

Number 07

Pre-Action Protocol Housing Disrepair Claims

1. Introduction

The Civil Procedure Rules envisage the publication of Pre-action Protocols with the objectives of:

- (a) encouraging an early exchange of information about claims;
- (b) facilitating settlement negotiations;
- (c) supporting the efficient management of Court proceedings where litigation cannot be avoided.

Numerous pre-action Protocols have come into existence in the three years since the Civil Procedure Rules took effect. A Pre-action Protocol in relation to housing disrepair claims is currently awaiting judicial approval and is likely to become effective in about September 2002.

If a party fails to comply with the procedures and timetables set out in the Protocol or acts unreasonably in, for example, refusing a reasonable request for an extension of a particular time limit, the Court may well penalise that party in costs.

2. Action by tenants

2.1 Early notification letter

This may be appropriate where urgent repair work is required and/or the tenant cannot yet provide full details of his claim. It should include:

- (a) the name and address of the tenant and the address of the property;
- (b) details of the defects;
- (c) details of any prior notice of the defects given by the tenant to the landlord;
- (d) a request for disclosure of relevant documents;
- (e) proposals for the instruction of an expert;
- (f) (if the letter is being written on behalf of the tenant) authority for the release of the information requested;
- (g) a cheque for £10 to cover the cost of disclosure.

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2.2 Letter of claim

The tenant should send the landlord a letter of claim as soon as possible. It should include:

- (a) if no earlier notification letter has been sent everything set out in 2.1 above;
- (b) history of the defects;
- (c) information as to any emergency work carried out;
- (d) the effect of the defect on the tenant (e.g. health);
- (e) details of any losses and expenses incurred by the tenant (e.g. damaged furniture, wallpaper etc.);
- (f) details of costs incurred to date.

3. Action by landlords

3.1 Response to the earlier notification letter

This should include:

- (a) disclosure of documents including:
 - (i) Tenancy Agreement;
 - (ii) tenancy file;
 - (iii) documents relating to Notices given or the disrepair itself;
 - (iv) any other relevant document including, for example, the contents of files relating to inspection, the property itself, works carried out and heating mechanical records.
- (b) the landlord's response to the tenant's proposals for instructing an expert.

3.2 Response to the letter of claim

This should include:-

- (a) disclosure of documents as set out above, if not already given;
- (b) the response to the proposals for instructing an expert if not already given;
- (c) whether liability is admitted in respect of any, and if so which, defects and if liability is denied the reasons for this;
- (d) any allegation regarding lack of notice or access;
- (e) a full schedule of intended works, including anticipated start and completion dates and a timetable for the works;

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- (f) any offer of compensation;
- (g) any offer in respect of costs.

4. Experts

If the landlord does not respond to the tenant's proposals within 21 days, the expert should be instructed as a single joint expert. If the landlord does object to the tenant's proposals then it is preferable for a single joint expert to be instructed, even if each party instructs him separately. If each party instructs its own expert, the experts should inspect jointly.

The Protocol provides for a tight timetable for the experts, stating that "efforts should be made" to inspect within 14 days of the landlord's response to the tenant's letter of claim.

5. Access

The tenant must give reasonable access for inspection and/or repair.

6. Costs

If it is agreed or determined that work should be carried out by the landlord and/or compensation paid, then the tenant's costs should be paid by the landlord unless this would cause an injustice. This might be the case where, for example:-

- (a) the tenant fails to give access and the cost of the works is increased by the delay; or
- (b) the landlord did not have any prior notice of the defects

7. Conclusion

The landlords of residential property and their advisors will have to deal far more quickly than before with the claims for breaches of landlords' repairing obligations. The requirement for disclosure within 21 days mean that it must be possible to locate all relevant documents at an early stage, even though they may be held on numerous different files.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property disputes or litigation please contact:

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