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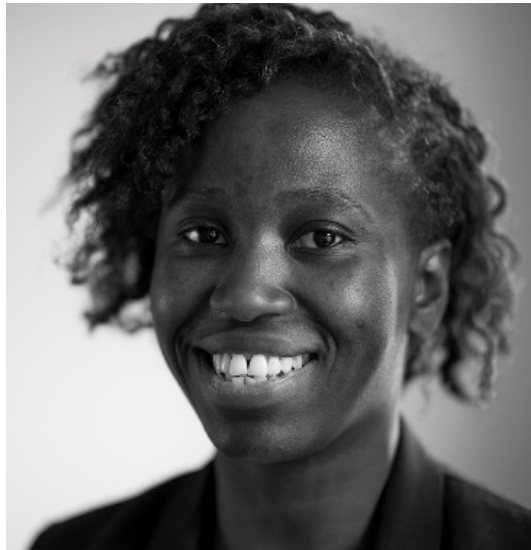
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**REPAIRS AND IMPROVEMENTS
IN RESIDENTIAL SHORT LEASES**



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Presenter



Elizabeth Dwomoh

Elizabeth is an established property practitioner with particular expertise in the fields of housing, commercial and residential landlord and tenant law.



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Aim

This seminar will provide an overview of the statutory repairing and improvement obligations under:

- section 11 of the Landlord and Tenant Act 1985 (“the 1985 Act”)
- sections 9A to 10 of the 1985 Act as amended by the Homes (Fitness for Human Habitation) Act 2018 (“the 2018 Act”)
- section 4 of the Defective Premises Act 1972 (“the 1972 Act”)
- the housing standards in relation to gas safety, energy performance and electrical safety



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Section 11 of the 1985 Act

The applicability of section 11 of the 1985 Act

- Tenants who occupy their properties under short leases; namely, a lease granted for a term of not more than 7 years
- Assured tenancy if it is not a shared ownership lease and is granted for a fixed term of 7 years or more by a



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Section 11 of the 1985 Act

For a tenant to succeed in an action for disrepair under section 11 of the 1985 Act three elements must be proved:

- Breach of the statutory repairing covenant;
- Notice of the alleged disrepair
- Failure to effect repairs within a reasonable period of time



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Section 11 of the 1985 Act

Breach of the implied repairing covenant under section 11

(1) In a lease to which this section ... there is implied a covenant by the lessor—

(a) to keep in repair the structure and exterior of the dwelling-house (including drains, gutters and external pipes),



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Section 11 of the 1985 Act

Breach of the implied repairing covenant under section 11 (cont.)

(1) In a lease to which this section ... there is implied a covenant by the lessor—

...

(b) to keep in repair and proper working order the installations in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the



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Section 11 of the 1985 Act

Breach of the implied repairing covenant under section 11 (cont.)

(1) In a lease to which this section ... there is implied a covenant by the lessor—

...

(c) to keep in repair and proper working order the installations in the dwelling-house for space heating and heating water.



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Section 11 of the 1985 Act

Breach of the implied repairing covenant under section 11 (cont.)

(1A) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if—

(a) the reference in paragraph (a) of that subsection to the dwelling-house included a reference to any part of the building in which the lessor has an estate or interest; and



Section 11 of the 1985 Act

Breach of the implied repairing covenant under section 11 (cont.)

(1A) If a lease to which this section applies is a lease of a dwelling-house which forms part only of a building, then, subject to subsection (1B), the covenant implied by subsection (1) shall have effect as if—

(b) any reference in paragraphs (b) and (c) of that subsection to an installation in the dwelling-house included a reference to an installation which, directly or indirectly, serves the dwelling-house and which either—

(i) forms part of any part of a building in which the



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Section 11 of the 1985 Act

A landlord will not be found to be in breach of the covenant to 'repair' under section 11 of the 1985 Act unless there a material deterioration in the property from the physical condition in which it was granted



Section 11 of the 1985 Act

Notice of disrepair

- The liability of the landlord for a breach of the implied repairing covenant is subject to the precondition that the landlord, or the landlord's agent, has been given notice of the disrepair. The requirement for notice applies even if the disrepair in question existed at the date of the tenancy.

Uniproducts (Manchester) Limited v Rose Furnishers Limited [1956] 1 WLR 45



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Section 11 of the 1985 Act

Notice of disrepair

Examples of records that a tenant should keep:

- Letters or emails sent to the landlord that provide a full description of the disrepair alleged and the date that notice was given;
- Date stamped photographs of the disrepair and any items that have been damaged as a result of the disrepair;



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Section 11 of the 1985 Act

Notice of disrepair

Examples of records that a tenant should keep:

- Logs telephone calls made by the tenant to their landlord with details of the date and times of the calls; and
- Social housing tenants should ask their landlord for a copy of the disrepair records that should also provide a record of the items of disrepair that have



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Section 11 of the 1985 Act

Reasonable time to effect repairs

- There is no breach until a reasonable time has elapsed in which the repair could have been carried out.

