

A Brief Guide to Landlord Repairing Obligations

(Section 11, Landlord and Tenant Act 1985)

Key provisions

This leaflet describes the landlord's main responsibilities for repair which are implied into all short leases for residential property by Section 11 of the Landlord and Tenant Act 1985 ("the Act"). The Act states that, where a landlord has granted a lease of less than seven years (a short lease), the landlord will normally be responsible:

- ◆ To keep in repair the structure and exterior of the dwelling, including drains, gutters and external pipes.
- ◆ To keep in repair and proper working order the installations in the dwelling for the supply of water, gas and electricity, sanitation, space heating and heating water.



Keep in repair

Keep in repair means the landlord must keep the property in good repair throughout the tenancy to the standard it was at the beginning of the tenancy. The landlord must ensure that the property is put into repair even if it was not in good repair at the start of the tenancy.

Structure and Exterior

Section 11 only makes provision for disrepair to the structure or exterior; therefore non-structural disrepair will not be covered. This could include damage to the roof, guttering, drains etc. Exterior is the outside or external parts of a dwelling.

Whilst structure covers more than structural defects in the sense of those which hold the dwelling together it does not include purely decorative items nor generally those such as internal plaster, skirting boards, internal doors etc, although these may be affected by other items of exterior disrepair.

Installations

Section 11 will apply to cisterns, water tanks, radiators, boilers, heating ducts, all gas and water pipe work, fixed electrical wiring and associated sockets in the property.

Notice

The landlord's obligations under Section 11 will not arise unless he has been given notice of the defect. However, the requirement of notice does not extend to common parts of the property. Once the landlord has been given notice the tenant must give him a reasonable period of time to carry out the repairs. It is the responsibility of the tenant to prove that notice has been given to the landlord. When the landlord is under an implied covenant to repair, he, or any person authorised by him in writing, may at reasonable times of the day and on giving 24 hours notice in writing to the occupier, enter the premises comprised in the lease for the purpose of viewing their condition and state of repair.

Reasonable time

Once the landlord has received notice of the disrepair, the repairs must then be carried out within a reasonable time. "Reasonable time" will be judged by the type and extent of the disrepair. The time period is likely to be longer where the repair is more expensive and requires a lot of work. However, where the repair is in the nature of an emergency (e.g. where the fault is a burst or broken water pipe or a total electrical failure) then "reasonable time" may be very short indeed regardless of any other considerations.

Exclusions

There are some exclusions under the Act including an agricultural holding, leases granted by local authorities and educational institutions etc.

Where the tenant is in breach of his duty to behave in a tenant like manner the landlord will not be responsible for any works or repairs as a result of that breach. The landlord is not liable to rebuild, or reinstate the property in the case of destruction or damage by fire, or by tempest, flood or other inevitable accident.

Other repairing obligations

Explicit Terms

In addition, to the responsibilities under Section 11 of the Act the tenancy may be subject to any further terms agreed in the tenancy agreement. A landlord cannot exclude liability for Section 11 repairs within the agreement but may choose to give the tenant other responsibilities, which are not a legal requirement of the landlord, such as maintaining the garden.

Common Parts

The common law will imply certain repairing obligations for common parts:

- ◆ Where the landlord retains control of a part of a building and lets another part, he must maintain that first part so as to prevent injury to the tenant or damage to the property e.g. maintaining a common roof to prevent damp entering.
- ◆ where the tenant is given a contractual right to use another part of a building other than that let, e.g. a shared bathroom, the landlord is under an obligation to maintain that part for use by the tenant.
- ◆ the landlord must maintain facilities necessary for use by the tenant, e.g. lifts, rubbish chutes etc.
- ◆ where the landlord does not own or retain control of a part of a building but has a right to use or access it he must maintain that part e.g. an exterior pathway to a block of flats where the landlord has been granted a right by the freeholder to use the pathway.

Common parts and areas that the landlord has a right to use are considered to remain within the landlord's control and tenants are not required to give the landlord notice before the obligation to repair arises. Where common areas are owned by the freeholder Landlords should ensure that these areas are kept in repair by the freeholder.

If remedial works necessitate access to parts of the building or installation over which the landlord does not have a sufficient right to gain access, it is a defence to an action for breach of section 11 to show that the landlord has made all reasonable efforts to gain access but has been unable to do so.

Defective Premises Act 1972 (DPA)

Under Section 4 of the DPA 1972 the landlord has a duty of care to any person who might be affected by a defect at the property. The landlord must ensure that person is reasonably safe from personal injury or damage to their property caused by the relevant defect. Landlords and agents should carry out regular checks on the property as a landlord will still be liable where a defect has not been reported and where there has been a failure to inspect.

Occupiers Liability Act 1957 (OLA)

Under Section 2 of the OLA 1957 the occupier of a property has a duty of care to all visitors who attend the property. A landlord will have a duty of care to visitors where he has control of parts of the property, for example, shared use areas such as staircases, entrance halls, lifts etc. Landlords are required to take such care as would be reasonable so that the visitor is reasonably safe in using the property. The landlord will be liable for any injury suffered by a visitor as a result of defects in the part of the building occupied by the landlord. The landlord will only be considered the occupier of a property if he has retained control of it, so this cannot happen where the tenant has exclusive possession.

Fitness for Human Habitation

Part 1 Housing Act 2004 requires local authorities to identify hazards and assess housing conditions using the Housing Health and Safety Rating System (HHSRS). The intention of the HHSRS is to ensure that property owners maintain their properties in a safe and healthy state i.e. free from hazards that may affect an occupier's health and safety.

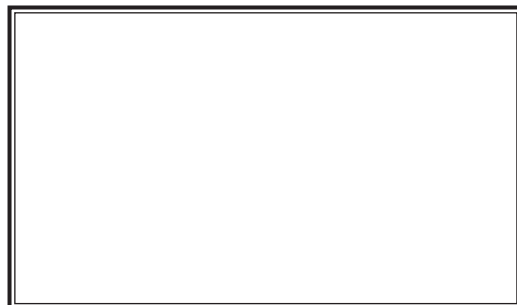
Landlords are generally responsible for the provision, state and working order of the exterior and structural elements of the dwelling, the installations within and associated with the dwelling for supply and use of water, gas and electricity, personal hygiene, sanitation and drainage, food safety, ventilation, space heating and heating water. Local authorities may issue improvement notices or prohibition orders where a property is found to be in an unsafe condition. More information is available in the 'HHSRS Operating Guidance' available from the Department for Communities and Local Government website.

Where do I go for more information?

If you would like more information, you should try the following sources:

- ◆ The Letting Centre website: www.letlink.co.uk
- ◆ The Landlord and Tenant Act 1985 is available from www.legislation.gov.uk
- ◆ Letting Centre Leaflets:
 - A brief guide to furniture and furnishing regulations
 - A brief guide to electrical safety regulations
 - A brief guide to gas safety regulations
- ◆ HHSRS Guidance: www.gov.uk

Agent's Stamp



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N.B. This summary is intended to assist landlords and letting agents to understand the effects of the legislation. It is not an authoritative interpretation - this is a matter for the courts. For more details, you should refer to the text of the legislation itself.



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