

First-tier Tribunal

Is “Disrepair” a defence to claims for rent arrears?

Jim Bauld
TC Young

“Overriding Objective”

- **FTT-HPC must give effect to “overriding objective”**
- **Must manage proceedings in accordance with this objective**
- **Parties must assist tribunal**
- **“Deal with the proceedings justly”**

“Deal With the Proceedings Justly”

- Proportionate to the complexity of the issues and the resources of the parties;
- Seeking informality and flexibility in proceedings;
- Ensuring parties are on equal footing procedurally;
- Using the special expertise of the First-tier Tribunal effectively; and
- Avoiding delay, so far as compatible with the proper consideration of the issues

Rent arrears actions

- **Regulated (protected) tenancies (pre 1989)**
- **Assured Tenancies (post 1989)**
- **Private Residential Tenancy (post December 2017)**
- **Can be for eviction or payment**

Assured Tenancy-Rent Eviction grounds

- 8.. Both when the required notice of intention to recover possession is served and at the date of the Court Hearing, at least 3 months' rent lawfully due from the tenant is in arrears.
- 11.. Tenant has persistently delayed paying rent lawfully due. This applies even if no rent is in arrears when proceedings are begun
- 12.. Some rent is unpaid at the date when proceedings are begun. The rent must also have been in arrears when the notice of intention to recover possession was served

Eviction from short assured tenancy

- **compulsory repossession under Section 33 of the Housing (Scotland) Act 1988.**
- **eviction action cannot be defended (if Notices validly served and in correct form!)**
- **Needs NTQ and Section 33 Notice**
- **Any claim for payment of arrears can be defended though**

PRT-Eviction grounds

4 categories

- **Property required for another purpose**
- **Tenant's status**
- **Tenant's conduct**
- **Legal impediment to let continuing**

PRT eviction ground 12

- In arrears for 3 or more consecutive months rent arrears and at least one month's rent is due (Mandatory if notices served before 7 April 2020)
- in arrears for 3 or more consecutive months (Discretionary)

Rent arrears -Defences

- Notices not served
- Notices are “invalid”
- Arrears don't exist
- House in disrepair and thus “rent not lawfully due” (should be supported by expert report?)

Repairs-Legal duties

- **Contractual rights**
- **Statutory rights**
- **Common law rights**

COMMON LAW RIGHTS

Implied obligation that

(a) at start of tenancy

and

(b) during tenancy

that house will be in a

“tenantable and habitable condition”

STATUTORY PROVISIONS

Housing (Scotland) Act 2006

Sections 27 and Schedule 4

Landlord's repairing obligation

REPAIRING STANDARD

- **Wind and water tight**...reasonably fit for human habitation
- **Structure and exterior** of the house...in a reasonable state of repair and in proper working order
- **Installations** for the supply of water, gas and electricity (sanitation, space heating and heating water) are in a reasonable state of repair and proper working order
- Any **fixtures, fittings and appliances**

- Any **furnishings**...capable of being used safely for the purpose for which they are designed
- Satisfactory provision for **detecting fires** and for giving warning in the event of fire or suspected fire
- **Carbon monoxide detectors**
- **Tolerable standard**

PRE-TENANCY INSPECTION

Landlord must before commencement of tenancy

- Inspect the house
- Identify any work needed to comply with “repairing standard”
- Notify tenant of that work

Repairing Standard

- **Duty to ensure property meets Repairing Standard at start of tenancy and at all times during tenancy**
- **Regular inspections**
- **Failure may lead to referral to First-Tier Tribunal -Housing and Property Chamber (FTT-HPC)**
- **FTT-HPC can issue Repairing Standard Enforcement Orders (RSEO)**

REPAIRS DUTIES

Repair work must be done

“within a reasonable time”

and includes

“duty to make good any damage caused by carrying out the work”

Repairing Standard

- first element...
- the house is wind and water tight and in all other respects **reasonably fit for human habitation**

“REASONABLE FITNESS”

Morgan v Liverpool Corporation..... 1927

“if state of repair...is such that by ordinary use damage may naturally be caused to the occupier.....then the house is not in all respects reasonably fit for human habitation”

Lord Atkin

“REASONABLE FITNESS”

“Morgan” test followed in

Summers v Salford Corporation...1942

Haggerty v Glasgow Corporation1964

And numerous cases since!!!!

BUILDING REGULATIONS

In determining whether house is
“reasonably fit for human habitation”
regard is to be had to the extent to which by
“reasons of disrepair or sanitary defects”
the house
“falls short of any building regulations in
force in the area”

SANITARY DEFECTS

- Lack of air space
- Lack of ventilation
- Lack of lighting
- Dampness
- Absence of adequate water supply
- Absence of sanitary conveniences
- Inadequate paving/drainage of yards

DAMPNESS/CONDENSATION

Causal factors...

- Type and quality of heating
- Amount of insulation
- Amount of water borne moisture
- Type and quality of ventilation

THE “HEATABILITY” DUTY

Duty of landlord to provide a house which in respect of ventilation, insulation and heating systems would enable any tenant the landlord might reasonably contemplate to be able to reside in the house and to heat the house to a reasonable temperature at a reasonable cost and capable of being lived in with reasonable comfort and not susceptible to condensation dampness and mould

TENANT'S REMEDIES

- **Apply for RSEO**
- **Damages**
- **Abatement of rent**
- **Self repair**
- **Withholding rent**

DAMAGES

- **Many reported cases in disrepair actions**
- **Mainly against local authorities**
- **Impact on health (personal injury/solatium)**
- **Damage to belongings**
- **“social embarrassment/inconvenience ” of living in damp/mouldy housing**

Abatement of rent

- Linked to “withholding “rent
- Can be used as defence to action for payment of rent
- Essentially a claim that rent (in whole or part) is not due because property is unfit for habitation
- Renfrew DC v Gray

“While house is not reasonably fit...the tenant is not getting his *quid pro quo* for the rent”

“Defences” available to tenants ?

- Can FTT decide on “abatement”
- Does it need a RSEO application
- Does tenant need to lodge separate “counterclaim”
- What evidence is needed

Parker v Treherne

- FTS/HPC/CV/19/0649
- Payment action for damages under rule 70 based on breach of contract and breach of statutory obligations of tenant which had now ended
- Tenant claimed £10000 as “abatement of rent” and £3000 “damages” for inconvenience?
- They were awarded £650 as “damages and tribunal rejected the “abatement” claim

Klondyke Fishing v Forbes

- **FTS/HPC/CV/19/2598**
- **Payment action by landlord for arrears of £5850**
- **Tenants argued that all rent should be abated owing to numerous defects**
- **Tribunal decided that was “wholly unrealistic”**
- **Allowed abatement of £650**

Josephine Marshall Trust v Charlton

- Eviction action based on intention to demolish
- Tenant had obtained RSEO but landlord had not complied
- Landlord decided to demolish rather than repair
- FTT did not grant eviction order
- Landlord appealed to Upper Tribunal
- UT and Inner House both agreed that existence of RSEO does not prevent use of mandatory eviction ground

Questions?

Jim Bauld: jdb@tcyoung.co.uk

www.tcyoung.co.uk

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