SMART GUIDE

Top tips on housing claims

With over 3.8 million social housing properties in the UK, social housing claims are a major concern. Part One covers claims relating to the condition of demised properties.

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The duties owed by landlords to tenants for the condition of rented premises are often misunderstood by claimants' solicitors. Having a good understanding of the relevant law, along with appropriate procedures, creates an immediate advantage when defending social housing claims.

The law

Common law

- Common law duties owed by landlords to tenants are very limited. There is no common law duty on a landlord to maintain and repair a property (*Cavalier v Pope 1906*).
- A landlord will owe a duty if he negligently designed or constructed the premises: although this duty is not retrospective and there must be evidence of negligence at the time the premises were built (*Rimmer v Liverpool City Council 1985*).
- A landlord will also owe a duty if he created the danger on the premises (*Drysdale v Hedges 2012*).

Occupiers' liability

The *Occupiers Liability Act 1957* is frequently pleaded in social housing claims. However, this is misguided. The tenant is the occupier of the demised premises. However, in the case of a block of flats, the landlord will be the occupier of the common parts. Where a landlord has retained control of part of the premises, both tenant and landlord are occupiers, but this is rare for domestic premises.

Contract

Only an individual named in the tenancy agreement can bring a claim for breach of contract. The landlord's repairing obligations may be expressly referred to in

Street mural by Hyuro as part of Cities of Hope in Manchester's Northern Quarter.

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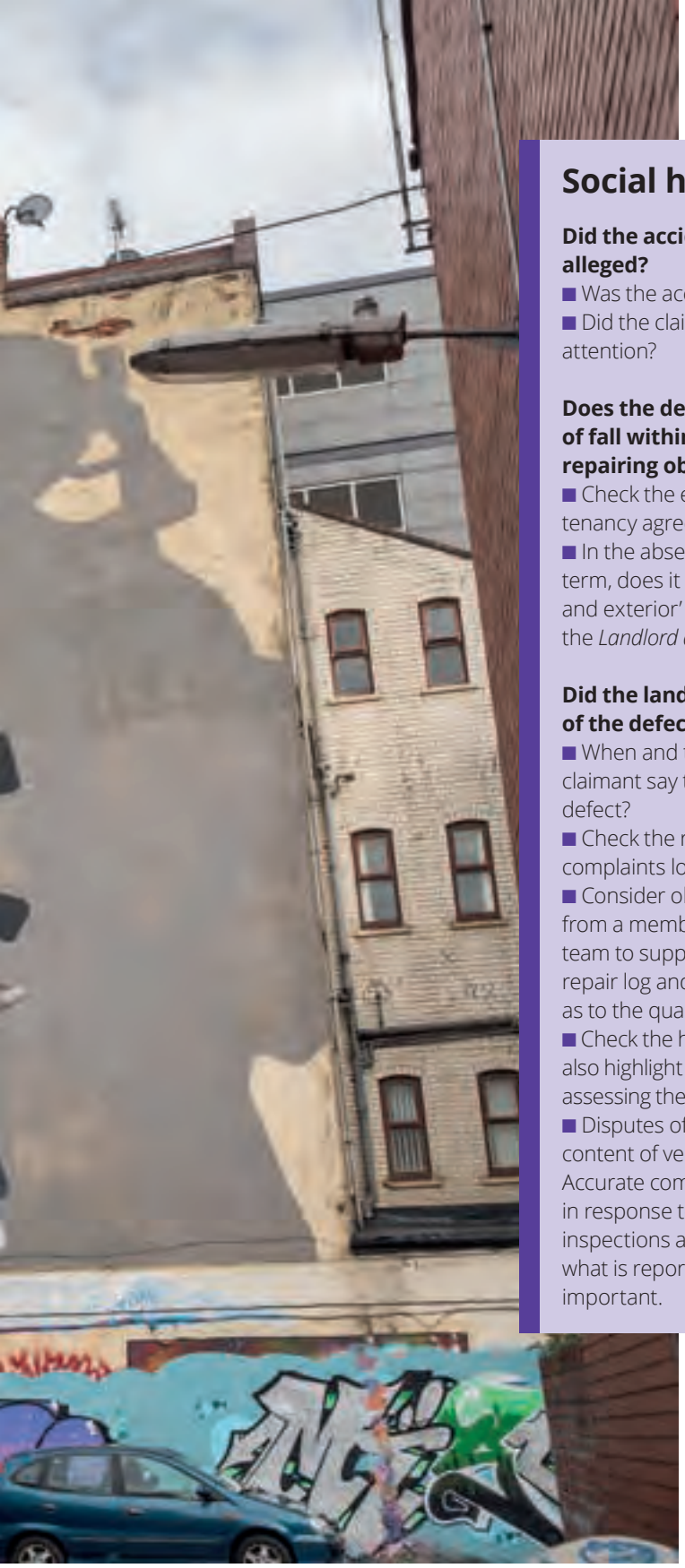

Social housing claim checklist

Did the accident occur as alleged?

