

# Housing Management Brief

October 2009



“With the Advice Line and now with our Ask the Expert section, we don’t think we’ve got all the answers, but we are getting there!”

## Welcome

This edition of HM Brief sees the arrival of our “Ask the Expert” section. This is a chance for us to answer specific queries from clients on difficult cases they have. To start us off Donna McCarthy has kindly agreed to take the chair as our in-house Expert. If you have any burning questions or legal issues you are struggling with, don’t wait for the next edition of HM Brief

- give us a call instead on our freephone Advice Line 0800 0854 529 and one of the Team will be there to take your call and answer your query. With the Advice Line and now with our Ask the Expert section, we don’t think we’ve got all the answers, but we are getting there!

**Nick Billingham, Partner, Head of Housing Management**

# Successfully Defending Disrepair Claims

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We have noticed a recent increase in claims brought by tenants for damages relating to alleged disrepair.

Neil Lawlor of the Devonshires Housing Management Team at Devonshires successfully

recurring problem of the condensation damp.

The tenant's lawyer had sought to rely on the repairing obligations set out in Section 11 of the Landlord & Tenant Act 1985 as well as alleging that the installation of the windows was not carried out in a proper manner, and that they were installed negligently.

An application was made by our client to strike out the claim but although the tenant's lawyer accepted that there could be no claim for breach of the repairing covenant contained

acted on behalf of one of our clients in opposing a claim brought by a tenant in respect of allegations of a failure of the landlord to carry out repairs.

The claim was brought by the tenant following the installation of double glazed windows in their property. The previous windows had contained a spinner vent but the new double glazed windows did not. It was alleged that as a result of the lack of spinning vents there was excessive and severe condensation damp in their property. It was also alleged that decoration works following installation of the windows were inadequate because of the

in Section 11 of the Landlord & Tenant Act 1985, the Judge considered that there was a triable issue as to whether the windows had been installed negligently or not. As such the tenant was allowed to continue with his claim. The tenant was seeking damages of between £5,000.00 and £15,000.00, together with payment of the tenant's lawyer's fees. By the time the case came to trial on the 21 September 2009 the tenant was seeking damages of £28,000.00, this being based upon 65% of the average rent paid between July 2003 and January 2008.

Arguments were made on behalf of the landlord

that there was no breach of the repairing obligations under Section 11 of the Landlord & Tenant Act 1985 and that this was accepted by the tenant's lawyer. It was further stated that the windows had been installed correctly and that there was no negligence on the part of the landlord or its contractors. The Judge found that our client had not been negligent in any way and dismissed the claim in its entirety. The tenant was ordered to pay the landlord's costs following an assessment of their financial

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ability to do so. The tenant is currently seeking permission to appeal.

This case demonstrates the importance of seeking legal advice when defending claims for damages for alleged disrepair. There are occasions when a claim must be defended to trial, especially when the evidence obtained indicates that the claim is without merit.



# Successfully Tackling Anti-Social Behaviour

Samantha Darlington of the Devonshires Housing Management Team successfully acted behalf of a Registered Provider to obtain a possession order against a tenant found to have been causing noise nuisance to her neighbour over a period of 3 years.

At the trial evidence of the noise nuisance was provided by two residents of the flat below the Defendant, as well as a senior housing officer and a private investigator. The Defendant denied every allegation of noise nuisance made

hearing the Defendant continued to deny all of the allegations against her and alleged that the evidence given against her was untrue. The Judge accepted all of the landlord's evidence and made an outright order for possession stating that the Defendant had failed to change her behaviour and take responsibility for it, despite being given a stern warning and a second chance. The Court had no choice but to make an order for possession.

This case highlights the importance of

“This case highlights the importance of independent first hand evidence of nuisance in neighbour disputes where the main allegations concern noise nuisance.”

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against her and took no responsibility for her or her family's behaviour. She also argued that the property suffered from poor sound insulation and that the noise was just every day noise.

After a two day trial, the Judge held that the ground for possession had been proved but that it was reasonable to give the Defendant one last opportunity to comply with her tenancy agreement and adjourned the case.

During the period of the adjournment, the Defendant continued causing noise nuisance and further witness statements were taken from a neighbour, the senior housing officer and two private investigators. At the adjourned

independent first hand evidence of nuisance in neighbour disputes where the main allegations concern noise nuisance.

For more information please contact:  
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# Ask our Expert

This edition of the Housing Management Brief brings you a new “Ask the Expert” section. We receive many requests for advice on Housing Management Issues on a regular basis and so we thought you would find it useful to read the advice provided by Donna McCarthy of our Housing Management Team on questions relating to disrepair matters.

## Question 1

We have agreed with a tenant’s solicitor to settle a disrepair claim for £1200. All works

Birmingham City Council v Lee (2008) EWCA Civ 891 made it clear that a tenant would be entitled to recover costs up to the date of completion of the works. I would suggest you contact the tenant’s solicitor and try to negotiate payment of their costs. Do bear in mind their costs should be reasonable and proportionate and if you feel they are particularly excessive you may want to get legal advice before you settle.

have been done and we are saying we should not pay their costs because it will be a small claim if they issue. They are insisting we must pay their costs. Who is right?

## Donna McCarthy :

An interesting point! The Civil Procedure Rules provide that if a claim is worth less than £5,000 and all works have been carried out the case will be allocated to the small claims track.

The usual costs rule for a small claim is that each party pays its own legal costs and the winner would have a limited ability to recover expert’s fees and “out of pocket” expenses only. However, the Court of Appeal case of

## Question 2

We have a tenant who has stripped off wallpaper throughout her flat after moving in. In doing so she has taken off loads of plaster in one room. We told her she could strip the wallpaper if she wanted to but we say she has done it inappropriately and is guilty of tenant damage. She claims the plaster fell away because it was ‘blown’ and was in disrepair. What should we do?

## Donna McCarthy:

The most important thing to do is record your reasoning! Carry out a full inspection (if you have not already done so) and photograph the

condition of the wall. I would advise that you also check for damp or signs of movement to establish whether there could be any basis for the tenant's complaints. If the wall is sound and you are confident the plaster has been hacked off by the tenant's botched DIY you need to write to the tenant, set out the findings of your inspection and tell the tenant what needs to be done to put it right or confirm that replastering will be carried out by you and whether or not she will be recharged for this. You will need to

We have introduced a training programme for our clients featuring our current most popular training programmes and some new additions. Booking discounts are available for multiple session and delegate bookings.

The seminar programmes kicks off with a full day training session on Housing Law for Beginners on 16 November 2009 with further sessions on successfully tackling anti-social behaviour, a guide to rent possessions claims and dealing with disrepair being held in January, May and July 2010.

The Housing Management Brief is a quarterly newsletter from Devonshires Solicitors on legal developments.

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check your policy and the tenancy agreement to make sure you know what you are entitled to do in terms of rechargeable works etc. It might also be a good idea to ensure that, in future, any tenant given permission to strip walls is asked to sign a disclaimer to make good any damage.

If you would like further information on the Training Programme, please contact Nick Billingham or Donna McCarthy in our Housing Management Team.

### New Website

You can also visit our new website at [www.devonshires.com](http://www.devonshires.com) for further information in the events section regarding our upcoming seminar programme, including downloadable booking forms.

For more information please contact:  
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