

TICKING CLOCK FOR LANDLORDS

Monday 8th December 2003 saw the publication date of the 33rd Edition of the Civil Procedure Rules which now includes a Pre-Action Protocol for Housing Disrepair Disputes between tenants and landlords. It sets out a code of conduct and time frame that should be followed by the parties, or by their appointed representatives, before proceedings can be issued out of the civil Courts. Failure to comply with the Protocol may result in the Court exercising its discretion to award (or restrict) costs against the defaulting party.

The Protocol applies to disrepair claims brought pursuant to Section 11 of the Landlord and Tenant Act 1985, Section 4 of the Defective Premises Act 1972 and pursuant to express covenants contained in a Tenancy Agreement or Lease. It does not apply to disrepair counterclaims or set-offs which originate as other proceedings (for example, where a tenant brings a counterclaim for disrepair following a landlord's claim for outstanding rent). It does not apply to proceedings brought in local Magistrates' Courts.

It is envisaged that the Protocol will be used in those cases where, despite the landlord's knowledge of the disrepair, the matter remains unresolved and litigation appears to be the only way forward for the tenant although such a course of action should only be taken as a last resort.

The Protocol has been seven years in the making following Lord Woolf's recommendations in his final Access to Justice Report in July 1996 and its purpose is to '...avoid unnecessary litigation'; '...promote the speedy and appropriate carrying out of any repairs which are the landlord's responsibility'; '...ensure that tenants receive any compensation to which they are entitled as speedily as possible'; '...promote good pre-litigation practice, including the early exchange of information and to give guidance about the instruction of experts' and '...keep the costs of resolving disputes down'.

In summary, the Protocol requires the tenant to send to the landlord an 'Early Notification Letter' which informs the Landlord of the tenant's own details; details of the alleged defects in the form of a schedule; details of any prior notice given to the landlord of wants of repair; nominations for a surveyor with draft letter of instruction and disclosure of any relevant documents which the tenant may have in support of the claim. The letter will also request of

the landlord disclosure of all relevant records or documents relating to the tenancy, notices of disrepair, works undertaken to the tenanted property and inspection reports.

The landlord has 20 working days from the date of receipt of the letter in which to reply and supply the information requested and to confirm whether or not the proposed single joint expert and the proposed letter of instruction are agreed. If a landlord does not agree to the appointment of a single joint expert and/or a letter of instruction, the landlord should state whether he agrees to a joint inspection with his own nominated surveyor.

Irrespective of whether the landlord fails to reply to the tenant's early notification letter within the time frame, the tenant (or his appointed representative) will send to the landlord a 'Letter of Claim' which contains much of the information contained in the initial letter plus a chronology of attempts undertaken to rectify alleged defects; the effect of such alleged defects on the tenant causing injury to health; and details of any financial losses arising from damage to personal belongings.

The landlord has a further 20 working day period in which to respond to the tenant's second letter in which he must include either an admission or denial of liability. If liability is denied he will need to identify those aspects of alleged defects and to give reasons. The landlord will also admit defects which are not in dispute and provide a full schedule of intended works including anticipated start and completion dates, a timetable for the proposed works together with any offer for compensation and costs.

It is not uncommon for claims of disrepair to be brought by tenants who have failed to give notice of want of repair to their landlord. Should such a scenario arise at the time a landlord receives correspondence from a tenant in pursuance of the Protocol, then he may state this in his response to the tenant's letter of claim and/or any difficulty in gaining access to the tenanted property.

The Protocol also requires an inspection of the property to be undertaken within 20 working days of the landlord's response to the tenant's initial letter and for the expert's report to be prepared within 10 working days of the inspection.

Where a landlord disputes a tenant's initial claim, he may elect to proffer instructions to a different surveyor and propose that a joint inspection be undertaken by the parties' respective surveyors. If a single joint expert is instructed, both landlord and tenant will pay one half of the cost of the report. If a joint inspection is to be carried out, the landlord and tenant will pay the cost of the report prepared by their own expert.

The landlord may elect to wait to respond to the tenant on the question of liability until after receipt of the expert's report. In this event, the landlord has 20 working days in which to respond following receipt of the expert's report.

The Protocol also provides that where a tenant's claim is settled without involving the Court, the landlord will pay the tenant's reasonable costs or out of pocket expenses provided that the tenant's claim was justifiably brought.

As the time clock starts to tick from the outset, Managing Agents who are appointed to act on behalf of client landlords, will need to move swiftly to take instructions to reduce the risk of cost penalties being imposed by reason of non-compliance with the Protocol.

It is suggested that tenants are unlikely to initiate the Protocol unless there is strong evidence to indicate a breach of repairing covenant on the part of a landlord. As the Protocol encourages the exchange of early and full information about the prospective legal claim, it should go some way to stop ill-founded claims being initiated through the Courts. Only time will tell!

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For further information please call:

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Note to Editors: Mike Summerhayes specialises in property related matters having previously been employed in local government, commerce before reverting to private practice in 1992. He advises property managers, providers of landlord legal expense and rental indemnity, the Social Landlord sector and is known to many property agents through his 10 year association with Lumley Letsure Limited.

Bridge McFarland has clients throughout Lincolnshire and the Humber region. The firm has offices in Lincoln, Louth, Grimsby, Mabelthorpe, Market Rasen and Hull.