



Irish Council for Social Housing

Guidance note: 9

Residential Tenancies Act (RTA) 2015 and the Impact on Housing Associations Repair Obligations

Housing associations should provide an effective and responsive repairs service to tenants to ensure that their rights to the enjoyment of their home is not disturbed. The landlord is obliged to maintain the dwelling to the standard it was in at the beginning of the tenancy. Any damage beyond normal wear and tear is normally the responsibility of the tenant. Tenants should be requested to report the need for repairs as soon as they become apparent.

The following guidance note sets out how the recent legislative changes impact on repair obligations for housing associations. Housing Associations can use this guidance in drawing up their Right to Repair policy and landlord / tenant responsibilities. Members can also refer to the 'Repairs Policy' template in the ICSH *Governance and Housing Management Toolkit*.

1. What does the RTA say about repair obligations to be carried out by a landlord / housing association?

Section 12 of the RTA sets out that, a landlord must repair or maintain the property so that it:

- ✓ complies with the standards and requirements prescribed under Section 18 of the Housing (Miscellaneous Provisions) Act 1992, and
- ✓ remains in at least the condition in which it was in at the commencement of the tenancy, and
- ✓ complies with any prescribed standards.

2. What does the RTA say about the obligations of the tenant in relation to repairs?

Section 16 of the RTA provides that a tenant shall:

- ✓ notify the landlord of any defect that arises in the dwelling that requires to be repaired so as to enable the landlord comply with his or her obligations,
- ✓ allow the landlord, or any person or persons acting on the landlord's behalf, reasonable access to the dwelling for the purposes of allowing any works to be carried out,
- ✓ not to cause a deterioration in the condition the dwelling from what it was at the commencement of the tenancy, aside from normal wear and tear.

3. What should be contained in the tenancy agreement in relation to repairs?

Repair responsibilities of the landlord and tenant should be clearly set out in the tenancy agreement. (The draft ICSH tenancy agreement contains a list of repair obligations in Appendix One).

4. What are some examples of landlord and tenant responsibilities in relation to repairs*?

Landlord: external structure e.g. drains, gutter, external pipes; main services e.g. gas, electricity; common areas around apartments e.g. stairways, fire alarms lifts; open spaces, drainage, roads (unless taken in charge by local authority); periodic painting of dwelling exterior (where required);

essential means of access to the property e.g. steps, paths etc; plumbing e.g. servicing of boilers; Electrical e.g. wiring, smoke alarm;

Tenant: installation / repair of items provided by the tenant; regular cleaning; broken glass / window panes; lost keys; internal light bulbs; unblocking sinks and toilets; internal decorations; replacement of certain fixtures and fittings e.g. toilet handles, door handles, toilet seats, shower heads; garden maintenance.

**This list is intended to give general examples, is not exhaustive and can vary between different housing associations.*

5. What is a reasonable timescale for carrying out repairs?

Guideline timescales for carrying out repairs are as follows:

- ✓ Emergency – within 24 hours
- ✓ Urgent – within 5-7 days
- ✓ Routine – within 28-30 days

6. Can a tenant proceed to get repairs done without the consent of the landlord?

No, prior to any expenditure, the tenant must notify the landlord of the necessary repairs to give them an opportunity to rectify the issue. If the issue is urgent, e.g. gas leak, and the tenant cannot reach the landlord or the landlord does not act within a reasonable time, the tenant may carry out the repair at their reasonable and vouched expense and claim reimbursement from the landlord.

7. Under what circumstances should a landlord reimburse a tenant for costs incurred in carrying out repairs?

The landlord should reimburse the tenant in respect of all reasonable and vouched-for receipted expenses that are incurred by the tenant in carrying out repairs to the structure or interior of the dwelling for which the landlord is responsible, provided the following conditions are satisfied:

- the landlord has refused or failed to carry out the repairs at the time the tenant requests him or her to do so, and
- the postponement of the repairs to some subsequent date would have been unreasonable having regard to either a significant risk to the health or safety of the tenant of the dwelling or a significant reduction in the quality of the tenant's living environment caused by a delay in carrying out the repairs.
- The tenant must provide receipts for any such expenditure.

