (note that these will only apply to those HMOs which require a licence):

### **Kitchen facilities:**

- There must be kitchen facilities in each room or a suitably located shared kitchen.
- Kitchens must have a sufficient number of sinks with hot and cold water and draining boards, installations or equipment for cooking food, electrical sockets, worktops, cupboards and refuse disposal and refrigerators.
- Shared kitchens must have adequate freezer space or a separate freezer, appropriate extractor fans, fire blankets and fire doors.

### **Washing facilities:**

- There must be individual bathing and toilet facilities or shared facilities suitably located in relation to the living accommodation.
- For four or fewer occupiers there must be one bathroom with a bath or shower and one toilet which may be situated in the bathroom.
- For five or more occupiers, there must be one separate toilet with a washbasin and at least one bathroom for every five occupiers.
- For five or more occupiers, each unit of living accommodation must contain a washbasin or sink.

### **Other amenity standards:**

- There must be the appropriate number and type of fire precaution facilities and equipment.
- Each unit of living accommodation must be equipped with adequate heating.
- All of the bathrooms must be suitably and adequately heated and ventilated.
- Baths, showers and washbasins must have hot and cold running water.
- Bathrooms and kitchens must be of adequate size and layout.

### **Remedies**

If your landlord ought to be licensed but is not, you should contact your local authority. Note that in some circumstances where your landlord has been operating an HMO without a licence, you can apply to the Residential Property Tribunal for a rent repayment order. However, this is only where the local authority has taken action first (e.g. to bring a prosecution). You will need to speak to your local authority about this. Landlords of properties which ought to be licensed but are not, cannot use the 'notice only' Section 21 procedure to evict tenants. If this applies, you can defend any claim for possession by your landlord under Section 21 on this basis.

### Further information

The basic information on licensing is set out in Part 2 of the Housing Act 2004. The two regulations referred to here are the Management of Houses in Multiple Occupation (England) Regulations 2006 (SI 2006 No.372), which applies to all HMOs, and the Licensing and Management of Houses in Multiple Occupation and other houses (Miscellaneous Provisions) (England) Regulations 2006, (SI 2006 No. 373).

For contact details for local authorities, try [www.localauthoritydirectory.co.uk](http://www.localauthoritydirectory.co.uk). You will find more information about HMOs and licensing on the Communities and Local Government's website at [www.communities.gov.uk](http://www.communities.gov.uk).

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## Conclusions on disrepair claims

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As you can see, the whole area of repairs and disrepair is a very complex one. Here are some concluding points.

### Keeping records

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As always, if you have a disrepair problem, you should start by keeping detailed records of everything (e.g. take photographs or a video of the problem). Keep a special folder where you can store all of the correspondence and telephone attendance notes so that they do not get lost. Keep a diary detailing all the problems you have had; this can include contact with the landlord or his agent about the problem, and any comments they make. Keep a record of every visit, telephone call and meeting, including all visits to the property by surveyors, Housing Officers and contractors.

Keep any belongings which have been affected, such as clothes that have been affected by damp. You should also keep full details and proof of money paid for any extra expenses you have incurred as a result of the disrepair. For example, keep receipts or evidence of comparable prices (e.g. a catalogue) for items damaged or destroyed (e.g. by damp), together with details of when and where any items were purchased; keep records of any extra electricity used for heating (keep your utility bills), cleaning

equipment purchased, meals out/takeaways purchased if you have no fridge or cooking facilities, and so on. If you go to court, you will need these to prove your claim for 'special damages' (explained on page 21).

If other people witness the problems, make sure that you have their names and addresses so that you can contact them later, if necessary. It is a good idea for them to write down what happened and if they do, make sure that they date and sign their statements.

Note that it is not unknown for contractors (e.g. those employed by social landlords to carry out repair works) to claim 'no access' without turning up, and failing to meet their appointments. Keeping proper records will help you deal with this, if it happens.

