

Repairs

a guide for landlords and tenants



housing

This booklet does not give an authoritative interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in doubt about your legal rights or obligations you should ask for information from a Citizens Advice Bureau or see a solicitor. Help with all or part of the cost of legal advice may be available under the Legal Aid scheme, depending on your personal circumstances.



Repairs

This booklet tells you about landlords and tenants responsibilities for repairs under **short** (less than seven years) **leases** of residential property. Short leases can be granted by private landlords or public bodies eg local councils, housing associations. They include periodic tenancies where the tenant has not got a fixed term agreement and occupies property eg from week to week or month to month. Through most of this booklet the terms 'landlord' and 'tenant' are used, but in some cases the arrangement between the parties will not be a tenancy but a licence. 'Licensor' and 'licensee' may generally be read for 'landlord' and 'tenant' wherever this occurs. Where there are differences in the law between tenancies and licences, this is explained. If you are not sure whether you have a tenancy or a licence, it may be helpful to look at the booklets *Assured and Assured Shorthold Tenancies – a guide for landlords/tenants*, or *Letting Rooms in Your Home – a guide for resident landlords* or *Renting Rooms in Someone's Home – a guide for people renting from resident landlords*.

This booklet does not cover all matters of repair; many are subject to agreements and common law interpretation.

Tenants who occupy properties under longer leases should consult housing booklets *Long Leaseholders: Your rights and responsibilities*. Council tenants will also find information about their rights in housing booklets *Your Rights as a Council Tenant* and *A Better deal for Tenants – Your Right to Repair*.

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Responsibility for repairs

Who is responsible?

Unless the tenancy has a fixed term of more than seven years, the landlord is responsible under the Landlord and Tenant Act 1985 for repairs to:

- the structure and exterior of the dwelling
- basins, sinks, baths and other sanitary installations in the dwelling and
- heating and hot water installations
- the remaining repairing provisions of this Act apply to tenancies but not to licences

The landlord is not generally responsible for repairs arising from damage caused by the tenant, or for rebuilding the property in the case of damage by fire, flood or other inevitable accident. Nor does he or she have to repair anything which the tenant has a right to take away unless, in some circumstances, the damage was caused as a result of the landlord's failure to carry out his or her repairing obligations.

For additional responsibility for repairs in the case of flats or other dwellings which are only part of a building – see page 11.

The landlord's obligations under the Act can only be varied if a court agrees that they may. They may not apply where the lease was granted to a tenant who already had a lease not covered by these obligations. The landlord may not recover the cost of doing these repairs through a service charge.

What about repairs to other parts of the property not mentioned above?

Responsibility for these repairs depends very much on the terms of the agreement between the landlord and the tenant. If a landlord, in doing repairs which he or she is obliged to do, spoils the internal decoration, he or she should make good the damage. If your agreement does not specify who is responsible for particular repairs, get advice. In the case of leases granted before 24 October 1961, responsibility for all repairs depends mainly on the terms of the agreement.

Safety of gas and electrical appliances

The landlord is required by the Gas Safety (Installation and Use) Regulations 1998 to ensure that all gas appliances are maintained in good order and that an annual safety check is carried out by a registered engineer – that is an engineer who is approved under Regulation 3 of the “Gas Safety (Installation and Use) Regulations 1998.” The landlord must keep a record of the safety checks and issue it to the tenant within 28 days of each annual check. The tenant is responsible for maintaining gas appliances which he or she is entitled to take with him or her at the end of the letting. Further guidance is contained in the leaflet *Gas appliances – get them checked, keep them safe*, available, free of charge, from the Health and Safety Executive, PO Box 1999, Sudbury, Suffolk CO10 6FS, telephone 01787 881165, fax 01787 313995.

The landlord should ensure that the electrical installation (fixed wiring, etc) and any electrical appliances supplied (cookers, kettles, toasters, washing machines, immersion heaters, etc) are safe to use.

The Landlord and Tenant Act 1985 requires the landlord to ensure the electrical installation is safe when the tenancy begins and that it is maintained in a safe condition throughout that tenancy. One way of ensuring safety is to undertake a regular formal inspection of the installation, looking for any obvious signs of damage such as damaged cables, sockets showing scorch marks, etc. In addition, the Institution of Electrical Engineers recommend combined inspection and testing at least once every ten years. Testing should only be undertaken by someone competent to do such work, such as a qualified electrician. Combined inspection and testing should be more frequent where the risk is found to be greater, for instance where the installation is very old, where damage is regularly found during inspections, etc.

If the landlord provides any electrical appliances as part of the tenancy the Electrical Equipment (Safety) Regulations 1994 require him or her to ensure the appliances are safe when first supplied. Each time the property is re-let, it will be classed as supplying to that tenant for the first time.

