

Updates in Landlord and Tenant Law

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Topics

- Homes (Fitness for Human Habitation) Act 2018
- Tenant Fees Act 2019

Homes (Fitness for Human Habitation) Act 2018

- Comes into force on 20th March 2019.
- Affects residential tenancies created on or after this date with a term of less than 7 years or that become periodic after this date: ASTs, secure tenancies, assured and protected tenancies.
- All residential tenancies will be affected from 20th March 2020.

Why has it been introduced?

- To ensure that rented accommodation is fit for human habitation and strengthens the tenant's means of redress when it is not.
- Tenants can take action against landlords via the courts without having to rely on the local authority to do so.

S11 Landlord and Tenant Act 1985

Updates Sections 8 to 11 of the Landlord and Tenant Act 1985:

Implied covenant by the landlord that the property will be fit for human habitation at the start of the tenancy and will remain fit during the term. This cannot be avoided or contracted out of by the landlord.

This relates to all parts of the building in which the landlord has an estate or interest including common parts, outside walls, windows and roofs.

Liability will only arise inside the Property when the landlord is made aware of the hazard but liability arises immediately where there is a hazard in the commons parts or retained areas.

S10 Landlord and Tenant Act 1985

- Currently the issues in respect of fitness for human habitation are:
- Repair Stability Freedom from damp
- Internal arrangement Not enough natural light
- Not enough ventilation Water supply
- Drainage and sanitary conveniences
- Facilities for the preparation and cooking of food and for the disposal of waste water
- *This has been added:*
- *In relation to a dwelling in England, any prescribed hazard*

Housing Health and Safety (England) Regulations 2005 (HHSRS)

- The hazards refer to the 29 listed in the above Regulations:
- Damp and mould growth Excess cold/Excess heat
- Asbestos and manufactured metal fibres Biocides Carbon monoxide
- Lead Radiation (from radon gas) Uncombusted fuel gas
- Volatile organic compounds Crowding and space Entry by intruders
- Lighting Domestic hygiene, pests and refuse Noise Food safety
- Personal hygiene, sanitation and drainage Water supply
- Falls associated with stairs and steps Falls on the level
- Falls between levels Electrical hazards Fire and fire safety
- Hot surfaces and materials Collision and entrapment Explosions
- Physical strain associated with operating amenities Structural collapse and falling elements

Exceptions from Liability

- Non-tenant-like behaviour or breach of tenancy
- Acts of God e.g. fires, storms, flood
- Problems caused by tenant's own possessions
- Where the repairs would breach any enactment such as planning permission, listed building consent
- Consent of Third Party is required and reasonable endeavours have been made to get that consent but it has not been given
- The tenant is not an individual e.g. local authorities, housing associations, educational institutions
- The Act does not cover people who have licence to occupy such as lodgers

Notice and Access for the Landlord

- There is now implied into a contract that the landlord or a person authorised by the landlord may enter the dwelling to view its condition and state of repair at reasonable hours of the day upon giving at least 24 hours' written notice.
- The landlord's liability will not start until they have had notice and had a reasonable period to rectify
- Landlords should rectify any damages that they are responsible for as soon as possible.

Court Proceedings

- The tenant may bring a claim in the county court
- Factors that will be taken into account: perceived harm inflicted on the tenant, longevity of the issue and the severity of unfitness
- An HHSRS inspection and report is not necessary to bring a claim
- The landlord may have to pay compensation and carry out the necessary works and pay the tenant's legal costs
- Action by the tenant through the court does not stop the local authority from using its enforcement powers
- If the landlord wins, the tenant may have to pay the landlord's legal costs

Tenant Fees Act 2019

- Comes into force on 1st June 2019
- Tenancies affected are ASTs, social housing, student lets and licences to occupy
- Landlords and letting agents will not be able to require tenants to make any payment or loan as a condition of the grant, renewal, continuance, variation, assignment, novation or termination of a tenancy

The only permitted payments are:

- Rent
- Refundable tenancy deposit of no more than 5 weeks where rent is under £50,000 pa
- Refundable holding deposit of no more than one week's rent
- Payment due in the event of default
- Payments for utilities, council tax and TV licence
- Anything else is a prohibited payment

Prohibited Payments

- Will not apply to a tenancy entered into before 1st June 2019 or periodic tenancies arising after this date
- Any provisions within these tenancies requiring payments will cease to be binding after 1 year

Holding Deposits

- These must be refunded to tenants within 7 days of the tenancy being entered into or 15 days if the agreement is not completed for reasons within the landlord's control.
- It does not have to be refunded if:
 - The tenant does not have the right to rent
 - The tenant provides false or misleading information

Sanctions for breach

- Landlords will not be able to serve S21 notices
- The Act is enforceable by local authorities with a fine of up to £5,000
- Local authorities can fine up to £30,000 for repeat offenders
- If the offence is committed by a corporate body, the officers/members can be liable for it
- The landlord must be notified of a potential fine within 6 months of becoming aware of the breach. The landlord has 28 days to respond. If imposed, the fine must be paid in 28 days. Right of appeal to the First Tier Tribunal.
- The Housing and Planning Act 2016 will be amended so that the local authority can apply for a banning order

Recovery of tenant fees

- Tenants can apply to the First Tier Tribunal to recover prohibited payments and payments that should have been refunded. Local authorities may help them.
- Section 83 of the Consumer Rights Act 2015 to be amended to require letting agents to publish details of their fees and client money and redress scheme memberships