8. Can a tenant offset the cost of repairs against rent?

Section 87 of the Landlord and Tenant (Amendment) Act 1980 provides for a right to offset rent against repairs in certain limited circumstances, the criteria for which is quite stringent. The works which could qualify under Section 87 are repairs to the dwelling which are the landlord's responsibility under an agreement in the lease or otherwise by law, which the tenant had requested the landlord carry out and which the landlord refuses or fails to execute. Each case in relation to this would have its own specific facts and would be examined by the RTB on its individual merits. It is advised that tenants take legal advice before intending to offset rent against repairs.

9. Do the minimum standards as set out in the Housing Standard Regulations (2008 and 2009)* still apply?

Yes, these regulations still apply. The regulations specify requirements in relation to a range of matters such as structural repair, absence of damp and rot, sanitary facilities, heating, ventilation, light and safety of gas and electrical supply. All landlords, including housing associations, have a legal obligation to ensure that their rented properties comply with these regulations. The only

exception for accommodation let by a housing associations is that they are exempt from the requirements of Article 8 for the provision of food preparation, storage and laundry purposes.

Therefore, housing Associations are **exempt** from the following requirements:

- Provision of a 4 ring hob with oven and grill
- Provision for the effective and safe removal of fumes to the external air by means of cooker hood or an extractor fan
- Fridge and freezer
- Microwave oven
- Sink with a draining area
- Adequate number of kitchen presses for food storage purposes
- Washing machine within the dwelling unit or access to a communal washing machine facility within the curtilage of the building
- In cases where the accommodation does not contain a garden or yard for the exclusive use of this accommodation, a dryer must be provided.

**Please note that the Housing (Standards for Rented Houses) Regulations are currently being reviewed.*

10. Is there anything that a housing association is not liable for in relation to repairs?

There may be certain terms set out in the tenancy agreement / tenant handbook in relation to the repair responsibilities of the landlord and tenant, once they do not conflict with the provisions of the relevant legislation/regulations. In addition to this, as housing associations are exempt from the requirements for the provision of food preparation, storage and laundry purposes (as per Article 8 of the Housing Regulations), they are also exempt from the requirement to repair such items as the association was not obliged to provide them in the first place.

11. Who is responsible for inspections to ensure that minimum standards are being met?

The housing association may carry out an inspection for required repairs at a pre-arranged day and time with the tenant. Local authorities are responsible for enforcing the minimum standards of rented dwellings. A tenant can contact the local authority if they think that their accommodation is not up to standard. 20% of the RTB registration fees goes to Local Authorities to facilitate the carrying out of the inspections.

12. Can a landlord / tenant refer a case to the Residential Tenancies Board (RTB) regarding the standard and maintenance of a dwelling?

Yes, if a tenant / landlord believes that the accommodation is not up to required standards and/or the tenant / landlord obligations in relation to repairs are not being met, then they may refer a case to the RTB for dispute resolution.

13. What evidence would be required by the RTB in a dispute case regarding the standard and maintenance of a dwelling?

The RTB guide to evidence indicates the following as important pieces of evidence in such cases:

- ✓ Letting agreement
- ✓ Inventory & Condition report on commencement of tenancy
- ✓ Notices bringing the matter to the attention of the landlord /tenant
- ✓ Photographic evidence e.g. before and after photos
- ✓ Cleaning or redecorating invoices

Disclaimer note: The content in this guidance note is provided for general information purposes only. If you are unsure about any of the information contained in the Act, please seek legal advice.

Members with any additional queries can contact Keelin McCarthy, ICSH Tenancies Registration Support Officer, at keelin@icsh.ie or 01 6618334.

Last Updated: 25th January 2017