

Rented property focus

The courts have a key role to play in ensuring rogue tenants – and landlords – are held accountable for their actions. In this month's column, Rob Cooke outlines two very different examples of court intervention and shows that ignorance is no excuse...

When it comes to the upkeep of a rented property, what are my statutory obligations as a landlord?

There are various pieces of legislation relating to the condition of a rented property and it is the landlord's responsibility to comply with them.

You are responsible for repairs to the structure and exterior of the building, the heating and hot water installations, sinks, baths and other sanitary ware, plus the gas and electrical appliances and the fire safety of any furniture or furnishings.

Failure to carry out maintenance can result in a court order forcing you to undertake repairs and a claim by the tenant for damages. If you do not comply with gas, electricity or fire health and safety, you can be fined, imprisoned or even face manslaughter charges if someone dies. The tenant may also sue you for civil damages and your property insurance may be invalidated.

If there is a statutory nuisance, such as smoke, fumes or gases being emitted from the premises, or the dwelling is a health hazard, the local authority can serve a notice forcing you to rectify the problem. Alternatively, a third party, such as the tenant, can make an application to the Magistrates Court for an order to abate the nuisance.

In situations where the landlord retains control of any part of the premises, for example communal areas, you have a common duty of care to visitors. Therefore, you may be liable if someone is injured or dies as a result of your negligence.

Landlords also have obligations under the Defective Premises Act. You have a civil liability to pay damages if a tenant or resident at your property is injured or dies as a result of a defect that you are responsible to repair and compensation may be awarded for personal belongings that are destroyed or damaged as a result of your negligence.



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The liability arises if you knew of the defect in question, or ought to have known about it, but failed to carry out the repair. The important point here is that even if you did not know there was a problem and the court decides a reasonable landlord should have been aware of it, you can still be held accountable.

Are rent arrears regarded as paid if the tenant delivers a cheque on the day of the possession hearing, even though the funds are not cleared?

The Court of Appeal has been asked to consider this situation.

In this particular case, the tenant had become 11 weeks behind with his rent when the landlord served a valid Notice Seeking Possession under Section 8 of the Housing Act 1988. This advised the tenant that the landlord intended to start court proceedings when the notice expired.

The court eventually listed the case three months after the notice expired, but on the day it was to be heard, the tenant handed a cheque to the landlord for the arrears, which he accepted.

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The judge adjourned the action to give the cheque time to clear. This did not please the landlord as he still wished to obtain possession, so he decided to appeal against the decision on the basis that at the date of the hearing, the rent remained unpaid i.e. the cheque had not been verified.

The landlord was successful in his application and was awarded a possession order, but amazingly, the tenant decided to take the case to the Court of Appeal.

Eventually the possession order was overturned, as the cheque was considered conditional payment with actual payment on the date of delivery, provided it was cleared on first presentation.

Landlords remember – when rent is offered, bank it straight away. If you are involved in court proceedings and payment is offered prior to the hearing, accept it and ask the judge to adjourn the case until it has cleared. That way, if the cheque is returned unpaid, you can still go back to the court for possession.

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