See also the general advice on paperwork in Part 1.

## Experts

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It may also be appropriate for you to get an expert to do an inspection and report. Initially, it is probably a good idea to ask the local authority's EHO to carry out an inspection. For complex civil claims, you will probably have to commission someone to write a report at some stage. This can be either a surveyor or an environmental health practitioner.

### Note

Surveyors will have the initials MRICS or FRICS after their names (FRICS is the superior award). Environmental health practitioners should be members of the Chartered Institute of Environmental Health (MCIEH). On the whole, judges tend to prefer surveyors, so consider using a surveyor for County Court cases which are likely to be defended, especially where the cause of the disrepair is likely to be in dispute.

However, it is best to obtain legal advice before commissioning any report, as your solicitor will usually be able to recommend someone good, and will be able to ensure that the report covers all the relevant points. Bear in mind also that the pre-action protocol (discussed below) provides the parties to jointly get a report from an expert, so it may be best to wait until this stage before instructing an expert.

## Legal advice

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As this is such a complex area of law it is always advisable to get some professional legal advice before taking any action, particularly legal action. You need to be very sure, before going to court, that the disrepair is something that the landlord is legally responsible for. You will need advice on which of the many avenues of approach is the most suitable for your case, and you need to be sure that any action taken is done properly; for example, for court claims that the pre-action protocol is complied with (discussed below, page 173).

### Remedies for disrepair

To a certain extent, these will depend on what the problem is and how serious it is.

- **Moving out:** For serious disrepair problems, you may be entitled to move out of the property altogether, particularly if you have only just started renting and you were not aware of the problems, or the extent of the problems, before you moved in. However, particularly if you have been living in the property for a while, you should seek legal advice before moving out.
- **Complaining to your landlord:** Before you start any of the procedures discussed in this chapter, you should tell your landlord about the problems, in writing, and ask him (or the officer concerned for social landlords) to arrange for the repairs to be done. You should give your landlord a reasonable period of time to do this. What a 'reasonable period' is will depend on what the problem is. Some repairing problems can be dealt with fairly quickly, but others will take your landlord more time to arrange. However, whatever the problem is, it is reasonable to assume that some action should have been taken by your landlord within a month, even if the landlord has only been able to seek estimates for the work. If it looks as if your complaint is being ignored, you should then try to take the matter further.
- **Complaining to the local authority (private landlords):** If you are not going to move out, and your landlord has not taken any action on your complaint, unless the disrepair is serious and needs urgent action, a good course of action is often to contact your local

authority and ask it to carry out an inspection. This is free of charge, and you will normally be able to ask for a copy of the report. It will help you find out whether there really is something wrong with your property. If there is a Category 1 hazard and/or an environmental health problem, the local authority must take action against your landlord. If there is a Category 2 hazard, it may take action if it considers it to be appropriate. However, note that it will generally take the local authority some time to arrange for an inspection visit, so this approach will not be appropriate for urgent cases. Bear in mind also that the local authority report will have been prepared for the purposes of the HHSRS rather than (for example) a civil claim for disrepair.

- **Complaining (social landlords):** If your landlord is the local authority, then you can still ask its Environmental Health Department to carry out an inspection. However, the department will not be able to take legal action against its own organisation. You should then follow the complaints procedure described in Part 4. This should also be followed for other registered social landlords. Alternatively, you can just start the complaints procedure without getting the EHO's report done first. Note that for serious disrepair problems you should also obtain legal advice as soon as possible, without waiting for the complaints procedure to be completed.
- **Self-help and set-off:** For information, see Chapter 11 on the tenant's right of set-off.
- **Going to court:** If complaints achieve nothing and the repairs are not something you are able to deal with yourself, then probably your only action is to consider going to court. This will normally mean a claim in the County Court. Here, for most disrepair problems, you should be able to ask the court for:
  - an injunction ordering the landlord to carry out the repairs;
  - compensation for your inconvenience and distress caused by the disrepair; and
  - any expenses you have suffered (e.g. for replacing clothes and other possessions destroyed by damp);

- a claim for compensation for personal injury, if the disrepair has caused you any physical injury (e.g. a broken leg through falling down a damaged staircase, or asthma caused by damp);
- an order in respect of your legal costs if you succeed in your claim. Note, however, that this may not cover all of your costs.

