

The Homes (Fitness for Human Habitation) Act 2018

1. Introduction

The Homes (Fitness for Human Habitation) Act 2018 (“the Act”) creates rights for tenants when landlords have failed to maintain their home so that it is fit for human habitation. This is implied into a tenancy agreement and covers the whole tenancy term.

2. What does fit for human habitation mean?

Fit for human habitation simply means that the dwelling must be safe, healthy and free from things that could cause serious harm. This would mean that to be unfit for human habitation the dwelling would need to be so defective that it is not reasonably suitable for occupation in one or more of the following ways:

- Repair
- Stability
- Freedom from damp
- Internal arrangement
- Natural lighting
- Ventilation
- Water supply
- Drainage and sanitary convenience
- Facilities for preparation and cooking and for the disposal of waste water, and
- Any “prescribed hazard”

3. What is a prescribed hazard?

The definition of prescribed hazard is set out in section 2 of the Housing Act 2004. A hazard for this purpose is defined as any risk or harm (including temporary harm) to the health (including mental health) or safety of the occupier.

The hazard may be due to an insufficiency in the dwelling or any land or building or part thereof in the vicinity.

4. Is there a test for the courts to consider?

The court will need to consider the following:

1. Whether a hazard exists – a hazard is defined in the same way as in the housing health and safety rating system – which includes but is not limited to: damp and mould growth, excess cold, excess heat, asbestos, presence of biocides and so on.
2. If there is a hazard, does the hazard make the dwelling unsuitable for occupation – this will be decided on the individual facts of each case.
3. Whether the landlord had been notified of the hazard – a landlord must check that a dwelling is fit for habitation before letting it. Although not expressly stated in the Act that notice should be given to landlords, it is likely that a landlord will not be in breach until they are given notice of the lack of fitness

and have been provided with a reasonable opportunity to complete any remedial works.

5. Limitations on the landlord's implied fitness for human habitation obligation

Landlords are not obliged to make a dwelling fit for human habitation in the following circumstances:

- When the tenant is responsible for the work – by express or implied duty of the tenancy agreement;
- Rebuild / reinstate if the dwelling is damaged or destroyed by fire, storm, flood or other inevitable accident;
- Repair or maintain something the tenant is entitled to remove;
- Carry out works that would cause the landlord to breach a statutory obligation;
- Carry out works where approval of a third party is necessary e.g. neighbor or landlord mortgagee;
- Where the disrepair is wholly or mainly due to the tenant's breach; and
- Where the county court has authorised an exclusion of the landlord's repairing obligations.

6. Remedies

If a landlord does not make a property fit for human habitation the tenant can apply to the court for damages or an order of specific performance which requires the landlord to carry out necessary works to ensure the property is fit for human habitation.

Conclusion

The Act intends to give tenants a new way to ensure their landlords improve conditions of their homes and when appropriate if this is not followed they can be compensated for the loss. It remains to be seen how the law further develops in this area.

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