

Technical Award in

# Residential Tenancy Deposit Protection and Management



MOL Sample Workbook



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QUALIFICATIONS



## **INTRODUCTION TO THE SAMPLE WORKBOOK**

This sample workbook is a guide to the learning materials for the Technical Award in Residential Tenancy Deposit Protection and Management, written and provided by MOL on behalf of the National Federation of Property Professionals Awarding Body (NFOPP AB).

The full range of property qualifications available from MOL/NFOPP AB is as follows.

### **Award in Introduction to Residential Property Management Practice (Level 2)**

This is an introductory qualification offering basic knowledge in the most important subject areas related to residential letting and property management.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Letting and Property Management (Level 3)
- Unit 2 Customer Service within the Property Sector
- Unit 3 Introduction to Residential Property Letting Practice
- Unit 4 Introduction to Residential Property Management Practice

### **Award in Introduction to the Sale of Residential Property (Level 2)**

This is an introductory qualification offering basic knowledge in the most important subject areas related to the sale of residential property.

- Unit 1 General Law, Health, Safety and Security in Relation to the Sale of Residential Property
- Unit 2 Customer Service within the Property Sector
- Unit 3 Regulations Relating to the Sale of Residential Property
- Unit 4 Practice Relating to the Sale of Residential Property

### **Technical Award in Residential Letting and Property Management (Level 3)**

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in residential letting agency.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Letting and Property Management
- Unit 2 Legal Aspects of Letting and Management
- Unit 3 Residential Property Letting Practice
- Unit 4 Residential Property Management Practice

### **Technical Award in the Sale of Residential Property (Level 3)**

The Technical Award in the Sale of Residential Property is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in residential estate agency or new homes sales.

- Unit 1 General Law, Health, Safety and Security in Relation to Sale of Residential Property
- Unit 2 Law Relating to Residential Property Sales
- Unit 3 Practice Relating to Residential Property Sales
- Unit 4 Property Appraisal and Basic Building Construction/Defects

### **Technical Award in Commercial Property Agency (Level 3)**

The Technical Award in Commercial Property Agency is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in commercial property agency.

- Unit 1 General Law, Health, Safety and Security in Relation to Commercial Property Agency
- Unit 2 Practice and Law Relating to Commercial Property Agency
- Unit 3 Law Relating to Commercial Property
- Unit 4 Commercial Property and Business Appraisal and Basic Building Construction

### **Technical Award in Real Property Auctioneering (Level 3)**

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in estate agency where auctioneering is an important part of the work of the agency.

- Unit 1 General Law, Health, Safety and Security in Relation to Real Property Auctioneering
- Unit 2 Law Relating to Real Property Auctions
- Unit 3 Real Property Auctioneering Practice and Procedures
- Unit 4 Property Appraisal and the Auction Process

### **Technical Award in Chattels Auctioneering (Level 3)**

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in chattels auctioneering.

- Unit 1 General Law, Health, Safety and Security in Relation to Chattels Auctioneering
- Unit 2 Law Relating to Chattels Auctions
- Unit 3 Chattels Auctioneering Practice and Procedures
- Unit 4 Chattels Appraisal and the Auctioneer's Duties and Liabilities

### **Technical Award in Residential Inventory Management and Practice (Level 3)**

This programme covers the law and practice of letting agency and inventory management in England and Wales.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Inventory Management and Practice
- Unit 2 Legal Aspects of Residential Inventory Management and Practice
- Unit 3 Residential Letting and Property Management
- Unit 4 Residential Inventory Management and Practice

### **Technical Award in Residential Tenancy Deposit Protection and Management (Level 3)**

This programme is designed as an introduction to the knowledge and understanding required by those working, or aspiring to work, in residential letting agency and who will be dealing with tenancy deposits.

- Unit 1 General Law, Health, Safety and Security in Relation to Residential Letting and Property Management
- Unit 2 Legal Aspects of Letting and Management
- Unit 3 Handling, Protecting and Processing Residential Tenancy Deposits
- Unit 4 Returning Residential Tenancy Deposits and Dispute Resolution Procedures

### **Certificate (Level 4)**

The Level 4 Certificate programmes are designed for more experienced people working within agency such as senior negotiators, managers and principles. The full certificate has 8 units, but the first two are carried forward from the relevant technical award. There are four additional technical units specific to each pathway, and two common office/people management units.

The common management units are

- Unit 7 Introduction to Office Management
- Unit 8 Advanced Office Management (Level 5)

The two pathways and their technical units are as follows.

#### **Certificate in Residential Letting and Property Management**

- Unit 3 Legal Aspects Relating to Residential Letting and Management
- Unit 4 Practice Relating to Residential Property Management
- Unit 5 Appraisal and Residential Property Letting Practice
- Unit 6 Applied Law Relating to Residential Letting and Management (Level 5)

#### **Certificate in the Sale of Residential Property**

- Unit 3 Legal Aspects Relating to Residential Estate Agency
- Unit 4 Practice Relating to Residential Estate Agency
- Unit 5 Market Appraisal, Value and Inspection Relating to Residential Estate Agency
- Unit 6 Building Design and Defects for Residential Estate Agency (Level 5)

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Technical Award in

**RESIDENTIAL TENANCY DEPOSIT  
PROTECTION AND MANAGEMENT**

**Unit 1**

**General Law, Health, Safety and Security in  
Relation to Residential Letting and Property  
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## INTRODUCTION

This unit acts as a basic introduction to the Technical Award in Residential Tenancy Deposit Protection and Management. It covers issues of health and safety and security issues, both within your workplace and also outside your office, for example when you are showing potential tenants around properties.

It then moves on to consider some basic aspects of general law which impact on the provision of letting agency services, and finishes with some basic facts about land and property law which are useful within a letting agency context.



