

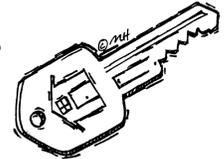
## Housing Disrepair- Trips, Traps, Tips and Tricks Access problems and Witness Evidence

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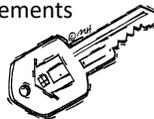
## Duty to Give Access- the Law

- Tenancy agreement or lease- always check express terms
- statute
  - S11(6) Landlord and Tenant Act 1985
  - S16 Housing Act 1988
  - S148 Rent Act 1977



## Duty to Give Access- the Law

- Common law
  - *Yeomans Row Management Ltd v Bodentien Meyrick* [2002] EWCA 860
  - No obligation to give access for improvements



## Refusals of Access

To particular individuals:

- *Beaufort Park Residents Management Ltd v Sahabipour* - [2011] UKUT 436 (LC)
- Leaseholder in breach of lease for refusing access to landlord's chosen representative
- Equality Act 2010-
- prohibition of harassment- Good reason?
- protected characteristics



## Refusals of Access

Information about work:

*Granada Theatres v Freehold Investments* [1959] 1 W.L.R. 570

- Tenant refused access until a detailed specification was given
- Held: no breach by landlord of repairing obligation



## Refusals of Access

Arguments about specification

- *Riverside Property Investments Ltd v Blackhawk Automotive* [2004] EWHC 3052 (TCC)

- Where there are two reasonable methods of repair - paying party is entitled to choose the cheapest option



### Alternative accommodation

- *Green v Eales* (1841) 2 Q.B. 255
  - No obligation on a landlord to rehouse
- *Calabar Properties v Stitcher* (1983) 11 HLR 20 CA
  - Tenant not entitled to cost of alternative accommodation
  - unless expenditure flowed from breach



### Alternative accommodation

- *Mc Greal v Wake* (1984) 13 H.L.R. 107 CA
  - Landlord has a right to vacant possession for the period of work
  - But only if repairs cannot be done with tenant in occupation



### Refusal to move to alternative accommodation

- Dodd Properties Ltd. v Canterbury City Council* [1980] 1 W.L.R. 433 CA
  - No obligation to mitigate if financially unable
- Lubren v Lambeth LBC* (1988) 20 HLR 165 CA
  - refusal of offers did not affect entitlement to damages
  - the offers were not refused “capriciously”



### Refusal to move to alternative accommodation

- English Churches v Shine* [2004] EWCA civ 434
  - unreasonable refusal to move is a failure to mitigate loss
  - Temporary alternative accommodation was on offer
  - Tenant breached injunctions to move into it
  - 75% reduction in damages



### Refusals of Access

- Specific performance/ Injunctions
  - S 17 Landlord and Tenant Act 1985
    - Equitable restrictions do not apply
    - But still discretionary



### Refusals of Access- practical problems

- Preserving evidence
  - Pre-action protocol for housing disrepair cases - paragraph 7.1
- Tenants in full time work
- Numerous futile visits by landlord’s contractors



### Witness statements- the Law

- CPR 32.4
- (1) A witness statement is a written statement signed by a person which contains the evidence which that person *would be allowed to give orally*.
- CPR 32.5(3) Permission needed to orally amplify statement at trial
- CPR 32.5(3) only for “good reason”



### Witness statements- the Law

- submissions and arguments do not belong in a witness statement, see:
  - *William v Wandsworth LBC; Bellamy v Hounslow LBC [2006] EWCA Civ 535*
  - *J D Weatherspoon plc v Harris [2013] EWHC 1088 ch;*



### Witness statements - the Law

- CPR PD 32 para 18.1
  - *so far as possible*, be in the witness’s own words
- *Alex Lawrie Factors Ltd v Morgan Times* 18 August 1999 CA
  - Statement worded by solicitor-Judge concluded witness highly knowledgeable
- *Mahmoud Assi v Dina Foods Limited* [2005] EWHC 1099 (QB)
  - Statements not worded by the witness lack credibility



### Witness statements - example

Pro forma:  
 “I was reluctant to invite my friends to my home because of the poor conditions in which I was living. Several of them commented upon it on a number of occasions. As a result I felt ashamed and my social life suffered”



### Witness statements - example

Own words:

“Growing up, I didn’t have a chance to bring friends over, because our home was so horrible. I came up with any and every excuse in the book to keep anyone from coming. At the time I was pretty embarrassed. I was a popular kid, but in my eyes that made it ten times worse, because everyone always wanted to come to mine. Now and then I would hear snide comments like “by the time we’re allowed in your house we’ll have walking sticks” or “you’ve been decorating for years.” I laughed it off, but inside I was fuming. “



### Witness statements- trips

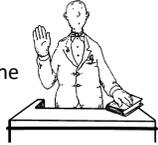
- Not dealing with all issues still in dispute in the defence
- Does lay or expert evidence show for each item:
  - Disrepair within s11 or an express term
  - Notice given and unreasonable delay by L
  - That the disrepair *caused* damage, loss or inconvenience.



## Witness statements- trips

- Common problems

- Not dealing with all issues still in dispute in the defence
- Dealing with aspects that are not in dispute
- Not explaining gaps in the records
- Not detailing inconvenience and distress for the items that are likely to attract an award



## Witness statements- traps

- Common problems

- Dealing with the inconvenience and distress for items which will *not* attract an award
- Statements that are much too long
- or far too short!



## Conclusion

- Prepare every case as if its going to trial
- Keep the client on board
- Address the issues

