



Fitness for Habitation

Landlord Legal Update

Introduction

As of March 20th 2019, the Fitness for Human Habitation Act will come into force for tenancies in England. This legislation amends the Landlord and Tenant Act 1985 so that landlords must ensure their property is fit for human habitation at the start of the tenancy and then maintain this standard throughout the rest of the time the

tenant lives in the property. The purpose of this guide is to explain what this means for landlords and agents, including potential penalties.

What is meant by 'fit for human habitation'?

It is important to note that fit for human habitation does not mean that there is a defect in the property. It means that there is a defect in the property that is so serious that a court considers the property to be unfit for that person to live in.

This is an important distinction because it means that the property has to be judged on the basis of the property condition as it is, and whether it is unsuitable for the actual person who lives in it as opposed to the generic tests applied by local authorities using the Housing Health and Safety Rating System. As a result, a younger, fitter tenant living on their own would have a higher threshold for what is unfit for them to live in than an older person or someone with a young family.

Does the local authority enforce this?

No, the legislation allows for tenants to bring court actions directly without first involving the council, allowing the judge to decide whether a property is unfit for human habitation based on evidence.

As such, while informal letters from the council will certainly be useful to a tenant they are by no means mandatory before action can be taken.



Homes (Fitness for Human Habitation) Act 2018 – 20th March 2019

What does the Fitness Test do?

The Fitness Test revives a clause which already exists in the Landlord and Tenant Act 1985, requiring all rented homes to be 'fit for human habitation' at the start of the tenancy and to remain so throughout. The clause is defunct due to the application of antiquated rent levels (£80/year in London, £52/year elsewhere). In determining whether a house is 'unfit', the Fitness Test incorporates the hazards enshrined in the Housing Health and Safety Rating System and adds them to the 9 original fitness categories.

The updated 'fitness standard' includes issues not currently covered

by a landlord's legal repair responsibilities, such as damp caused by design defects (lack of ventilation) rather than disrepair and infestation, such as fleas.

The Fitness Test gives tenants a way to take effective action themselves if they rent a property in poor condition and the landlord fails to do the necessary maintenance. Currently tenants have no way to enforce property standards themselves. The Fitness Test gives tenants the right to take their landlord to court where the property is not fit - they will be able to apply directly to the Court for an injunction to compel a landlord to carry out works, or for damages (compensation) for the landlord's failure to keep the property in good repair. Some tenants will be able to apply directly to the court using their own evidence, such as photos of mould, or just emails confirming that no heating has experienced for several weeks.

What does this mean for an agent / Landlord?

It will place greater emphasis on the landlord/agent to ensure that the property is fit for habitation at the commencement of the tenancy and during the occupation itself. You will need to ensure that there is a detailed check in inventory covering the relevant areas contained within the Fitness Test i.e. heating, trips and falls, and security. In addition, you need to ensure there are regular property visits to take note of any defects with a property whether these have been caused by the tenant or fair wear and tear.

Finally, the importance of having a robust and detailed repairing

system cannot be understated. We are currently liaising with a legal department to make changes where required I have confirmed that 99% of our managed properties have a detailed Inventory but this needs to be updated on any new tenancy going forwards taking into consideration the following information;

The Government has put forward 29 categories of hazard. Each hazard has a weighting which will help determine whether the property is rated as having category 1 (serious) or category 2 (other).

The 29 Hazards Are:

A. Physiological Requirements

1. Damp and mould growth
2. Excess cold
3. Excess heat
4. Asbestos and MMF
5. Biocides
6. Carbon monoxide and fuel combustion products
7. Lead
8. Radiation
9. Uncombusted fuel gas
10. Volatile organic compounds

B. Physiological requirements

- 11. Crowding and space
- 12. Entry by intruders
- 13. Lighting
- 14. Noise

C. Protection against Infection

- 15. Domestic hygiene, pests and refuse
- 16. Food safety
- 17. Personal hygiene, sanitation and drainage
- 18. Water supply

D. Protection against accidents

- 19. Falls associated with baths etc.
- 20. Falling on level surfaces etc.
- 21. Falling on stairs etc.
- 22. Falling between levels
- 23. Electrical hazards
- 24. Fire
- 25. Flames, hot surfaces etc.
- 26. Collision and entrapment
- 27. Explosions
- 28. Position and operability of amenities etc.
- 29. Structural collapse and falling elements

Are there any defects the landlord is not responsible for?

The landlord is not responsible for -

- defects caused by the tenant's negligence or intentional damage
- rebuilding the property in the event of destruction or damage by fire, flood, or other catastrophic weather event
- repairing items that the tenant is entitled to remove from the property (ie their goods)
- carrying out works that the head landlord will not authorise.

The landlord must make reasonable endeavours to contact the head landlord in this case.

Does it apply to all tenancies?

It will apply to secure, assured (including assured shorthold) and introductory tenancies as long as the term of the tenancy is for less than 7 years. It will come into force at different times however. This includes subletting tenancies.

New and renewed tenancies from March 20th 2019

From March 20th 2019 the legislation will apply to any new tenancies granted on or after that date.

Where the tenancy is renewed on or after March 20th 2019, the legislation will apply at the point of renewal and landlords should check to ensure the property is fit for human habitation at that point. This includes statutory periodic tenancies that come into force on or after this date or any contractual periodic tenancies that are agreed on or after this date.

Tenancies that began before March 20th 2019

The legislation will not apply to fixed term tenancies that began or were agreed to begin before March 20th 2019 (ie student lets signed up in January to start the following September). In addition, if that fixed term then turns into contractual periodic tenancy as agreed in the contract, it is likely that the legislation will not apply as they are not technically renewals. Nevertheless, landlords should be careful with this until there is case law available to verify this view.

For periodic tenancies that began before March 20th 2019, the legislation will apply but there is a 12 month grace period before enforcement action can be taken. As such a defect must arise on or after March 20th 2020 for the legislation to apply.



Useful Links:

<https://services.parliament.uk/bills/2017-19/homesfitnessforhumanhabitation.html>

<https://landlords.org.uk/news-campaigns/news/homes-fitness-human-habitation-act-2018-becomes-law>



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