The landlord therefore needs to maintain the electrical equipment he or she supplies, taking reasonably practicable precautions to ensure the appliances are safe. A combination of formal visual inspection and combined inspection and testing should help achieve this. Further guidance on how this could be done is contained in the leaflet *Maintaining portable electrical equipment in hotels and tourist accommodation* available free of charge from the address listed above. Though the advice in the leaflet is aimed at hotels, the maintenance procedures suggested in it are likely to suit many rented properties.

Fire safety of furniture and furnishings

The landlord must ensure that any furniture and furnishings he or she supplies meets the fire resistance requirements in the Furniture and Furnishings (Fire) (Safety) Regulations 1988, unless he or she is letting on a temporary basis while, for example, working away from home. The regulations apply if the let is for a longer period or for a series of lets, where the property is regarded primarily as a source of income rather than a home. If you are not sure whether the regulations apply to you, seek advice from the Trading Standards Department of your local authority.

The regulations set levels of fire resistance for domestic upholstered furniture. All new and second-hand furniture provided in accommodation that is let for the first time, or replacement furniture in existing let accommodation, must meet the fire resistance requirements unless it was made before 1950. Most furniture will have a manufacturer's label on it saying if it meets the requirements. Further guidance is contained in the booklet *A Guide to the Furniture and Furnishings (Fire) (Safety) Regulations*. This is available, free of charge, from BERR Publications Order Line, Admail 528, London SW1W 8YT, telephone 0845 015 0010.



What are the tenant's responsibilities?

What obligations does the tenant have?

Under common law, a tenant must use the property in a responsible way. He or she must take proper care of it. For example, he or she should turn off the water if there is a risk of burst pipes when he or she is going away and

unblock the sink when it is clogged up by waste. He or she should not damage the property and should make sure that his or her family and guests do not do so. If they do, he or she may be responsible for the damage. Under the Rent Act 1977, the Housing Act 1985 and the Housing Act 1988, the landlord can seek possession where the tenant or someone living with him or her has damaged the property. See housing booklets *Your Rights as a Council Tenant, Assured and Assured Shorthold tenancies – a guide for tenants and Regulated Tenancies*.

Apart from his or her duty to take care of the property, the tenant generally only has to do repairs if the terms of his or her tenancy agreement say that he or she must. He or she cannot, under the terms of the tenancy agreement, be made to do repairs for which the landlord is by law responsible.

What happens if there is no written tenancy agreement?

A verbal agreement is subject to the law on repairs just like a written agreement, and the same provisions will apply. It is a good idea, though, to get any agreement set out in writing if you can.

What about licensees?

I have a licence, not a tenancy. Does this mean I have no rights to get repairs done?

Licensors do not have the same obligations as landlords to keep a property in good repair. However, local authorities require property to meet certain standards in the interests of public health and safety. If your property

does not meet these standards, they can order your licensor to carry out work or repairs to make sure that it does. The Environmental Health Department of your local council will be able to give you further information.

If the tenant is responsible for getting the repairs done, does this give him or her greater rights to stay on in the property?

No. The tenant's security of tenure depends on the type of lease he or she has, not on his or her repairing obligations.



Getting repairs done

The tenancy agreement will normally set out the rights and liabilities of the parties and may cover the procedure for getting repairs done. If the landlord fails to get repairs done after being told about them:

- the tenant can sue the landlord in court. The court can award damages, and order repairs to be done. Get advice before taking court action
- where the landlord has been told about the need for repairs, and failed to do them, a tenant can contact their local council who have new powers, under Part 1 of the Housing Act 2004, to carry out an assessment of the property using the new Housing, Health and Safety Rating System (HHSRS)

The HHSRS is a risk based assessment tool, introduced in England in April 2006, and implemented in Wales later in 2006. HHSRS is used to assess potential risks to the health and safety of occupants in residential properties in England and Wales. Local authorities are responsible for operating the HHSRS.

Any property that comes to the local authority's attention, through a complaint for example, can be assessed. Authorities do not have to inspect every property in their area but will inspect if they have reason to do so. If a complaint about the state of a property is made by a justice of the peace, or the parish or community council then the local authority has a duty to undertake an inspection. Authorities also have a strategic duty to keep the housing stock in their area under review.

HHSRS looks at the likelihood of an incident arising from the condition of the property and the likely harmful outcome. For example, how likely is a fire to break out, what will happen if one does? The HHSRS assesses 29 categories of housing hazard, (eg cold, fire, falls, lead in drinking water pipes and old paintwork, and hot surfaces that could lead to burns or scalds) and each hazard has a weighting which will help determine whether the property is rated as having Category 1 (serious) or Category 2 (other) hazards.