## LEARNING OBJECTIVES

Having completed this unit you will know and understand

- basic concepts about the Health and Safety at Work etc Act 1974 and other security issues
- how this relates to yourself and others, both within the workplace and outside when dealing with rental appraisals and viewings
- safety and security issues relating to properties, including dealing with keys and property information
- basic facts about the legal system in England and Wales
- basic land and property law
- basic contract law dealing with offer, acceptance and consideration
- basic facts about the law of torts, particularly concerning negligence, occupiers' liability and vicarious liability
- the law on discrimination covering sexual, racial, disability and age discrimination
- how the Data Protection Act 1998 relates to your work
- how to comply with the regulations concerning money laundering
- the common law duties of the letting agent and concepts of agent's authority



## SECTION 3

# Basic Land Law

Land law is a wide-ranging subject area. We will be looking at specific aspects of land law and will concentrate on areas that letting agents will come into contact with, if disputes arise between their tenants and neighbours.

The areas you need to understand are

- the legal definition of land
- the meaning of tenure
- the two legal estates in land

You should also have some understanding of legal and equitable interests in land.

**LEARNING OBJECTIVES**

Having completed this section you will know and understand how to

- explain the structure and application of land law
- explain the meaning of tenure
- describe legal estates and legal and equitable interests

**3.1 THE MEANING OF TENURE**

The law of tenure deals with the way in which land is held.

**SELF CHECK QUESTION 1**

*Write down what you think is meant in law by the word 'land'?*

*Compare your answer with the one given at the end of this section.*

---

The Law of Property Act 1925 gives a definition of 'land' as

*...including...buildings or parts of buildings...and other corporeal hereditaments; also a rent, and other incorporeal hereditaments, and an easement right, privilege, or benefit in, over, or derived from land...*

What this means in plain English is that land involves not just the surface of the earth, but anything which is built on the land, and any right attaching to the land, such as a right of way. It also includes anything below ground level and anything above the ground.

In theory, as figure 3.1 shows, ownership of land in the law of England and Wales involves everything from the centre of the earth to the outer reaches of the atmosphere.

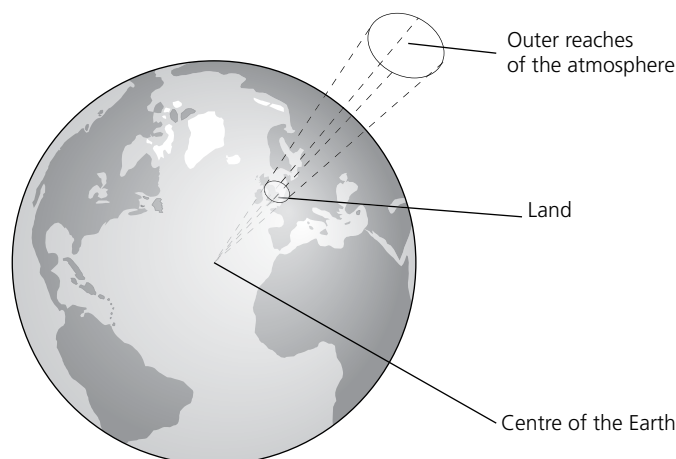


fig 3.1

As already stated, the definition in the Act gives the theory. In practice Parliament has modified this so, for example, minerals below ground such as coal and oil, and gold and silver, belong to the state or the Crown. Aircraft are, further, allowed to fly through the airspace above land.

### 3.2 THE TWO LEGAL ESTATES

Technically all land is held by the Crown. Everyone else enjoys rights of ownership and possession by virtue of the Crown.



#### SELF CHECK QUESTION 2

*Land can be held in two ways. Which two words are used to describe the two legal estates in land?*

*Compare your answer with the one given at the end of this section.*



Since the Law of Property Act 1925 there have been two legal estates which may be held in land

- **freehold** (also known as fee simple absolute in possession)
- **leasehold** (also known as a term of years absolute)

Under the concept of freehold, there is a further way of holding land known as commonhold, brought in by the Commonhold and Leasehold Reform Act 2002.

## Freehold

At common law, freeholders can in theory do anything they like with their land. In practice this right is limited.



### SELF CHECK QUESTION 3

*Who or what do you think can restrict the freeholder's right to use the land as they wish? Write down any restrictions you can think of.*

*Compare your answer with the one given at the end of this section.*

---

The freehold has no time limit but is capable of going on indefinitely.

## Leasehold

A leasehold is derived from a freehold interest (or another leasehold interest) and has two key elements, which are

- a fixed duration
- exclusive possession

### Duration

The duration of the lease can be for whatever term is agreed between the freeholder and the leaseholder.



#### SELF CHECK QUESTION 4

*You may have come across leases for different lengths of time. Write down the length of the leases you have come across.*

*Compare your answer with the one given at the end of this section.*

---

The term or length of the lease is infinitely flexible and, as stated earlier, can be for any period agreed between the freeholder and the leaseholder. Both short-term and long-term leases exist. The first group might include Assured Shorthold Tenancies (ASTs). These have a typical minimum length of six months. Long leases on residential property, however, could be placed in the second category, as they might be 99, 125 or 999 years in length. Leases between these time periods exist, such as leases of 5, 10 or 15 years on your business premises.

#### **Exclusive Possession**

The exclusive possession given under the lease allows the leaseholder to exclude all others from the premises, including the freeholder, for the duration of the lease (as long as they comply with the terms of the lease). The lease is a contract (legal agreement) between the freeholder and the leaseholder.

## Head Lease and Sub-Lease

As mentioned earlier, a leasehold is created from an existing freehold interest. It is also possible to create a lease from an existing leasehold interest.

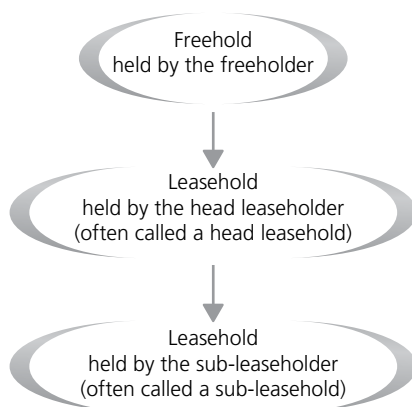


fig 3.2

As you can see from figure 3.2, the original leaseholder would have the head lease, and the newly created lease would be a sub-lease. Any other leases that are created would also become sub-leases.

