

Fitness for Human Habitation

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What we all know

- Liability for repairs
- Express terms
- Implied terms – s. 11 Landlord and Tenant Act 1985
- Pre-condition of notice
- Access to inspect and repair

The background to the Act

- The best of intentions
- Historical anomaly
- Previous attempts made to reform
- Now enacted on 20th December 2018
- Central purpose to improve standards in the PRS

Homes (Fitness et c) Act 2018

- Creates a further implied covenant in dwellings that the premises are:
 - (a) fit for habitation at the time of the grant; and
 - (b) will remain fit for habitation during the term of the lease
- Implied covenant now in s. 9A LTA 1985

What's not included?

- Repairs required as a result of tenant damage (s. 9A(2)(a))
- Rebuilding or reinstatement (fire, flood, storm)
- Repairs to tenant's fittings (that tenant entitled to remove)
- Carrying out works that would place the landlord in breach of any statutory obligation
- Carrying out repairs requiring the consent of a superior landlord where consent has not been obtained

As with s. 11

- Any provision seeking to exclude the implied covenant is void (s. 9A(4))
- Specific performance can be ordered
- Includes a dwelling which is part of a building and common parts in which L has an estate or interest
- Reciprocal implied covenant to enter to view, inspect and repair (s. 9A(7)) at reasonable times of the day and on 24 hours' notice in writing.

To what tenancies does the Act apply?

- As with s. 11, the implied covenant applies to leases for less than 7 years
- i.e. non-registrable interests.
- In practical terms, most tenancies of short fixed term and periodic tenancies

Commencement

- Implied covenant applies to any new tenancy granted on or after 20/3/19 (secure, assured, introductory).
- Applies to renewed fixed term tenancies on or after the commencement date (20/3/19)
- Periodic or secure tenancies:
 - Fitness at the date of grant is fitness from 20/3/20
 - Remaining fit applies after 20/3/20

Fitness – Meaning?

- S. 1(4) refers to s. 10 LTA 1985:

Section 10 – in determining if a house / dwelling is unfit regard is to be had to the condition in respect of the following:

- Repair
- Stability
- Freedom from damp
- Internal arrangement
- Natural lighting
- Ventilation
- Water supply
- Drainage and sanitary conveniences
- Facilities for prep and cooking of food and disposal of waste water
- And house to be regarded as unfit if and ONLY if it is so far defective in one or more of those matters that it is not reasonably suitable for occupation

Fitness - further

- S. 1(4)(b) now additionally refers to 'any prescribed hazard'
- The prescribed hazard is a matter or circumstance amounting to a hazard for the purposes of Regulations under 2004 Housing Act
- i.e. HHSRS

Hazards?

- 'Hazard' prescribed by Regs under Housing Act 2004 - HHSRS
- The criteria utilised by Local Authorities in determining whether to impose improvement and/or prohibition orders.
- This is a list of 29 hazards under the Housing Health and Safety Rating System
- Cat 1 immediate risk to health. Cat 2 less urgent.
- Very wide ranging.
- Expert evidence?

Hazards

Damp

Excess Cold

Excess Heat

Asbestos

Biocides

Carbon Monoxide

Lead

Radiation

Uncombusted fuel gas

Volatile organic compounds

Crowding and space

Entry by intruders

Lighting

Noise

Domestic hygiene

Food safety

Hazards

Personal hygiene

Water supply

Falls associated with baths

Falls on the level surfaces

Falls associated with stairs

Falls between levels

Electrical hazards

Fire

Flames and hot surfaces.

Collision and entrapment

Explosions

Ergonomics

Structural collapse

Intended Consequences

- The ability for tenants to take action themselves against landlords in the PRS
- The improvement thereafter in housing conditions in the PRS (increasingly large proportion of housing stock for rent)
- The empowerment of tenants to do this without having to persuade under-resourced LAs to act under 2004 Act powers

Unintended Consequences

- Good news and bad news
- Act is likely to do little to improve conditions in the PRS where those conditions are unfit.
- Why?
- Act will result in CMCs chasing larger housing providers
- The return of Legal Aid Funding?

Practical Considerations

- For those managing housing stock:
 - Void inspections and bringing properties up to standard
 - Repair may now involve a considerable degree of improvement to ensure fitness standard complied with
 - Constructive notice of defects/fitness.
 - Training of housing officers and contractors to ensure hazard is noted and acted upon