

Chapter 12: Obligations in leases

Assessment question

Tricia has a five-year lease of a flat. She is always moaning to you about the state of repair of the whole block of flats. 'I sometimes think that the landlords don't know the dreadful conditions we tenants are living in.'

Advise Tricia.

Specimen answer

It is worth checking the lease agreement to see if there are any express covenants entered into by the landlord which specify who has responsibilities with regard to repair and maintenance of the common parts of the block of flats. Section 9A of the Landlord and Tenant Act 1985 (LTA) (as amended) aims to ensure that the landlord maintains the property in good condition for the tenants who have a lease of less than seven years. This only applies to leases entered into on or after the commencement date of the statute (20 March 2019). The landlord must assess dwelling as to whether it is fit for human habitation (see s.10 LTA 1985). The landlord may be excluded from certain obligations listed in s.9A LTA 1985.

Since this lease is for not more than seven years, the landlord is subject to statutory implied repair obligations. These are provided for by ss. 11-14 Landlord and Tenant Act 1985. These include: keep in repair the structure and exterior of the house; keep in repair and proper working order the installations in the home for the supply of water, gas and electricity, for space heating and the heating of water; and, added by s. 116 of the Housing Act 1988, in the case of blocks of flats, keep in repair 'common parts' such as lifts and staircases.

O'Brien v Robinson clearly state that the tenant must inform the landlord of the state of disrepair, otherwise no liability arises under s. 11(1) LTA 1985. However, this principle from *O'Brien* will not apply to parts of the block of flats which the landlord retains in his possession, for example, common parts. The landlord must repair the property he has in possession, whether or not s/he is notified of the defect by the tenant (*British Telecom v Sun Life Assurance* [1996] Ch 69).

Where the landlord is under a duty to repair, an issue can arise regarding the standard of repair that is required. In *Anstruther-Gough-Calthorpe v McOscar and Another*, the court suggested the following: 'look at the character of the house and its ordinary uses at the time of the demise. It must then be put in repair and kept in repair'. Applying this to the scenario, inevitably it depends on the block of flats: Where are they located? When were they built?

An issue that is unclear is what is meant by 'dreadful conditions'. Does this suggest that the landlord needs to undertake repairs or improvements to the block of flats? In *Ravenseft Properties v Davstone*, stone-cladding on a concrete block of flats began to bow away from the wall. In order to address the risk of stones falling, the landlord made full repairs. The landlord sought to recover the cost of the works from the tenant. According to the court in this case, the issue of repairing is a question of degree, which depends on whether the landlord or tenant give back something wholly different from that which they had leased. If Tricia is seeking improvements being made to the block of flats she will not be successful.

Where there is physical defect which requires repair then the landlord could be liable. However, the court in *Quick v Taff Ely Borough Council* construed the term 'repair' narrowly. In this case, there was no physical

damage to the walls or windows due to condensation, merely loss of amenity. This was insufficient for a successful claim by the tenants against the Council for lack of repair.

If the landlord has breached the repairing covenants, Tricia has several remedies available to her. She can certainly sue for damages. In an action for damages, the court will consider: How bad is the disrepair? What is the effect on living conditions? Has it caused physical damage? Has Tricia's health suffered? See, in particular, *Calabar Properties v Sticher*, p 395).

It is important to warn Tricia that she cannot withhold payment of rent on the ground that the landlord has not undertaken the necessary repairs. Tricia could herself obtain several quotations for the repair of the damage, and get the lowest bidder to do the repairs. She could then deduct the costs she has incurred from future payments of rent (*Lee Parker v Izzet* (1971)).

It is, however, doubtful whether Tricia would be able to do this, since repairs for a whole block of flats may incur significant costs.

A court may order specific performance of a covenant to repair in relation to a dwelling (s. 17(1) LTA 1985).