

Tenants and Landlord Responsibilities regarding mould issues

1. Overview

- 1.1. Tenanted living accommodation must by law be fit for occupants use and be free of health hazards. There are many laws which support both landlords and tenants but confusion on responsibility and or interpretation often clouds clear judgement and decision making. The result is so often animosity and increasing health issues.
- 1.2. There is now clear evidence that water damaged buildings may be responsible for many health issues and I will at this time simply point to the following:
 - 1.2.1. WHO Dampness and Mould in Buildings 2009
 - 1.2.2. Housing Health and Rating System 2006 (class 1 hazard carcinogenic)
 - 1.2.3. Ming Dooley research PhD on literature search and 1396 Peer reviewed supportive documents 2019
 - 1.2.4. Composite UK legal issues, written by Jeff Charlton
<https://cms.pm/uploads/files/buildingforensics.co.uk -- 356614625.pdf>
 - 1.2.5. The withdrawal of standard defence papers in 2008
 - 1.2.5.1. 2006 "American Academy of Allergy asthma & immunology (AAAAI)" (Singled out by Government Audit Office)
 - 1.2.5.2. 2002 American College of Occupational and Environmental Medicine (ACOEM)

2. What Building Forensics do

We provide independent qualified investigation and inspection to properties with the sole objectives of

- 2.1. Assessing the risk of mould and biological contamination
- 2.2. Presence of historic or current water damage, condensation etc
- 2.3. Investigate building or construction defect
- 2.4. Assessing the presence and genus/species of mould
- 2.5. Assessing the cause and responsibility of damage
- 2.6. Lifestyle and or Landlords issues

2.7. Provide detailed report including

- 2.7.1. Thermal imaging
- 2.7.2. Moisture mapping
- 2.7.3. Reports and photographic evidence of causation etc
- 2.7.4. Air sampling
- 2.7.5. Surface sampling
- 2.7.6. Risk and hazard assessment

3. Failures in the application of laws and “Misunderstandings

- 3.1. Typically, landlords and tenants believe washing off mould with bleach removes the problem and health risk. This is untrue and this basic explanation will suffice in this paper.
 - 3.1.1. Mould cannot generally be killed by any conventional cleaning agent
 - 3.1.2. Where (some) mould may be killed or desiccated the fragments are 40 times more hazardous than whole live spores
 - 3.1.3. Just wiping off mould can release millions of spores

3.2. Housing Health and Safety Rating System 2006

This law is based on two separate documents

3.2.1. The Landlords and Property Related Professional

In its day to day use the “Professional” will undertake a visual and logarithmic assessment of risk and hazards regarding mould growth. It can be seen in Operational Guidance document This is not permitted.

3.3. Operation Guidance

See page 49 Annex D HHSRS Not to be used for Microbial (mould and associated biological agents)

See also page 54 for health hazards and major issues of cancer and asthma from mould exposure

- 3.4. Therefore, the HHSRS 2006 should NOT be used to assess mould health risks unless it confirms risk and hazard from visual markers (NOT invisible micro-organisms).

4. Water damage

Following water damage and where contractors are engaged they should follow British Standards BS 12999 and PAS 64. In these documents there is a requirement to provide verified evidence of decontamination clearance of air and surfaces together with a drying certificate

5. International Guidance

Following intentionally accepted published protocols from sources such as Centre of Disease Control, Environmental Health Agency and Health Protection Agency, mould and associated contamination should be removed to prevent health risks which are internationally recognised as including:

5.1. Chronic Fatigue Syndrome (ME)

5.2. Flu like symptoms

5.3. Asthma

5.4. Upper respiratory problems etc.

5.5. Those under 11 or over 60 years of age are at particular risk as are those with reduced immune systems often due to long term prescription drugs, although the atopic population and prolonged exposure can increase health risks to many more.

6. The legal framework

Of special interest is the following information provided by Direct line insurance company which outlines the responsibilities of the landlord

<https://www.directlineforbusiness.co.uk/landlord-insurance/knowledge-centre/running-your-property/landlords-maintenance-obligations-for-damp-and-mould#whatisrisingdampandmould>

7. Section 11 of the Landlord and Tenant Act 1985

There is a legal requirement under the 'repairing obligations' set out in Section 11 of the Landlord and Tenant Act 1985 which states that the "structure and exterior of the dwelling-house" as well as "the supply of water, gas and electricity" and "heating and heating water" need to be kept in working order.