If a property is found to contain serious, category 1 hazards, the local authority has a duty to take the most appropriate action in relation to the hazard. Appropriate action could be to serve a notice for the landlord to carry out improvements to the property, for example to install central heating or insulation, fix a rail to steep stairs, or mend a leaking roof. However, appropriate action may extend to issuing a prohibition order, the effect of which would be to close all or part of a property. In which case, the local authority may have to re-house the tenants.

A property owner who feels that an assessment is wrong can discuss matters with the inspector and ultimately will be able to challenge an enforcement decision through the Residential Property Tribunal.

Further information on the HHSRS can be found at <http://www.communities.gov.uk/housing/about/guidanceforpublic/homehealthsafety/>

Does the landlord have the right of entry?

Is the landlord entitled to enter the property to carry out repairs?

There is an implied term in tenancy agreements under the Rent Act 1977 and the Housing Act 1988 that the tenant will let the landlord have access to the property, and all reasonable facilities, to carry out repairs which he or she is entitled to do.

In the case of tenancies where the landlord is responsible for repairs as described on page 3, he or she or an agent authorised by him or her in writing may, at reasonable times of the day, enter the property to inspect its condition and state of repair. He or she must give the tenant 24 hours notice in writing before he or she carries out such an inspection.

If a regulated tenant will not give his or her consent for work to be carried out for which the landlord has a local authority grant, then the landlord may apply to the court for an order to enter and carry out the works. An order can be made subject to conditions about the time at which the work is carried out and about alternative accommodation arrangements.

Must the tenant leave?

Can a landlord make a tenant give up his or her tenancy so that he or she can carry out repairs or improvements? Except in special circumstances, such as compulsory purchase for redevelopment, or overcrowding, a regulated, secure or assured tenant can only be made to leave his or her home if the landlord obtains a court order on one of a number of specified grounds (see housing booklets *Your Rights as a Council Tenant*, *Assured and assured shorthold tenancies – a guide for tenants*, *Assured and assured shorthold tenancies – a guide for landlords and Regulated Tenancies*). A landlord cannot repossess the home of either a regulated or an assured tenant simply because he or she needs or wants to do repairs. He or she may be able to obtain an order if he or she can provide suitable alternative accommodation or, in the case of assured tenancies, if he or she wishes to develop the property or do substantial works. The council may be able to get possession from a secure tenant to do major work if suitable alternative accommodation is available.

A tenant can also agree to leave his or her home temporarily while work is carried out, but if he or she does so he or she should make sure that the agreement between him or her and the landlord sets out clearly the basis on which he or she is leaving the property and his or her right to return. It should also include details of the alternative accommodation provided. If you are asked to move out of your accommodation temporarily, get advice from a Citizens Advice Bureau or a solicitor.

A tenant who is fully protected by the Rent Act 1977 (unless he or she is a protected shorthold tenant) cannot be granted an assured tenancy of alternative accommodation by his or her landlord. A full assured tenant cannot be granted a shorthold tenancy of alternative accommodation by his or her landlord.

Does the tenant have rights to repair, etc?

Does the tenant have any rights to do work on the property?

A regulated tenant has the right to carry out certain improvements unless the landlord has a right to get back his or her property because he or she has served a particular sort of notice under the Rent Act 1977. See housing booklet *Regulated Tenancies*. A secure tenant also has the right to carry out certain improvements. See housing booklets *Your Rights as a Council Tenant* and *A Better deal for Tenants – Your New Right to Repair*. However, in each case the tenant must get written permission from the landlord who can impose conditions or refuse permission, but must not do either unreasonably. If the tenant does not satisfy reasonable conditions imposed by the landlord, he or she could be breaking his or her agreement, and the landlord might be able to regain possession.

How does the tenant get his or her landlord to do repairs if he or she does not know who his or her landlord is?

If the tenant pays a weekly rent, his or her landlord's name and address should be in the rent book which the landlord has to provide. If the landlord is a company, the tenant has the right to know the name and address of each of the company directors and the company

secretary. The tenant must ask the landlord, his or her agent or the person who collects the rent for this information in writing. Failure to provide this information is a criminal offence attracting a fine.

Any tenant who asks the person who receives the rent, or the landlord's agent, in writing, for the landlord's name and address is entitled by law to get that information within 21 days unless there is a reasonable excuse for it not being given. He or she may also ask the landlord in writing for the names and addresses of the company directors and secretary, as mentioned above.

Again, if the landlord or agent does not provide this information, he or she could be liable to a fine. Tenants can find out from the Land Registry, details of who owns their property. For further information see housing booklet *Residential Long Leaseholders: A guide to your rights and responsibilities*.

