Disrepair Best Practice And Tactics Webinar– 4 May 2021 Q&A

Recorded Webinar and Slides

The recording of the webinar and the slides can be viewed on our website which can be accessed using the following link:

https://dglegal.co.uk/webinars/disrepair-best-practice-and-tactics-webinar/

Q&A

Q What is reasonable notice? 3 months? 6?

A It depends on what the nature of the repair is. E.g. a serious escape of water ought to be repaired within a couple of days, an escape of gas within hours. Damp will depend on the severity, but generally within weeks not months.

Q Similar question, what is classed as reasonable time to carry out repairs. Is there a recognised timeline? Thanks

A For Council tenants a good guide is found in the LA (Right to Repair) Regs 1994. Again, it depends on the nature of the repair and the effect upon the occupiers.

Q With regards to the question in relation to reasonable time to carry out the repairs, this is obviously now more contentious due to COVID. However, would you say that due to the restrictions recently being lifted that works as per a Part 36 would now be reasonably enforced. I am just concerned in relation to the courts view on this lately....?

A Yes. If you've agreed a date e.g. in a tomlin order, then the works should be done by that date and, if not, you can apply to enforce the tomlin order and in an appropriate case seek an injunction ancillary to it. If you have a covid provision within the tomlin order/schedule, then that provision should deal with any delays but only for as long as Covid restrictions apply/cause the delay.

Q Is notice still required if the defects are to the exterior of the property ?

A Edwards v Kumurasarmy says not provided that the landlord has retained an interest. E.g. if it was a defect to the roof of block of flats then no notice required. And see s11(1A) L&T Act 1985

Q If the landlord has refused joint inspection under the protocol and the tenant has gone ahead and instructed a Surveyor and got an expert report, can the Landlord ignore this report and then go on and instruct a Surveyor to give a report totally ignoring the tenant's report?

A Common occurrence. The protocol does make provision for each party to use their own expert if they can't agree on a SJE. Although neither party needs permission to instruct their own expert, they do need permission to rely on their expert's report. If either party has acted unreasonably, e.g. ignored the protocol, or not given a good reason for not agreeing to an SJE, then the court ought not to grant that party permission to rely on their expert's report.

Q Is it sufficient to show that the landlord had actual knowledge of the disrepair for example by inspection if the tenant has given no notice? Thanks

A Yes, only have to show had reasonable knowledge. So if the landlord should have picked something up on an inspection, then they will be deemed to have knowledge or notice

Q If the tenant's Solicitor fails to respond to letters, emails & messages and works were booked in pre PAP letter and contractors unable to gain access; can the landlords solicitors contact the tenant or do we have to seek an injunction to gain access? Only asking as there are a few Solicitors who do not respond for weeks to PAP request for tenants proof of contact, and or when contractors may attend and or a survey be carried out (or indeed after months of chasing reply "our file is closed". In the interim works that need doing are not effected and this is frustrating.

A Injunction should be a remedy of very last resort. The duty to do works carries an implied duty on the tenant to allow access upon reasonable notice being given and can be used as a defence and even a counterclaim if the state of disrepair becomes worse by the tenant failing unreasonably to allow access.

Q With rodent claims, I usually find it difficult to come to conclusion as to what is deemed as infestation. If there are only one or 2 mice found/caught by traps could you argue there is an 'infestation' or could a landlord wriggle out of this if this makes sense.

A If only one or two rats enter a property, but do so because of a defect to the structure, e.g. a hole in the wall, or defective pointing, then that is an infestation, actionable both under s11 (if the landlord had knowledge of the defective wall/pointing), and in nuisance.

Q In the case of common parts of a residential block (mixed with private owners and council tenants) can the council use bye-laws to control the use of the common parts (e.g. prohibiting mats etc) or is it a misuse of councils power? (Somewhere I have seen it argued successfully that common parts of a block are private areas not public so do not seem susceptible to bylaws?)

A Yes I don't think a local authority landlord could escape liability in respect of common parts by using bylaws. There may, most likely, be express terms in the tenancy agreement as to how tenants use the common parts.

Q What authority implies that the landlord is liable for repair of goods such as washing machines (where provided with the property)?

A If a washing machine is provided at the start of the tenancy, then there is an implied expectation that it forms part of that which the tenant has bargained for, and so must continue to be provided for the duration of the tenancy unless the parties agree otherwise, so as to give the contract 'business efficacy'.

Q If the Tenancy agreement with a private landlord provides for Notices to be served by Recorded Delivery, will a Notice served by Certificate of Posting in respect of a claim for disrepair ss 9& 11 L& T 1985 suffice?

A Yes. Irrespective of what is in the tenancy agreement the duty to do repairs arises within a reasonable period of knowledge. So it's not necessary that the Tenant serve the landlord notice of the need of repair by recorded delivery.