

MAINTAINING YOUR PROPERTY

A well maintained property usually leads to a happy tenant and reduces the likelihood of loss of rental through void periods. It is important to make clear in the tenancy agreement who is responsible for repair and maintenance of the property. Lack of clarity in the agreement can lead to disputes and bad feeling between landlord and tenant.

Landlords Statutory Responsibilities

Under statute all landlords are responsible for:

- maintaining and repairing the structure and exterior of the rental property including drains, gutters and external pipes.
- keeping in repair and proper working order the installations in the property for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences).
- keeping in repair and properly working order the installations in the property for space heating and heating water.
- obtaining a Gas Safety Certificate in relation to all gas appliances and having these checked annually
- ensuring that all electrical appliances and installations are safe
- ensuring all furniture included in the rental property complies with the [Furniture and Furnishings \(Fire\) \(Safety\) Regulations 1988](#)

You cannot contract out of these obligations.

What to do once you have notice of a defect?

If you receive notice of a defect which is your responsibility to repair it is important that you arrange for remedial work to be undertaken as quickly as possible. If you do not then the tenant can arrange for the work to be carried out and claim the costs of doing so from you. The tenant can also claim damages for any inconvenience and loss suffered as a result of your failure to carry out the repairs. A tenant may do this by withholding rent.

Alternatively a tenant may apply to the court for an injunction requiring you to carry out the work. If the tenant is successful then it is likely that you will be ordered to pay the tenants costs of making the application.

If the defect is the responsibility of the tenant then you must inform the tenant of this and it will be their responsibility to carry out the repairs. In order to protect your investment it is sensible to ensure that the tenant has carried out the repair. In order to do this you must ensure that your tenancy agreement provides that you may enter the property upon reasonable notice to inspect the condition of the property.

In the event that the tenant does not carry out the repair you can make a claim against the tenant for damages which, during the currency of the tenancy, will be calculated as the amount that the value of the property has decreased as a result of the tenant's failure to repair. This is generally not a satisfactory way of dealing with the problem. It is therefore important to include a provision in your tenancy agreement to allow you to enter the premises and carry out the repairs and then to reclaim the costs of such from the tenant as a debt.

Pre-action Protocol for Disrepair Claims

In the event that the tenant has notified you of a defect which it is your responsibility to repair and you have failed to do so, the court has created a procedure for the tenant to use prior to issuing any proceedings.

The first thing that the tenant is obliged to do is to send you a letter containing certain information including details of the defects in question and details of any notification given to you of those defects. The tenant can propose an expert to instruct to carry out a report on the defects and to recommend any remedial action. The tenant will also request that you disclose any relevant documentation.

You then have 20 working days to respond to this letter. You must disclose all relevant documentation and confirm whether you agree to the instruction of the proposed expert. Within the letter you can state whether you admit liability and make offers in respect of compensation and costs. If you do not respond you will be in breach of the protocol and the tenant can then issue proceedings in the County Court which may lead to further cost consequence for you.

In the event that you do reply and there is a dispute then the expert will carry out a report and make recommendations as to how to resolve the dispute. The expert's fees should initially be borne equally by the parties. However in the event that the matter is settled on terms which justified the tenant in bringing the claim i.e. you have to carry out work; the Protocol states that the landlord should pay the tenant's costs.

The Protocol aims to assist the parties resolve any disputes without formal court proceedings. However as a landlord you need to ensure that if you receive notice of a defect, which is your responsibility to repair, you carry out that repair as soon as possible so to avoid any adverse costs consequences.

If you have any queries about any of these matters then please do not hesitate to contact Paul Reader at our Tunbridge Wells office.



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