Withholding rent to pay for repairs

If the landlord is failing to carry out repairs, can the tenant withhold rent to pay for repairs?

If a tenant does not pay his or her rent, the landlord can take him or her to court for arrears, and he or she may seek possession on arrears grounds. In some circumstances, if the right procedure is followed, the tenant could do the works and take the cost out of the rental payments. A tenant considering this should always get advice first.



Special problems in blocks of flats

The Housing Act 1988 extended the responsibilities of the landlord.* A tenant with a lease as described on page 3 (but which was granted on or after 15 January 1989), may now get the landlord to repair damage caused to the structure or exterior of any part of the building owned by the same landlord, if the damage is interfering with his or her enjoyment of his or her property or of any common parts he or she is entitled to use. For example, if the tenant's flat is made damp by a leak in a part of the roof which does not actually cover his or her flat, the damage caused by the leak is now something which the landlord can have a responsibility to repair. The landlord does not have to do the repair if he or she does not own the part of the property which is causing the damage, or if he or she cannot get access to the part of the property which is causing the damage.

The landlord's responsibility to repair installations such as those mentioned on page 3 extends to installations owned by him or her or under his or her control or installations in another part of the building, so long as he or she can get access to them and they serve the dwelling. These responsibilities apply if the damage is interfering with the tenant's enjoyment of his or her flat or the common parts.

The Housing Act 1988 also improved local authorities' powers to get repairs done to the common parts of blocks of flats. These powers apply not just where the common parts need repair, but also where one tenant's flat is affected by disrepair in a neighbouring flat.

* Under S11 of the Landlord and Tenant Act 1985.

What do I do if my flat is affected by disrepair that is not the responsibility of anybody in the block?

Depending on the nature and the urgency of the repair, approach your landlord or his or her agent. If the landlord does not accept responsibility for the repair, get legal advice. The local authority housing or environmental health departments may also be able to help.

Repairs that are not done properly

If the repair is not done properly, what can the tenants do about it?

Take the matter up with the landlord or his or her agent. If the negotiations with the landlord or his or her agent are unsuccessful get legal advice (see housing booklet *Residential Long Leaseholders: A guide to your rights and responsibilities*).

Disrepairs caused by another tenant

What can I do if my flat is damaged because another tenant in the block has not maintained his or her flat properly?

Under the terms of the lease, the landlord may have a responsibility to stop the damage continuing or get the other tenant to stop it. If you are not recompensed you may need to consider court action. Get legal advice.

My flat is fine but the staircase I use to reach it is rickety. What can I do?

If the landlord refuses to repair it, ask your local authority if they will consider serving a notice enforcing repairs. Such notices can be served if the common parts of a building are in very poor condition or in such disrepair that they

seriously affect your personal comfort. If your landlord is liable, eg see page 10, you could sue him or her.



Other issues

Are there any special rules for repairs to houses in multiple occupation?

Local authorities have powers to require landlords to bring houses in multiple occupation up to a standard which is fit for the number of people living in the property. They may require the landlord to provide extra sanitary fittings, heating installations, facilities for storing, preparing or cooking food, or to make the property comply with fire safety regulations. Grants may be available to the landlord to enable him or her to do the necessary work.

If the landlord does repairs and improvements, does he or she have the right to put the rent up immediately?

This will depend on the type of tenancy, the nature of the repairs and improvements and the terms of the tenancy agreement.

If the tenant has a **regulated tenancy** under the Rent Act 1977, and the repairs and improvements change the condition of the property, the landlord may apply to the rent officer to register a new fair rent. If the improvements mean that the registered rent is no longer a fair rent and a fair rent is already registered, he or she does not need to wait until the next scheduled date of increase before applying (see housing booklet *Regulated Tenancies*).

In other cases, it will depend on the terms of the tenancy agreement.



Further information

The other housing booklets referred to in this booklet are:

Your Rights as a Council Tenant

A Better Deal for Tenants – Your Right to Repair

Assured and Assured Shorthold tenancies

– a guide for tenants

Assured and Assured Shorthold tenancies

– a guide for landlords

Renting Rooms in Someone's Home

– a guide for people renting from resident landlords

Letting Rooms in Your Home

– a guide for resident landlords

Regulated Tenancies

Residential Long Leaseholders – A guide to your rights and responsibilities.

These leaflets, and further copies of this leaflet can be obtained from:

Communities and Local Government Publications

Tel: 0300 123 1124

Fax: 0300 123 1125

E-mail: communities@capita.co.uk

They are also available on the Department's website:

<http://www.communities.gov.uk/housing>

Alternative formats can be requested from:

alternativeformats@communities.gsi.gov.uk



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