

Routine maintenance dealt with by agreement

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Daily News Tuesday January 25 2005

WHO is responsible for maintenance and repairs of a dwelling: internal, external and structural? Responsibilities for maintenance and repairs are defined in a written lease or can be ascertained from the common law. Under common law, the landlord is under obligation to place the dwelling in a condition reasonably fit for the purpose for which it is let. He or she is also obliged to maintain the dwelling and carry out repairs during the currency of the lease.

The landlord has to also ensure that the following is in good and safe working order while the tenant occupies the dwelling: electricity, plumbing, ventilation, doors and windows). If the landlord let the dwelling with a geyser, cupboards, stove, refrigerator and other appliances, it is the landlord's duty to ensure that these are in working order too at the time of entering into a lease and during the currency of the lease.

The landlord is also required to maintain and carry out external repairs. External repairs include damage to roofs, windows, doors, plumbing, repair works and gutters. The landlord also has a legal duty to keep every part of the external dwelling clean and free of rodents, dirt, garbage or other offensive material.

The landlord is therefore required to maintain the property both internally and externally at all times. In other words, the dwelling must be in "a good state of repair" so that the tenant is able to have undisturbed use and enjoyment.

Parties can, however, agree that the tenant will take over certain duties of the landlord. A tenant can undertake to maintain the premises and thereby relieve the landlord of his or her common-law duty.

Parties enter into an express clause in a lease agreement that the tenant will be responsible for maintaining the dwelling and carrying out repairs to the inside of the dwelling or to both the inside and outside, "fair wear and tear excepted".

The tenant must look for a "maintenance clause" before signing a lease. Should the landlord fail to carry out the necessary repairs or fail to maintain the premises in a proper condition, the tenant has several remedies available.

Similarly, the landlord can also take action against the tenant for failing to maintain the dwelling and to carry out repairs if the tenant contracted to take over the landlord's obligations.

In the event of a dispute, the condition and circumstance of each lease contract can give rise to different interpretation, and the courts would be the appropriate body to provide clarity.

The tenant must notify the landlord of any repair that needs to be carried out, preferably in writing. Should the landlord fail to respond, the tenant has the option of canceling the lease agreement for breach.

Alternatively, the tenant can place the landlord on a fourteen days notice to carry out the necessary repairs, inform the landlord that should he or she fail to respond, the tenant would attend to such repairs and deduct the cost from the rental or set it off against the landlord's claim for rental.

The tenant can also have the rental reduced proportionate to the deprivation, provided the inconvenience or loss is substantial.

The landlord can also place the tenant on terms in the case where the tenant had contracted to carry out repairs and to maintain the dwelling.

Should the tenant fail to carry out the repairs, the landlord has a claim for damages for both the costs incurred to carry out the repairs (actual loss), and also the loss suffered for not being able to let out the dwelling (consequential loss).

It is advisable for a tenant or a landlord to seek legal advice.