Two important elements here are that

- each newly created sub-lease will be for a shorter period than the previous one
- during the period of tenancy, the tenant occupier will have the same powers as an owner would, subject to the terms of the lease, ie during the lease term they have exclusive possession and can exclude all others. So, in the case of a sub-leaseholder they can exclude the head leaseholder and the freeholder

## Commonhold

This is a system which allows a number of units to share a **freehold**, for example a development of flats or a mixed development of commercial and residential uses. Until recently such developments needed to have leasehold units. Each unit holder has exclusive possession of their unit which is held freehold, and also shares the freehold of all common areas.

## 3.3 LEGAL AND EQUITABLE INTERESTS IN LAND

It is possible, while owning a property, that others may have certain rights over it. These are called 'interests', and can be legal or equitable (as derived from common law or equity).

Legal interests are listed in the Law of Property Act 1925, but we are particularly interested in one of the legal interests listed – **easements**.

Of the equitable interests that can exist, we are particularly interested in **freehold covenants**.

These two are of particular importance to letting agents, should disputes arise between tenants and neighbours.

## Easements

An easement is a right over land. The person who has the benefit of the easement may have the right to use the land of another, which as a consequence may restrict the use of the land of another in some way.

Common examples of easements include

- rights of way – ie a right to have access over adjacent land
- rights of light – ie a right that a property will not obstruct the natural passage of light to a neighbour's home
- rights of support – ie the right, for example, for a first floor flat to expect support from the flat beneath
- rights of water – ie the right for a property to have access to a water supply running through neighbouring land or extract modest amounts of water from a stream

There must be two pieces of land in different ownership for an easement to arise. They are

- land which enjoys the right over another person's land (this is called the **dominant tenement**)
- land over which the easement is exercised (this is called the **servient tenement**)

Easements can be expressly granted as easements, in which case the written document will refer to an easement. Alternatively an easement may arise because someone has used the land of another

- uninterrupted
- without force
- without secrecy
- without permission

for an extended period of time. As a minimum this needs to be 20 years, but it will need to be 40 years if it is claimed an oral permission was given. (Note that if, at any time, written permission was ever given to occupy land or use it in some way, no right to an easement can be established, unless the written document refers to the permission being an easement.)

Figure 3.3 should help to explain what an easement is.

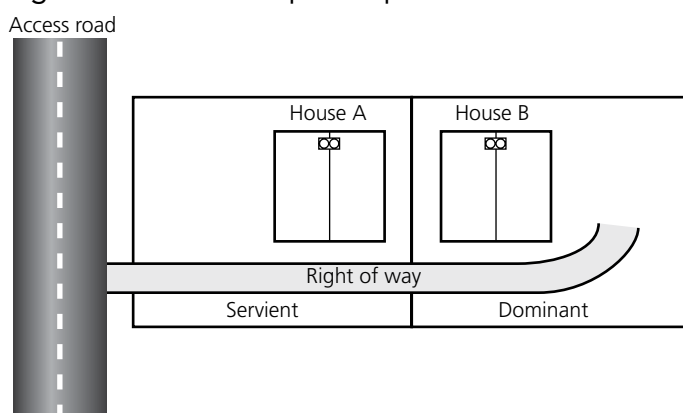


fig 3.3

House B benefits from an easement, in this case a right of way from the access road across the land of house A. So house B enjoys the benefit of the easement and is the dominant tenement, whereas house A suffers the burden of the easement and is the servient tenement.

**SELF CHECK QUESTION 5**

Study figure 3.4. Which section of the drain needs an easement? Explain why.

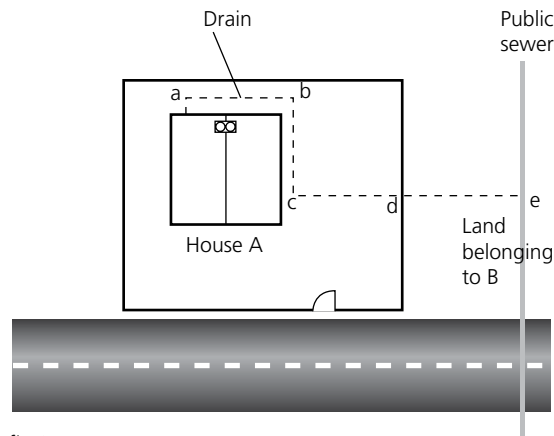


fig 3.4

Compare your answer with the one given at the end of this section.

Because easements are legal interests attaching to the land, they are passed from one owner to the other. The existence of an easement may have valuation consequences for the land benefitted or affected by the easement. For example, the existence of a right of way across the garden of a house may be undesirable and reduce the value of the property suffering the burden of the right of way, but may enhance the value of the property benefitting from the right of way.

### Freehold Covenants

We said earlier that an easement is a legal interest and gives the owner of the land benefiting from the easement the right to **do something** on or over the land of someone else.

A freehold covenant is an equitable interest because, unlike an easement, it owes its origins to equity. Freehold covenants can be restrictive (or negative) or can be positive. Someone with the benefit of the freehold which is restrictive can **stop** the owner of other land from using that land in some way.



### SELF CHECK QUESTION 6

*Can you think of a common freehold restrictive covenant that could apply to residential property?*

*Compare your answer with the following text.*

A common freehold restrictive covenant in residential property is a restriction not allowing business use of the property. Another would be not to build on land but to keep it open and use only as, say, a garden.

You may also find freehold positive covenants which commit the owner of land to actually do something, such as a positive covenant to fence boundaries. Positive covenants do not automatically pass with the land when a property is sold. However, restrictive covenants will pass from one owner to the next in the same way that easements pass from one owner to the next.

Freehold covenants may have a bearing on market appraisals undertaken by estate agents. For example they could be asked to appraise a house with a large plot of land and the existing building to one side of the land, as shown in figure 3.5.