Calabar Properties v Sticher [1984] 1 WLR 287



Section 11 of the 1985 Act

The schedule to the Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994 (SI 1994/133)

Defect	Prescribed period (working days)
Leaking roof	7
Toilet not flushing (where there is no other working toilet in the dwelling-house)	1
Total or partial loss of space or water heating between 31st October and 1st May	1
Total or partial loss of space or water heating between 30th April and 1st November	3



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Section 11 of the 1985 Act

Access

A landlord can rely on the tenant's failure to provide access to inspect and carry out repairs as a defence to a claim for damages for disrepair brought by the tenant



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Homes (Fitness for Human Habitation) Act 2018

The 2018 Act provides tenants with improved enforcement mechanisms to force their landlords to deal with dangerous and unhealthy housing conditions.



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Homes (Fitness for Human Habitation) Act 2018

Relevant provisions

9A(1) In a lease to which this section applies of a dwelling in England (see section 9B), there is implied a covenant by the lessor that the dwelling—

(a) is fit for human habitation at the time the lease is granted or otherwise created or, if later, at the beginning of the term of the lease, and

(b) will remain fit for human habitation during the term of the lease



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Homes (Fitness for Human Habitation) Act 2018

Section 10 of the 1985 sets out factors that the court must consider:

- repair
- stability
- freedom from damp
- internal arrangement
- natural lighting



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Homes (Fitness for Human Habitation) Act 2018

Section 10 of the 1985 sets out factors that the court must consider (cont.):

- ventilation
- water supply
- drainage and sanitary conveniences
- facilities for preparation and cooking of food and for the disposal of waste water; in relation to a dwelling in England
- any prescribed hazard



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Homes (Fitness for Human Habitation) Act 2018

A “prescribed hazard” is defined by the Housing Health and Safety Rating System (England) Regulations 2005. The factors listed in the 2005 Regulations broaden the fitness for human habitation criteria



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Homes (Fitness for Human Habitation) Act 2018

Exemptions

Subsections 9A(2) and 9A(3) of the 1985 Act, exempt a landlord from liability where, for example, the unfitness is wholly or mainly attributable to the tenant's own breach of covenant or the tenant has not used the property in a tenant-like manner



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Defective premises act 1972

Duty of care under s.4 of the 1972 Act

A duty of care is owed by landlords who are under an implied or express obligation to repair, maintain and/or enter a tenant's property to effect repairs. The duty of care owed is a duty to ensure that all persons who might reasonably be expected to be affected by "relevant defects" in the state of the property are reasonably safe from personal injury or from damage to their property caused by the relevant defect



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Defective premises act 1972

To whom is the duty owed?

The duty is owed not only to the tenant, but also to any other occupier of the property as well as visitor to the property



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Defective premises act 1972

Repairing obligations during Covid-19

A Landlord's contractual and statutory repairing obligations were not suspended by the Covid-19 pandemic



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Defective premises act 1972

Repairing obligations during Covid-19

In circumstances where landlords have not been able to carry out repairs due to a tenant or a member of the tenant's family self-isolating or shielding a detailed record should be kept of the attempts made by the landlord to carry out the repairs



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Housing Safety standards

Gas safety checks

- A landlord has a statutory obligation to ensure that a gas safety check is carried out to all gas pipework, gas appliances and flues that serve the property

Regulation 36(3) and regulation 36(4) of Gas Safety (Installation and Use) Regulations 1998



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Housing Safety standards

Gas safety checks

- A landlord must give an existing tenant a copy of the most current gas safety record within 28 days of the gas safety inspection
- a copy of the current gas safety record must be given to a tenant prior to the tenant going into occupation of the property



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Housing Safety standards

Gas safety checks and Covid-19

- Throughout the Covid-19 pandemic, landlords were still required to comply with their gas safety obligations under the 1998 Regulations.



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Housing Safety standards

Minimum Energy Efficiency Standards

The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 SI 2015/962, as amended (“the MEES Regulations”) set minimum energy efficiency standards for properties



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Minimum Energy Efficiency Standards

A property that achieves a rating less than band E is deemed to be substandard



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Housing Safety standards

Minimum Energy Efficiency Standards

The MEES Regulations applies to all tenancies let under an AST or an assured tenancy. It does not, however, apply to registered providers of social housing.



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Minimum Energy Efficiency Standards

A landlord may obtain an exemption in certain prescribed circumstances. A landlord who relies on an exemption in respect of his property must be registered on the National Private Rented Sector (PRS) Exemptions Register.



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Housing Safety standards

Minimum Energy Efficiency Standards

MEES Regulations and Covid-19

- The operation of the MEES regulations was not suspended during the course of the Covid-19 pandemic. Landlords were still required to comply with their statutory obligations.



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Housing Safety standards

Electrical Safety Standards

Since 1 April 2021, the Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 (“The Electrical Safety Standard Regulations”) apply to the majority of private rented sector tenancies.



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Housing Safety standards

Electrical Safety Standards

- Under the Electrical Safety Standard Regulations landlords must ensure their rental properties comply with current wiring regulations, which are maintained throughout the course of the tenancy
- Landlords must engage a qualified engineer to carry out an electrical safety check to the property before their tenant goes into occupation of the property



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Housing Safety standards

Electrical Safety Standards

Electrical Safety Standard Regulations and Covid-19

- As with the MEES Regulations, compliance with the Electrical Safety Standard Regulations was not suspended during the course of the Covid-19 pandemic.



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Any questions?



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