You should read the section on court claims in Part 1 for more general information. Do note the following points:

- If you are bringing a claim for disrepair, you will need to comply with the housing disrepair pre-action protocol. This is part of the Civil Procedure Rules (CPR) and can be downloaded from the website for the Department of Constitutional Affairs at [www.dca.gov.uk](http://www.dca.gov.uk).
- You do not need to comply with the protocol if you are raising disrepair as a defence to a claim for possession based on rent arrears. It only applies to claims where the tenant is taking the lead.
- If you also have a claim for personal injury, you may also need to comply with the separate personal injury pre-action protocol. This is probably not required if the injury is slight and you will only be using a GP's letter as evidence of injury. However, for more serious injuries and particularly where there are longer-term consequences, the protocol must be followed. This can also be downloaded from the Department of Constitutional Affairs' website.
- For most claims, particularly serious and expensive claims, the court will want to see some sort of evidence from an expert to prove the disrepair.
- Your claim form will need to set out the legal basis of your claim (e.g. that the landlord is in breach of his statutory repairing covenants under Section 11 of the Landlord and Tenant Act 1985), as well as list all of the things you are claiming (e.g. an injunction, compensation, etc.). The judge can only award you something if you have asked for it.

## The disrepair pre-action protocol

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This exists to ensure that there is a full exchange of information between

the parties before court proceedings are issued. This is done by the tenant sending an 'early notification letter' and later on a 'letter of claim' setting out the full details of the matters complained of. In many cases this will prevent court proceedings being issued altogether. Indeed, this is the aim of the protocol as there is tremendous pressure on court time, which the courts are trying to reduce as much as possible. Therefore, you will receive little sympathy from the judge if you go ahead with a claim for compensation or repairs without following the protocol. Generally if you have not followed the protocol your claim will be postponed (described by lawyers as 'stayed') while the protocol procedure is followed and you may be ordered to pay the landlord's legal costs.

The protocol is clearly written and provides sample letters. However, it is easy to make a mistake if you are not familiar with court work. Also, if you need to go to court, the court claim form must be carefully drafted to make sure that it includes everything that you are entitled to. Unless you really know what you are doing, you should not do this without professional legal help. However, this can be expensive so you should first look to use one of the following:

- **Shelter:** Shelter is a housing charity and it provides a free telephone helpline you can ring on 0808 800 4444. This will give you initial advice and will help you to find a local adviser. Shelter runs local housing aid offices where you can obtain more detailed help from a solicitor or other legal adviser (these are also free of charge). In many cases these advisers will be able to act for you in legal proceedings. To find an office near you, ring the helpline or visit the website at [www.shelter.org.uk](http://www.shelter.org.uk).
- **Law centre:** Many towns will have a Law Centre, which will almost always be able to give advice and support for housing disrepair claims. This is a free service. To find your local Law Centre, see Part 4. You can see a recent list of addresses at [www.landlordlaw.co.uk/page.html?id=217&step=2&page=links](http://www.landlordlaw.co.uk/page.html?id=217&step=2&page=links).
- **Citizens' Advice Bureau (CAB):** There are many more CABs than there are Shelter Officers and there will almost certainly be one near you. However, only a few CABs will specialise in housing work and you need to make sure that the person you see is experienced in this. Generally, it is best just to use the CAB for initial advice and to assist you to find a suitable solicitor.

