

The Tenants law regarding mould

Homes (Fitness for Human Habitation) Act 2018 – 20th March 2019

This legal act revives a clause in the Landlord and Tenant Act 1985, requiring all rented homes to be 'fit for human habitation' at the start of the tenancy and importantly throughout the duration of the tenancy.

This may now remove the landlord's historic approach of camouflaging mould prior to renting because if mould does appear after renting commences, it is the landlords responsibility and liability

Previously the LTA 1985 – Section 11 was used as it's the go to piece of legislation for Property Managers. The Act inserts a new section 9A into the Landlord and Tenant Act 1985 which is headed "Fitness for human habitation of dwellings in England". 9A(1) provides:

... there is implied a covenant by the [landlord] 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.

So how is a property deemed Unfit for Human Habitation?

The Act incorporates 29 Hazards found in the **Housing Health and Safety Rating System (HHSRS)** first introduced in 2006 (**Housing Act 2004**) which classifies mould as a class 1 hazard (in the same category as asbestos) Note the HHSRS accepts mould as a carcinogen

The updated 'fitness standard' includes issues not currently covered by a landlord's legal repair and specifically notice should be taken of the HHSRS "Operating Guidance" which on page 49 Annex D states the HHSRS cannot be used for microbial pollutants. Obviously mould spores, their fragments, mycotoxins are microbial and can only be identified by specialist laboratories.

Building Forensics can provide an independent report to support this requirement.

The tenants course of action

The Act provides tenants with a means of taking effective action themselves if they rent a property in poor condition and the landlord fails to do the necessary maintenance. This applies to both private and social tenants. Previously tenants had no way to enforce property standards themselves.

What rights do tenants have?

The Act gives tenants the right to take a landlord to court where the property is not fit and to apply directly to the Court for an injunction to force a landlord to carry out works, or for damages (compensation) because the landlord has failed in his Duty of Care. Some tenants will be able to apply directly to the court using their own evidence which Building Forensics can provide (subject to inspection) . They can start court proceedings themselves and present the judge, with their OWN evidence such as photos of disrepair, without having to first rely on an environmental health officer (EHO).

The new act covers any tenancy agreement after march 20 2019 but from 20 March 2010 the act will extend to all tenancy agreements

Note

This article is provided as an introduction and awareness paper only. It is not intended as legal advice and you should read the Government information (below) or seek professional advice if in doubt

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