- Was the accident reported?
- Did the claimant seek medical attention?

Does the defect complained of fall within the landlord's repairing obligations?

- Check the express terms of the tenancy agreement.
- In the absence of an express term, does it fall within 'structure and exterior' as implied by *s.11* of the *Landlord and Tenant Act 1985*?

Did the landlord have notice of the defect?

- When and to whom does the claimant say they reported the defect?
- Check the repairs history and complaints log.
- Consider obtaining a statement from a member of the repairs team to support the details in the repair log and provide evidence as to the quality of the system.
- Check the housing file. This may also highlight relevant issues when assessing the tenant's credibility.
- Disputes often arise as to the content of verbal complaints. Accurate computerised notes in response to calls and at inspections about precisely what is reported are therefore important.
- Consider obtaining a statement from the housing officer/tenancy services officer about complaints.
- If there is no record of the defect being reported, was the defect so obvious that it should have been picked up by an employee attending the premises?
- Make sure housing officers, inspectors and maintenance operatives understand the duties.
- Take photographs of a reported defect if a future claim is anticipated.

Was the defect repaired within a reasonable time?

- The landlord's standards set out in the tenant's handbook will usually be a good guide. However, what is reasonable inevitably means that consideration needs to be given to the particular facts of a case.
- If there is a good reason for a delay in repairing a defect make a record of it at the time.

Consider recovery or a contribution

- While a landlord's duties to maintain and repair are non delegable, where there is clear negligence on the part of a contractor, they may be willing to take over the claim.

the tenancy agreement and this should be the first port of call. In the absence of an express term covering the defect complained of, the obligations implied by *s.11* of the *Landlord and Tenant Act 1985* must be considered.

For leases of less than seven years *s.11* places an implied duty on the landlord to keep in repair the structure and exterior of the property. There is also a »

Defective Premises Act 1972

***S.4* of the *Defective Premises Act 1972* extends the landlord's duties to a wider class of persons and not just those named in the tenancy agreement. It also broadens the concept of 'notice'.**

Notice will be established if the landlord knows, or 'if he ought in all the circumstances' to have known of the relevant defect. This does not create a duty to inspect, except in circumstances where there is recognised industry guidance such as periodic gas and electricity safety inspections (*Sykes v Harry 2001*).

***S.4* relates to the premises specifically referred to in the tenancy agreement. It does not, for example, apply to the common parts of a multi-occupied building. It is important to remember and to emphasise to claimant solicitors that the duty under *s.4* is a duty of reasonable care and is not an absolute duty imposing strict liability.**

It is an important requirement that the defect complained of is a 'relevant defect'. This is a defect that arises out of a failure by the landlord to carry out his express or implied repairing obligations.

As with the *Landlord and Tenant Act 1985*, the *Defective Premises Act 1972* is concerned with repair and maintenance, not making safe.

duty to keep in repair and proper working order the installations for water, gas, electricity, sanitation, heating and hot water. Walls, roofs, doors, windows, window frames and floorboards all fall within the definition of 'structure and exterior'. Plaster has also been held to be part of the structure but not, for example, coving, which is decorative. Fixtures and fittings do not fall within the definition of *s.11*.

The definition of 'exterior' will not normally include the garden/yard or boundary walls/ fences. However, it may include a path if it is an essential means of access (*Brown v Liverpool Corporation 1969*).

If a defect falls within the landlord's obligation to repair (in respect of defects arising within the demised premises) a landlord is not in breach of duty until he has had notice (actual or constructive) of the defect *and* a reasonable time to repair it.

There is no generally recognised duty on landlords to undertake periodic inspections.

If the defect is in the common parts, the landlord is held to be on notice as soon as the defect arises (*BT v Sun life 1995*).

There is no prescribed time limit for repair works to be undertaken. What is a 'reasonable period' will vary according to circumstances, including the nature of the defect and any imminent danger. The onus is on a claimant to demonstrate delay.

There is no generally recognised duty on landlords to undertake periodic inspections.

The obligation to maintain and repair is not an obligation to make premises safe or to improve premises in the absence of disrepair (*Alker v Collingwood Housing Association 2007*).

In summary, this is a complex area of law. However by taking a methodical approach and applying the prescribed principles, claims can often be defended in circumstances where conventional wisdom would suggest there may well be liability. ●

Part Two in Winter *stronger* gives guidance on claims against landlords as occupiers.

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