Housing Tips and Advice

Disrepair

Under Section 11 of the Landlord and Tenant Act 1985 the landlord has an obligation to maintain and keep in repair the heating, hot water, sewage, (water, gas, electricity and sanitation), structure, exteriors (including drains, gutters and pipes) and furniture, if supplied, which needs to be working and serviceable. Failure to do this would be a breach of contract.

REMEMBER: the test for keep in repair would be; if it's there, is it broken, does it need mending?

If a tenant wishes to claim that there has been a breach of the landlord's statutory obligations in the contract then they would need to have a valid claim.

If so, there are two ways a tenant can make a claim:

- Cost of Cure (cost of repairs)
- Equitable Set-Off (reduce the rent)

If the property is in disrepair and the tenant wishes to make a claim they must first give fair notice to the landlord and allow for the landlord/agent to repair/replace.

The tenant would need to:

- Write to the landlord/agent with a proposal
- Give an opportunity for the landlord/agent to make right the problem
- Then either claim for the Cost of Cure (cost of repairs)
- or reduce the rent (Equitable Set-Off)

e.g. if you moved in and found that there was no furniture even though it had been advertised as fully furnished; you could either:

Equitable Set-Off

Reduce the cost of the rent by the difference in value between a furnished and unfurnished property.

Cost of Cure

Buy the furniture and bill for the cost - less what it would be worth at resale (as you would be able to take it with you when you leave)

It is important to mitigate your loss. If you moved in because a flat was advertised as close to campus and its actually half an hour away you might be able to claim for the cost of the bus but not for a taxi each day!

Damages and Inventory

FACT: Penalties in contract law are not enforceable. Common law only allows for reasonable reimbursement for the estimate of cost, a landlord can only claim for the cost of any loss or repair and not add additional penalties.

The contract cannot state that "a fee" will be added, a landlord would need to be able to substantiate this cost, there cannot be a hidden term in a contract - it needs to be clear how much something would be.

A landlord is entitled to claim for the cost of repair if things get broken during your tenancy but not to fine you for this. It would need to have been made clear in the contract if the landlord was able to use your deposit for the cost of repairs, not just rent arrears.

The landlord should release your deposit within 28 days of your tenancy ending and you agreeing to any justifiable deductions. If there is a dispute (which can be raised thought the deposit protection scheme) the remainder of the deposit should be returned whilst the dispute is ongoing. The Alternative Dispute Resolution could mediate between the tenant and landlord.

REMEMBER: It is very important to check your inventory as soon as moving in and to return it with any amendments as soon as possible. It is a good idea to take photos of any damage that was present upon moving in and to email these to the landlord so that you have dated evidence. If no inventory is provided then do your own, list all the contents but also the condition of the walls, ceilings, carpets, windows, curtains, doors etc.

FACT: Fair wear and tear is not a legal term but it is often found in contracts; it means that there is an allowance for reasonable wear on a property over the course of the tenancy.

If it states in the tenancy that the property must be cleaned or left in the state it was when rented then this must be done by the last day of the tenancy. A landlord/agent cannot impose a cleaning schedule on you which was not listed in the contract however they may try. It would be unlawful to enforce this post-contractual document.