As rising and penetrating damp are caused by structural issues, landlords must secure a correct diagnosis and get the problem fixed. If condensation is a major problem, especially if mould is forming, it can also be considered a structural issue. This means moisture clearly can't escape from the property. Ventilation should therefore be installed to prevent mould from forming, because that can be harmful to the tenant.

8. Landlord responsibilities for damp

The key responsibilities a landlord has when there are damp issues is to make sure a correct diagnosis is obtained and to carry out the treatment if it's their responsibility – see above section on how to decide whose responsibility it is. This is because treating damp is a mandatory repair under the (HHSRS).

9. Landlord responsibilities for mould

When mould forms in a tenanted property it's important to make sure you deal with it quickly and effectively, once you have accurately identified the cause.

The HHSRS, which landlords need to abide by, stresses that landlords must ensure mould doesn't affect a tenant's physical and mental health. Mould is a nasty fungus to live with and is known to cause breathing difficulties. Tenants who suffer from asthma or rhinitis conditions, or are taking any cancer treatment, may suffer serious health problems if exposed to it, so it is best to tackle it quickly and correctly.

There is now international consensus that some people are genetically prone to the effects of mould and others can be sensitised from chronic exposure.

10. Landlord property management and repairs

A landlord's duty to repair and maintain a property should be set out in the tenancy agreement. Obviously, a landlord can't carry out repairs unless they know there is a problem, so the tenant has a responsibility to highlight issues as soon as they notice them.

If the tenancy started after 1st October 2015, once a problem has been reported, the landlord is legally obliged to respond to the tenant within 14 days. In writing they are required to state what they're going to do and by when.

If the landlord doesn't respond, the tenant can report the problem to their Local Authority, who can issue the landlord with a notice to fix the damp and mould. Under the new Retaliatory Eviction and the Deregulation Act 2015, if a landlord tries to evict the tenant within six months of a problem being reported in writing and not fixed, then it's likely any Section 21 notice served can't be enforced.

Source: www.gov.uk/private-renting/repairs

11. Recommendations for tenants

12. Call in the local authority Environmental Health Officer and ask them to review the health hazards under the Housing Health and Safety rating System and warn that section 1.26 which requires professional judgement must be substantiated regarding professional competence. Environmental Health Officers are usually competent and qualified, but many have simply undertaken a two day course on the use of HHSRS 2006. This is a qualification to use the guide and not a certification of competence in environmental health. It should be obvious that airborne and surface microscopic health hazards from by bacteria and mould cannot be seen by the human eye and must therefore rely on scientific measurement and competent lab analysis. This is supported by British Standards and completely refutes the visual logarithmic assessment of HHSRS.
13. One point of importance here is that if mould can be seen it should be recognised that it will have sporulated and contamination will be in the air and distributed throughout the property by air pathways

14. NEW LEGISLATION

(Fitness for Human Habitations) Act 2018

With changes applicable in England only, landlords must ensure their properties meet the law's habitable standards. Failure to do so means they may face the possibility of being taken to court by their own tenants.

Most landlords make sure that the houses and flats they rent out are safe and secure, warm and dry. But some landlords do not, and this means that some tenants live in dangerous or unhealthy conditions. This new law, the Homes (Fitness for Human Habitation) Act 2018, will help these tenants and make sure irresponsible landlords improve their properties or leave the business.

If rented houses and flats are not 'fit for human habitation', tenants can take their landlords to court. The court can make the landlord carry out repairs or put right health and safety problems. The court can also make the landlord pay compensation to the tenant. In this guide we refer to the new law as 'the Homes Act'.

Who can use the Homes Act?

The Homes Act applies to tenants who live in social or privately rented houses and flats. The type of housing you live in, for example a bungalow, house or flat, is not important. It

also doesn't matter how you pay your rent, or if you are on Housing Benefit or Universal Credit. It is the agreement that you have with your landlord or letting agent that matters.

You can use the Homes Act immediately if you signed your tenancy agreement contract on or after 20 March 2019, whether this meant you moved into a new property. If you signed your contract before 20 March 2019, you will have to wait until 20 March 2020 before you can use the Homes Act (unless you sign a new tenancy, or your tenancy becomes a monthly rolling contract). But you should still contact your local council if you're worried about conditions in your home. They have powers to take action on your behalf, at no cost to you.

See government advice

<https://www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-tenants-homes-fitness-for-human-habitation-act-2018>