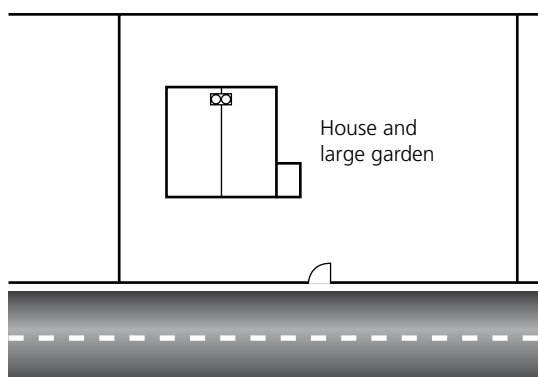


fig 3.5

The agent might well think there was a possibility of developing the side garden by building another property. This is likely to increase the value of the house. However, if there was a freehold restrictive covenant saying the plot could only have one detached dwelling you would not be able to build another property and the value would not increase.

For letting agents, a freehold covenant may become important when dealing with a potential tenant who wishes to run a business from home. A freehold restrictive covenant may stop the tenant from doing this.



### SELF CHECK QUESTION 7

Which of the following are **restrictive** covenants and which are not?

- a) A covenant not to park a caravan or truck/lorry on the site of the property
- b) A covenant to paint the house every two years
- c) A covenant not to build more than one house on a plot
- d) A covenant not to build more than ten houses on a development site
- e) A covenant to build a boundary wall and then maintain it
- f) A covenant not to build higher than eight metres above ground level

Compare your answers with those given at the end of this section.

---



## **Summary**

Having completed this section you should now know that

- tenure is the way land is held legally
- land includes buildings and anything in, on or over the land
- certain things are excluded, such as some minerals including coal, oil, gold and silver
- land can be held as freehold or leasehold estates
- leasehold can be for any term or length of lease by agreement
- legal and equitable interests can be held in addition to the two legal estates
- an easement is a legal interest, eg right of way, right of light or right of support, which is passed on when land/property is sold
- a freehold restrictive covenant is an equitable interest stopping someone from doing something to land or property, and is passed on when land/property is sold
- easements and freehold covenants may affect value

If you are unsure about any of these areas, go back and re-read the relevant part(s) of the text.





## REVIEW EXERCISE

Look at figure 3.6 then answer the following questions. The access road is used by cottage A but belongs to the owner of Dingle Hall. The septic tank is owned by cottage A but is located on the land of farmer B. Cottage A takes water from the spring and along the pipeline to the house. Cottage owner A wants to build a double garage at location X next to the greenhouse of house C. The greenhouse has been there for around 60 years.

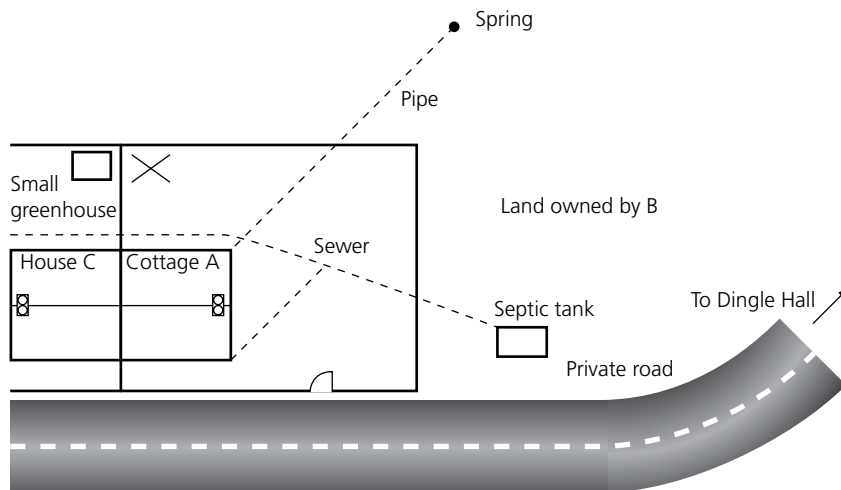


fig 3.6

- Mark on figure 3.6 all the easements likely to be enjoyed by cottage A.
- If A wants to build the garage, could C object? If C could object, what reason could C give for objecting?

Suggested answers to the review exercises are given at the end of this unit.



Technical Award in

**RESIDENTIAL TENANCY DEPOSIT  
PROTECTION AND MANAGEMENT**

**Unit 4**

**Returning Residential Tenancy Deposits and  
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## SECTION 2

# Assessing Damage

Having undertaken the check-out, it should now be possible to compare the condition and cleanliness of the property at the end of the tenancy to its condition and cleanliness at the start. Any differences may lead to the landlord wanting to claim damages from the tenant's tenancy deposit.

Whoever is assessing the changes reported between the beginning and end of the tenancy has to decide if the change is the result of fair wear and tear, or whether it is damage over and above fair wear and tear for which a claim against the tenancy deposit might be made if this damage was caused by the tenant.

This section will look at the assessment process starting with the check-out report and the other documentation needed. The concept of fair wear and tear and betterment will be covered along with the various ways in which the damage claim can be assessed.



## LEARNING OBJECTIVES

Having completed this section you will know and understand

- the concept of repair and disrepair
- the concepts of fair wear and tear and betterment
- the expected lifespan of various items
- how to apportion costs and assess damages/compensation

## 2.1 REPAIR/DISREPAIR AND LIABILITY OF THE PARTIES

In the case of commercial property, tenants will often have onerous repairing responsibilities, and the concept of repair and disrepair is very important. In the residential sector tenants have virtually no repairing responsibilities, so the concept of repair and disrepair is not so critical.

We saw in Unit 2 section 6 that tenants may be responsible for repairs at a property they rent if they do not look after a property in a 'tenant-like manner'. Outside of this requirement the landlord is expected to repair the property and keep it in repair.

In the residential context, for example, a carpet can be worn but still capable of being used and would not be considered to be in disrepair. However, if it becomes so worn that it is threadbare and holes begin to appear, it would be considered to be in disrepair and would need repairing (or replacing).