- **Legal Aid solicitor:** If you are on a low income, you may be eligible for advice and assistance from a solicitor who does Legal Aid. However, unfortunately few solicitors now offer this service so you may find it difficult to locate one. The best source of information is the Community Legal Services Direct's website at [www.clsdirect.org.uk](http://www.clsdirect.org.uk).
- **A solicitor under a no-win, no-fee agreement:** Many solicitors offer these for personal injury claims; some will also offer them for disrepair claims. You will need to sign a complicated agreement which your solicitor will explain to you. You will also need to take out insurance to cover you for your landlord's costs if you lose your case, and for medical reports. It is generally best to go direct to a solicitor rather than via a claims company. The Law Society runs a telephone helpline for personal injury claims called Accident Line on 0870 607 8999.

For more information on legal help, see Part 4.

## Financial compensation

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Any sum awarded to you at court for compensation will vary depending on the type of disrepair, the type of property involved, and the course of action you have taken to obtain compensation.

Generally, you will receive a higher award by taking your claim to the County Court, rather than via a claim under one of the criminal law jurisdictions (e.g. under the Environmental Protection Act). This is because the purpose of the criminal law jurisdiction is to uphold standards and punish landlords for wrongdoing, rather than compensating individual tenants.

When making an award in the civil courts, frequently the sum awarded by the judge will reflect the level of rent paid and will often be a proportion of the total rent for the period of time you experienced the problem, to reflect the diminution of 'enjoyment' of the property as a result of the disrepair. So the same problem may attract a much higher award for a tenant of an expensive central London apartment than for the tenant of a low value bedsit. You will only be awarded 100% of your rent in very serious cases, normally where you have had to move out of the property altogether.

For example, if your property has no hot water and heating in the winter due to a non-functioning boiler, you will probably receive a basic award in the region of 30% of your rent for the relevant period of time. However, you will also be able to claim your expenses incurred because of the non-functioning boiler, for example additional heating bills and the like.

Note that if you have caused any aspect of the disrepair yourself or made it worse (e.g. by not allowing the landlord in to do inspections), any award made to you will be reduced accordingly.

### Further information

Contact details and websites have been given in the various sections above.

There is an excellent practitioners' book published by Legal Action Group called *Repairs: Tenants' Rights* by Jan Luba and Stephen Knafler. Unfortunately, the most recent edition was published some time ago in 1999 but it is still a very helpful book.

To find your local authority, see [www.localauthoritydirectory.co.uk](http://www.localauthoritydirectory.co.uk).

**Q** Our landlord has indicated that he would be willing for us to have cavity wall insulation fitted at our expense to the house we are renting to help with the damp and the exorbitant heating fees. However, he has also intimated that should we undertake this work he would then put up our rent. Can the landlord put up the rent when the improvements have been made at no cost to him?

**A** Frankly, I would not advise any tenant to carry out and pay for expensive improvements to someone else's property. If the works are done, ideally it should be following an agreement (preferably drafted by a solicitor) that the landlord will reduce the rent to allow for the improvements you have done to his property, and that he will allow you to stay in the property for an agreed minimum period of time (to prevent a situation which happened in one case I know of, where the tenant was evicted shortly after carrying out costly works). If, by any chance, you are a protected or statutory tenant under the Rent Act 1977 (i.e. if you have been living in the property since before January 1989), you should ensure that a fair

rent is registered before the works are done. When the rent is reviewed the Rent Officer will not take any improvements paid for by you into account when assessing the new rent.

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## **The rights of disabled people to request changes to their property**

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Since the Disability Discrimination Act 1995 came into force, it has been illegal for landlords to treat disabled tenants less favourably than non-disabled tenants because of their disability, without justification. For more general information on disability discrimination, see Chapter 2.

From December 2006 new regulations came into force bringing new duties for landlords to make reasonable adjustments to properties for disabled people; for example, by providing a temporary ramp for a wheelchair user who has a small step up into his flat.