Similarly a lock on a door that worked but was worn so the key wiggled around in the lock would not be in disrepair. However, as soon as the lock was so worn that the door could not be locked or unlocked, or it was extremely difficult to lock or unlock, it would be considered to be in disrepair and need repairing or replacing.

In the context of the carpet, if the holes appeared simply due to it being old and having lots of wear, this would be considered fair wear and tear (see later) and not the responsibility of the tenant. If the holes appeared due to the misuse of the carpet by the tenant, that would be disrepair due to the neglect or wilful act of the tenant and would then be the tenant's responsibility to repair or compensate the landlord.

So, although residential tenants have very little repairing responsibility, the concept of repair and disrepair can be important where the tenant has allowed or caused damage to happen for which the landlord may want some compensation.

The liability for repair will (or should) be set out in the tenancy agreement. As already indicated it is predominantly the landlord that has the repairing responsibility with residential property. Section 11 of the Landlord and Tenant Act 1985 makes the landlord responsible for the structure of the property including the drains, gutters, downpipes, etc and the repair and maintenance of the services. Even if this is not an express term in the tenancy agreement it is implied at common law.

Any other liability falling on the landlord should be set out in the tenancy agreement or it may not be enforceable against the landlord. Similarly, if the tenant is to carry any liability, this must be specifically covered in the tenancy agreement. The only common law rule regarding the tenant's repairing liability is to use the property in a 'tenant-like manner'.

This means that the tenant is only responsible for disrepair that is beyond the concept of fair wear and tear. The tenant's liability for other things needs to be specifically covered in the tenancy agreement. So the tenant's liability for damages or breakages of the landlord's property or fixtures and fittings, etc must be expressly covered in the tenancy agreement, especially if this is to be recoverable via a claim against the tenancy deposit.

Similarly the tenancy agreement should make it clear that the tenant is responsible for removing their possessions and rubbish at the end of the tenancy and leaving the property clean and tidy. Where the landlord wishes to claim against the tenant or the tenancy deposit for dealing with damage caused by the tenant, or for clearing the tenant's belongings and rubbish, this must be expressly catered for. Such clauses must be fair or they may not be enforceable.

The tenancy deposit clause in the tenancy agreement should make similar provision, so it is clear that the landlord can claim against the tenancy deposit for damage caused by the tenant, breakages of the landlord's property or fixtures and fittings, removing the tenant's possessions and clearing the tenant's rubbish at the end of the tenancy.



**SELF CHECK QUESTION 1**

*A landlord wishes to ensure that the tenant is responsible for damage that they do at the property and wants the option of claiming against the tenancy deposit. How can they achieve this?*

*Compare your answer with the one given at the end of the section.*

---

## **2.2 FAIR WEAR AND TEAR**

Many landlords believe the tenant is responsible for returning the property to them at the end of the tenancy in the same condition as it was at the start of the tenancy. However, deductions may not be claimed from a tenancy deposit for minor damage that should be expected in any normal use of a property. For example, a landlord claiming for redecorating an entire room when minor scuff marks on one wall have been caused by a tenant would not be allowable.

Normal use of a property and the deterioration that causes is called 'fair wear and tear'. The House of Lords defined fair wear and tear as 'reasonable use of the premises by the tenant and the ordinary operation of natural forces'. So it is the level of deterioration that a landlord might reasonably expect a tenant to cause through their everyday use of the property over the period of the tenancy.

Fair wear and tear will vary depending on the circumstances of the letting and in particular the length of the tenancy, the number and age of the occupants and the quality and condition at the start of the tenancy of items in the property.

### **Length of Tenancy**

Generally speaking the longer the tenancy, the more natural fair wear and tear to be expected. A tenancy of six months is likely to see less fair wear and tear than one that has lasted three years.

### **Number and Age of Occupants**

Normally the greater the number of occupants, the more fair wear and tear, especially to common areas such as halls, stairs, kitchens and bathrooms. Where some of the occupants are children, there is likely to be more fair wear and tear than for the equivalent number of adults.

## Quality and Condition

Higher quality items will tend to show less fair wear and tear over a given period compared to lower quality items, ie they deteriorate at a slower pace under normal use. So the expected lifespan of an item is longer the higher the quality, and lifespan is important. The condition at the start of the tenancy is also important. A carpet which is five years old when the tenancy starts is likely to be fairly worn already.

The level of fair wear and tear also depends on the location of the item within the property. For example, carpets of the same quality will show different fair wear and tear if located in a bedroom compared to being located on the stairs, with the one on the stairs being more heavily worn over the same period of time.

Damage that is deemed to be beyond the tenant's reasonable everyday use is unlikely to be considered as fair wear and tear. Some examples might include

- soiling to a carpet is not fair wear and tear, whereas fraying is likely to be considered fair wear and tear
- limescale to a sink or dirt in a washing machine soap dispenser is not fair wear and tear
- a bowing shelf in a cupboard may be fair wear and tear, but it depends on the quality of the cupboard and what was put in it (ie was it overloaded? If yes, it is not fair wear and tear)



### SELF CHECK QUESTION 2

*Consider the following situations and decide if these are examples of fair wear and tear.*

- The new carpet in the hallway at the beginning of the tenancy is now flattened to the centre of the hallway.*
- The property has a large south-facing window in the lounge. The curtains to this window have faded along the folds that occur when the curtains are pulled back during the day.*
- The decoration in a bedroom has been scribbled on by a child in pencil and crayon.*

*Compare your answers with those given at the end of the section.*

---

## 2.3 BETTERMENT

When calculating deductions from a tenancy deposit at the end of a tenancy, the landlord should be compensated for any breaches of the tenancy agreement where the landlord has suffered a loss and the tenancy agreement allows it.

However, the landlord should not end up, either financially or materially, in a better position than they were at the start of the tenancy, or as they would expect to be at the end of the tenancy, having allowed for fair wear and tear. If the landlord did end up in a better position this would be betterment. So, the landlord is under a duty to mitigate any loss, ie keep any claim to a minimum.