However, note that landlords can only be required to do what is reasonable. It will not normally be considered reasonable to require a landlord to make expensive adaptations to premises which will inconvenience other tenants. Just because you are disabled and the proposed change will benefit you, does not necessarily mean that you are entitled to demand it. Also, what it is reasonable to expect from a large professional or social landlord may not be reasonable for a small private landlord with only a few or just one property.

In particular, landlords and managers of rented premises cannot be forced to take any steps which involve the removal or alteration of physical features of the property. However, the regulations have set out things which are not to count as 'physical features' and which a disabled tenant is entitled to ask to have done. These are:

- The replacement or provision of any signs or notices.
- The replacement of any taps or door handles.
- The replacement, provision or adaptation of any doorbell or door entry system.
- Changes to the colour of any surface (such as a wall or door).

In addition, landlords cannot unreasonably withhold consent from disabled tenants who need to make physical adjustments to their homes for disability-related reasons. However, the tenant must pay for the alterations and must ask permission from the landlord. This right of individual tenants to make adjustments will not apply to the 'common parts' of properties, such as stairs or hallways of communal blocks of flats.

### Remedies and further information

Generally these rights can only be enforced by court action. If you are disabled and your landlord is refusing to agree to reasonable adaptations to the property, your best course of action is to seek advice from the Disability Rights Commission, which has a website at [www.drc.org.uk](http://www.drc.org.uk).

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## Dilapidation claims – where landlords can claim against the tenant

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Before ending this chapter on the condition of the property, it is probably appropriate to have a short section on your rights when your landlord seeks to claim against you for damage to the property.

This sort of claim is normally dealt with at the end of the tenancy where the tenant leaves the property in a poor condition and the damage deposit (discussed above at Chapter 7) is insufficient to cover the cost of repair and the replacement of broken items.

For this sort of claim it will normally be essential for the landlord to have a good inventory, ideally one which provides details about the condition of the property and its contents, rather than just a list of furniture. As it will be the landlord bringing the claim, he will normally be the one who has to prove to the court that the damage was caused by you, and that the sum he is claiming is reasonable. Here are a few points on dilapidations claims:

- The landlord cannot claim against you for items which were damaged before you moved into the property or after you moved out. If you challenge him, he will have to prove that the damage was done during the period of your tenancy.
- If the landlord did his final check several weeks after you left, it is open

to you to argue that the damage was not done by you.

- The landlord cannot claim for damage occasioned by ‘fair wear and tear’.
- There is a technical rule (in Section 18(1) of the Landlord and Tenant Act 1927) which says that the landlord cannot claim more than the diminution caused to his reversion (i.e. the value of the property when he regains possession) by the state of the premises at the end of the tenancy. So if the property should have been worth £100,000 when he got it back, but due to the damage to the property done by the tenants it is actually worth £70,000, he will not be entitled to claim more than £30,000 from the tenants. Note that the rule does not include damage to the property contents, but just to the property itself.
- If the landlord has had repair work done, the court will normally accept the invoices as being evidence of the value of the damage to the landlord’s reversion, provided it was reasonable for him to do the work and the sums charged were reasonable.
- If the landlord has not had any repair work done, he may have difficulty proving his case. If he has no invoices or estimates for the proposed work, the court may dismiss his claim.
- Sometimes landlords will also seek to claim for rent lost as a result of having to carry out the repair work. However, to claim this he will have to establish how long it would reasonably have taken him to let the property if it had been in a proper condition, and then show that the works that were completed extended this period.
- You may be entitled to ask the court to reduce any sum awarded to reflect ‘betterment’, i.e. the fact that after the works are done the landlord will be getting back a property in a better condition than he was entitled to expect.

#### **Further information**

Hopefully, few readers of this book will have caused such damage to their property that the damage deposit is insufficient to cover it! However, if your former landlord is making a big claim against you, the best thing to do is to obtain legal advice as soon as possible. See the guidance in Part 4 on obtaining legal advice.