For example, where severe scuff marks on some wall decorations are beyond fair wear and tear, landlords will try to claim for redecoration of the entire room, whereas only the wall affected by the scuffs will need redecoration and even the cost of that cannot be claimed in full (see later).

The landlord is only entitled to be put back into the same position they would have been in at the end of the tenancy, allowing for fair wear and tear. The tenancy deposit cannot be used like an insurance policy where a claimant might get 'full replacement value' or 'new for old'.

As another example, where a tenant damages a washing machine so that it is beyond reasonable repair and the washing machine was four years old at the end of the tenancy, the tenant could replace the washing machine with a four-year-old second-hand machine in similar condition to what the washing machine should have been in. The landlord cannot claim for a brand new machine or that would give them something better than they had before, hence betterment.

Betterment works both ways. The tenant cannot use betterment to offset other damage. For example, if the tenant was a keen gardener and left the garden in a much better condition than it was in at the start of the tenancy, they cannot claim the improved garden would offset the compensation due for a carpet they ruined.

## 2.4 LIFESPAN OF ITEMS

It is generally accepted that items included in a let property will not have the same lifespan than they would have if they were in an owner-occupied property. The lifespan of items will also depend on the quality of the item and the number and type of occupier at the property.

The same item in a property with only one occupant would be expected to last a lot longer than in a similar property with four occupants, especially if some of the occupants are children, where items are likely to wear at an even faster pace.

Subject to these limitations, the following table is a rough guide to the lifespan of various common elements in let property under 'normal' use.

ITEM	LIFESPAN
<b>Decorations</b>	
Hall, stairs and landing	2-3 years
Living rooms	approx 4 years
Dining rooms	approx 6 years
Kitchens and bathrooms	2-3 years
Bedrooms	approx 5 years
<b>Carpets</b>	
Budget quality	3-5 years
Medium quality	5-10 years
Top quality	up to 20 years
<b>White goods</b>	
Washing machines	3-5 years
Cookers/ovens/hobs	4-6 years
Fridges	5-8 years

The time periods for items such as carpets are largely dependent on them being used in the location for which they are designed. For example, a medium quality carpet designed for the bedroom could reasonably be expected to last for 5-10 years from the table above if used in a bedroom, but if instead it is used on the stairs it may have a much reduced lifespan, such as 3-5 years.



### SELF CHECK QUESTION 3

*A tenancy has just ended where the tenant was allowed to keep cats. In one room the good quality curtains that were three years old at the end of the tenancy and had an expected lifespan of 10 years have been ruined, cannot be repaired and need to be replaced. Explain to the landlord why the tenant cannot be charged for the full replacement cost of the new curtains.*

*Compare your answer with the one given at the end of the section.*

---

## 2.5 ASSESSING DAMAGE AND APPORTIONING COSTS

The check-out will highlight any changes between the start and the end of the tenancy. Once this has been completed, the last thing to be done is to assess the damages, if any, that should be paid to the landlord from the tenancy deposit.

We have seen previously that not all the changes identified in the check-out report will be classed as damage. Some changes may be classed as fair wear and tear for which the landlord will not be compensated out of the tenant's deposit.

We have seen already that in order to assess damages at the end of the tenancy, the person assessing any damage needs to understand and consider

- the concept of fair wear and tear
- the concept of betterment
- what constitutes repair and disrepair
- the liabilities of the parties under the tenancy agreement
- the lifespan of common items in let property
- how to deal with missing items
- how costs should be apportioned
- how damages should be calculated

Previously it has been highlighted that the main liabilities of the parties should be set out in the tenancy agreement, with the main repairing liability falling on the landlord and the tenant only required to use the property in a 'tenant-like manner'. The tenant, therefore, will only be responsible for damage caused by them that exceeds fair wear and tear.

Furthermore we have seen that the tenant's liability for damages or breakages of the landlord's property or fixtures and fittings, furniture, etc should be clearly and expressly set out in the tenancy agreement. The deposit use clause in the tenancy agreement should refer to these liabilities and expressly state that such damages or compensation is recoverable from the tenancy deposit.

Because the landlord is required to mitigate their loss, ie not claim more than is necessary to adequately compensate them for any loss they have suffered, the landlord or the landlord's agent, where a loss requires compensation, needs to assess if the amount claimed should be based on

- repair or cleaning, or
- compensation for reduced value or lifespan, or
- replacement where damage is extensive and severe and the condition makes an item unusable, or it is damaged beyond economic repair

In some circumstances it may be necessary to work out costs on all three methods, because the landlord is required to mitigate their loss, so the lowest costs between repair, cleaning, compensation or replacement should be the claim made.

## Repair or Cleaning

This is usually the general method for claiming damages. If an item can be cleaned or repaired, it is generally a much cheaper way to deal with the matter compared to compensation or replacement. For example, with a stained carpet an attempt to have it spot cleaned should be tried first to see if the stain comes out. If that doesn't work then compensation for reduced value or lifespan should be claimed, and as a last resort replacement of the carpet if the staining is extensive and ruins the carpet.

General dirt and soiling is not fair wear and tear and tenants would be expected to pay the full cost of cleaning the property if it was not left in a clean condition. This is not the same as spot cleaning as in the previous example of a stained carpet.

In the case of repairs, it may be necessary to obtain estimates for the cost of the work to be done, eg the cost of French polishing for furniture with water or heat marks, replacing a damaged seal on a washing machine door, replacing a broken handle on a cupboard door, etc.

## Compensation for Reduced Value/Lifespan

Where repair or cleaning is not possible, eg with the carpet stain above, the resulting damage (in this case the stain) may reduce the lifespan of the item or reduce its value rather than requiring replacement. It is normal to claim a spot figure in such circumstances. Typically, for small stains, small burn marks, etc, a figure of £25-£50 per stain/burn is charged. Such figures need to be justified.

## Replacement

There are times when an item is so badly damaged that it is not economical to repair it, or so badly marked that it cannot be used again and replacement is necessary. Because the landlord cannot benefit from betterment, the tenant will only be responsible for a proportion of the cost of replacement (see later).



### SELF CHECK QUESTION 4

*A seven-year-old medium quality carpet had some wear at the start of a 12-month tenancy but was otherwise unmarked. At the end of the tenancy there are 10 cigarette burn marks scattered over the carpet. These cannot be repaired or cleaned. The charge to a tenant towards a replacement carpet is likely to be around £150. What should the landlord claim?*

*Compare your answer with the one given at the end of the section.*

## Apportionment

We know that the landlord has to allow for fair wear and tear, is not entitled to betterment, must take account of the number and type of occupants and the quality and lifespan of items in the property. So whoever is assessing damage at the end of the tenancy must be able to apportion costs to arrive at a fair figure to claim from the tenant.

We can illustrate this with a simple example. Suppose a carpet has a lifespan of eight years and is four years old at the end of a tenancy. It has been damaged so badly that it cannot be repaired and will have to be replaced. The replacement cost is £400. The landlord is entitled to be compensated for their loss.

Many landlords would wish to claim for the £400 it will cost to replace the carpet. However, that is not the loss that the landlord has suffered.



### SELF CHECK QUESTION 5

*In the example above with the four-year-old carpet, what is the loss that the landlord has suffered?*

*Compare your answer with the one given at the end of the section.*

---

As you can see in self check question 5, the loss the landlord has suffered is the loss of the additional four-year lifespan of the carpet. So if the carpet was expected to last eight years and four years have gone and the carpet has to be replaced, the landlord has lost 50% of the lifespan of the carpet. If the carpet costs £400 to replace, the damages the landlord can claim is 50% of the replacement cost, ie £200.

## Assessing Damages

It should now be possible to put all of these concepts together when considering the changes that have taken place between the start and the end of the tenancy, and when considering the landlord's claim for damages against the tenant.

Whoever is assessing damages needs to

- consider the liability of the parties under the tenancy agreement
- consider what is disrepair
- allow for fair wear and tear
- ensure that the claim does not include betterment
- ensure that costs are apportioned where necessary

Because fair wear and tear has to be allowed for, the landlord can only claim for damage that has occurred and can be attributed to the tenant. Damage may occur that has nothing to do with the tenant, but is the landlord's responsibility, for example storm damage to the roof of the property or a leak from a WC in the property, both of which form part of the landlord's statutory repairing obligation.

When assessing damages, these concepts must be considered and the person assessing the damages must also decide with items like carpets, curtains, etc, whether repair, cleaning or compensation is the appropriate measure of damages, rather than the complete replacement of the item and an apportionment of the cost of replacement.

Agents should compile their own list of costs so these can be applied consistently in every case, and applied to such things as

- cigarette burns to surfaces, carpets or furniture
- candle wax or candle burns to surfaces, carpets or furniture
- stains to carpets
- iron burns on surfaces
- stains to mattresses
- scorch marks or knife cuts to kitchen work surfaces

Once all the figures are worked out, a schedule of costs for each item of damages should be compiled with explanations of how the costs have been derived. Each item should be listed individually with the appropriate repair cost/compensation amount noted beside it.

Where an agent holds the tenancy deposit and the deposit is protected, remember that the agent holds the tenancy deposit as stakeholder and cannot make any distribution of the tenancy deposit without the consent of both the landlord and the tenant.

Because of their stakeholder position, the agent should remain neutral and not take the side of the landlord or the tenant. The assessment of the damages should be based on fact and standardised processes that can be demonstrated as fair and properly costed, so these can be defended if necessary if the matter ends up in front of a court or a scheme adjudicator.

## **2.6 RENT ARREARS**

If a landlord wishes to make a claim for rent arrears from the deposit, the landlord will need to supply a rent statement which clearly shows the arrears as evidence to the adjudicator.





## Summary

Having completed this section you should now know

- tenants have virtually no repairing responsibilities
- tenants must use the property in a tenant-like manner
- most repairing responsibilities fall on the landlord under Section 11 of the Landlord and Tenant Act 1985
- the property and items in the property will only be in disrepair if they do not fulfil their function
- tenants are responsible for damage beyond fair wear and tear
- the tenant's liability for damage to the landlord's property or fixtures and fittings must be expressly covered in the tenancy agreement and the tenancy deposit clause
- landlords should allow for fair wear and tear
- fair wear and tear is the reasonable use of the property and the ordinary operation of natural forces
- the landlord should expect a gradual deterioration of the property under fair wear and tear
- the amount of fair wear and tear during a tenancy will depend on
  - the length of the tenancy
  - the number and age of the occupants
  - the quality and condition of the items in the property
- the longer the tenancy, the more fair wear and tear should be expected
- the more occupants there are, the more fair wear and tear should be expected, especially if some occupants are children
- higher quality items show less fair wear and tear over a given period compared to lower quality items
- damage beyond the tenant's reasonable everyday use is not fair wear and tear
- uncleanliness is not fair wear and tear
- where damage has occurred, the landlord is entitled to be compensated in full
- the landlord cannot claim for betterment
- betterment would occur if the landlord was put in a better position, either financially or materially, than they would have been in at the end of the tenancy allowing for fair wear and tear
- when making a claim for damages a landlord must mitigate their loss
- items included in a let property have a shorter lifespan than similar items in an owner-occupied property
- there are guidelines for typical lifespans for common items in let property
- the check-out highlights changes between the start and end of a tenancy

- damages to the landlord should be based on the lesser cost of
  - repairing or cleaning
  - compensation for reduced value or lifespan
  - apportioned replacement cost
- repair or cleaning is usually the starting point for a damage claim as it is likely to be cheapest
- estimates of repair or cleaning costs may need to be obtained
- compensation for reduced value or lifespan is usually based on justifiable spot figures
- if an item cannot be economically repaired or re-used, replacement is necessary
- only a proportion of the replacement cost can be claimed to ensure the landlord does not get betterment
- costs are usually apportioned based on the lifespan of the item
- the person assessing damages must decide if the cost of repairing/cleaning, compensation or replacement is most appropriate
- a schedule of damages should be compiled for the landlord and the tenant
- agents holding tenancy deposits as stakeholder cannot distribute the money without the consent of both the landlord and the tenant
- the agent should remain neutral and not take the side of the landlord or the tenant
- the assessment of damages should be based on fact and standardised process so they can be defended before a court or adjudicator if necessary

If there are any areas you are unsure about, go back and re-read the relevant part(s) of the text.



## REVIEW EXERCISE

A tenancy has just ended, the check-out completed and the report sent to the agent. The agent is assessing damages and there are three main items that the agent feels the landlord should be compensated for. The first is a small armchair which has been broken and crudely repaired. The second relates to two scorch marks on the kitchen work surface. The third relates to a cracked and broken mirror fitting in the hallway. The check-out report indicates the property needs some cleaning to match the standard of cleanliness when the tenancy started. The agent has assessed damages as follows

- £90 for the damage to the armchair which needs replacing
  - £70 for damage to the work surface in the kitchen
  - £85 for replacing and fitting the mirror in the hall
  - £80 for cleaning
- a) Explain how the damages for each item should be assessed and indicate if the amounts given in the question are likely to be reasonable.
- b) The tenant is claiming £80 for cleaning is excessive and wants to go back to the property to undertake extra cleaning themselves. The tenancy ended three days ago.

- c) *The tenancy is an AST and the tenancy deposit protected. The landlord says the armchair will cost £270 to replace and they want this amount as damages. Explain to the landlord why you think they should agree your assessment of damages.*

*Suggested answers to the review exercises are given at the end of the unit.*

# Glossary

## **civil law**

law covering non-criminal activities between individuals and organisations

## **common law**

law developed from custom, ie all law not enacted by Parliament

## **consideration**

the legal term for the element of exchange (one of the essential elements of a legally binding contract). The consideration does not necessarily have to be money – it can be goods or property, for example. Also, the consideration does not have to reflect fair value

## **contract**

an agreement recognised in law that can be enforced by the courts. It may be written, spoken, a mixture of written and spoken, or implied by the conduct of the parties involved. Contracts for the sale of property must be in writing and signed by all parties. They set out the agreed terms by which both the seller and the buyer are committed to proceed to completion

## **corporeal hereditaments**

an old term meaning visible, tangible property, eg buildings, houses, land and goods

## **covenant**

a promise or obligation, usually contained in a deed, made by one party to another (see also **positive covenant** and **freehold covenant**)

## **criminal law**

law covering activities thought to be detrimental to the State or society

## **damages**

a remedy under common law. The party awarded damages will be put in the same position as if the contract had been performed. Damages claimed have to be reasonable

## **direct discrimination**

treating an individual or one group of people less favourably than another individual or group

## **DSE**

display screen equipment (ie computer screens)

## **easement**

a right which someone may enjoy over another's property, eg a right of way or right of light, or drainage rights. They are often expressly created for particular purposes, such as having access to a neighbour's land in order to carry out repairs to your own property, but may be created after long usage. Easements are passed on when land is sold

## **equitable**

a matter derived from equity

**equity**

a system that fills the gaps in common law on the basis of what is fair. It has two main remedies – specific performance and injunctions

**freehold**

the highest legal estate that can be held in land, where the owner has permanent and absolute tenure and can dispose of the land as they wish. The owner can do anything they wish to with their land, subject only to the rights of others, such as leaseholders' interests, rights of neighbours and statutory obligations, eg complying with Town and Country Planning Acts (see also **leasehold**)

**freehold covenant**

a promise or an obligation restricting the use of land or property, which is binding on subsequent owners, eg not using residential property for business use (see also **positive covenant**)

**HASAWA**

the Health and Safety at Work etc Act 1974

**incorporeal hereditaments**

an old term for rights that exist over land, eg easements (rights of way, etc) and sporting rights, eg the right to hunt, shoot and fish

**indirect discrimination**

where one group of people, or an individual, cannot comply with a certain condition which is applied to all groups, or where only very few of that group, or very few individuals, can comply because of race or sex

**injunction**

a remedy under equity, where the court orders a party **not** to do a certain act

**invitation to treat**

an invitation by a landlord to a tenant to negotiate over the rental price of a property

**judicial precedent**

a method of deciding a new case by referring back to decisions in old cases

**leasehold**

where a tenant is granted exclusive possession of land by the freeholder for a fixed period. One of the two legal estates that can be held in land (see also **freehold**)

**legal**

a matter based in law

**legislation**

laws contained in Acts of Parliament. Also known as **statute law**

**negligence**

a common tort, where an act breaches a duty of care and this causes damage, harm or loss

# Reading List

For those of you who want to study further any sections of this unit, the following reading and reference list is suggested. This is not an exhaustive list and you will find other books, articles and references on the same topics.

When looking through books, articles and references, and when searching on the web, take care to check the date the material was created. This is particularly important for legal references where the law may change from time to time, but also applies to other areas.

If you are working in letting agency, you should always be aware of changes that take place in law or practice as these will affect the way in which you do your job. If you or your company belong to one of the professional bodies, they will usually keep their members up-to-date with changes that will affect their working practices.

*Dictionary of Property and Construction Law*, Jack Rostron (ed), Spon, London 2002

*Landlord and Tenant Law*, Margaret Wilkie and Godfrey Cole, Macmillan 2006

*Law of Estate Agency and Auctions*, John R Murdoch, Estates Gazette, London 2009

*RICS UK Residential Property Standards*, RICS, Coventry 2011 (constantly updated)

You may also find it useful to check the following publications regularly for relevant articles on letting and management

*Estate Agency News*

*Estates Gazette*

*Negotiator Magazine* (now part of Property Drum)

*Property Professional*

## Useful Websites

[arla.co.uk](http://arla.co.uk) – Association of Residential Letting Agents

[citb.co.uk](http://citb.co.uk) – Construction Industry Training Board website (for health and safety publications)

[equalityhumanrights.com](http://equalityhumanrights.com) – Equality and Human Rights Commission











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