



**In this issue:**

- D&C - A Chartered Surveyor's perspective
- What the law says
- Dates for your diary
- New Course available

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Please contact us if you have any queries.



If I can help with any of the issues in this E-Briefing then please contact me on the number or email address below.

*Glyn*

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## ***E: Briefing - Disrepair***

### ***Damp v Condensation***

***Okay - damp and condensation don't sound like the most thrilling topics !!***

*But as you will see in this edition of the E-Briefing, not understanding the causes and effects of these let alone knowing what your obligations as landlords are could cost you thousands of pounds.*

*For this special edition, we have comment from the usual (legal) suspects but we also have the benefit of John Kershaw's expertise. John is a Chartered Surveyor with over 30 years' experience and specialises in:*

- Dilapidations
- Disrepair
- Fault Diagnosis
- Boundary Disputes
- Valuations

### ***NEW COURSE .....***

*This is a new course designed to help asset management and maintenance teams fully understand the potential impact of Damp & Condensation in claims for Disrepair. The half-day seminar comprises:*

- **Types of dampness—the surveyor's perspective**
- **Understanding and challenging the 'other side's' survey**
- **Condensation and legal action**
- **The legal framework of Damp & Condensation**
- **Landlord's Liability**
- **Grey areas**

The seminar includes lunch and refreshments and can be delivered to in-house teams or on an open-access basis. Delegate rates start from £95.00 + VAT.

**For more information or to book a seminar, please contact Neil Whitehead on [neil.whitehead@whiteheadsols.co.uk](mailto:neil.whitehead@whiteheadsols.co.uk)**

## Damp v Condensation - The Surveyor's View

The overwhelming majority of disrepair cases are brought because of a tenant's perception of dampness.

This can be the result of some structural or service breakdown:

- **missing slates leading to water penetration**
- **leaks on the water pipework**
- **rising dampness etc.**

In many cases however there are no structural defects leading to dampness. The culprit is condensation.

### **The appliance of science...**

Condensation is moisture which is precipitated out of the air. Condensation is what happens when you breathe on a mirror. The misting that you see is tiny droplets forming on the cold surface.

Air can contain moisture as gas in a quite benign way, but once it precipitates out as liquid water, this can become a problem. The amount of water the air can contain depends on how warm it is - the hotter it is the more moisture it can contain. The colder it gets the less moisture it can hold and when it reaches a critical point (known as the dew point) that moisture just has to come out.

Outdoors, moisture will condense around dust particles and make clouds. Inside buildings the air cools against cold surfaces and the moisture condenses directly on to the surface.

What it means in practice is that for some people, water seems to endlessly run off their windows and form pools on the window ledges which have to be mopped up every day, or it runs off the window ledge and down the wall below; and dampness will form in cold spots like outside walls, outside corners, solid lintels, concrete beams etc.

When condensation occurs over a length of time mould will grow. Mould spores are everywhere just drifting on the wind looking for somewhere to germinate. In practice a chronic condensation problem will almost inevitably be accompanied by mould growth. The mould grows where the condensation is worst.

Tenants always think that the mould which appears on their new wallpaper is "coming from somewhere" they think it is coming through the wall from behind. They do not accept that it just forms on the surface or that cleaning off the mould is something they should have to do.

In terms of disrepair however, there may well be no liability on a landlord's part for such conditions.

The lead case, (if there is such a thing) is *Quick v Taff-Ely Borough Council* (1986). No room here to go into the details of the case but anyone dealing with condensation-based legal actions should know about it. Essentially it spelt out that condensation run-off, mould growth, spoilt decorations etc. were not *per se* matters of disrepair for which the landlord carried an obligation to make good. But you should find a copy of the Court of Appeal judgment and learn it.

## The Surveyor's View (cont..)

Condensation problems are almost always linked, to some degree, with poverty, overcrowding and ignorance. Just occasionally there is a gross design fault and the householder will find it almost impossible to do anything about it, but usually there is a lot that can be done to alleviate symptoms;

Cut down on the moisture you produce by changing your cooking habits. Put lids on pans. Put the fan on (assuming there is one) when you cook and bathe and leave it on till the job's done

Don't use an unvented tumble dryer.

Don't dry clothes on the radiator, take them to the laundry, or dry them outside

When you see mould forming wipe it off

Keep the place warm

The last bit of advice is the best. If you can afford to keep the house warm all the time you won't get condensation/mould problems even if you do all the other bad stuff

There may however be instances when structural problems will make condensation worse.

Amongst the most obvious are:

- Failure of a heating system for a long period of time. If the tenant is deprived of the means of heating his or her home it gets cold and more prone to condensation
  - Rising/penetrating dampness. If moisture finds its way into the building, it immediately starts to evaporate, raising the relative humidity and making the likelihood of condensation more likely. Moreover where evaporation takes place there is a chilling effect as heat is drawn from the surrounding atmosphere to trigger the changeover from liquid water to a gas. This too will tend to exacerbate condensation.
- Plumbing leaks for the same reason

You should ask your surveyor to try to assess the degree to which the condensation problem is worsened by the disrepair (very difficult and sometimes impossible to do in some cases but should be attempted).

A vast number of claims have started on the assumption that the house is damp and that it is somehow the landlord's fault. Where condensation alone is the cause of damp it isn't and the claim will fail.

If you have any queries or could do with some advice about any of the above issues please contact me.

**John Kershaw, Surveyor**

## The Legal bit .....

Basically, there are 4 causes of dampness in buildings, namely:

1. Rising damp
2. Ingress of moisture
3. Leaking pipes, cylinders etc.
4. Condensation

In most cases, liability for the first three lies with the landlord but the tenant is normally liable for condensation.

### Damp

#### **Possible causes....**

Rising damp is often caused by absence or failure of damp proof course, bridging internally/externally or via plaster, blocked cavity or failure of cement mortar or water rising due to hydrostatic pressure.

#### **What to do....**

1. Test by analysis of sample of plaster/brickwork – calcium carbide or “Speedy”. Do not use a Protimeter – a Protimeter reading of 99% suggests wall is built of water! The accepted threshold for rising damp is 5%+.
2. Conduct salt analysis in all cases as many are found in soil and in building materials themselves, e.g. gypsum plaster. Use renovating plaster or dry-lining. Ensure photographs are taken (with date stamp) to record evidence

#### **Liability....**

The Landlord is usually liable but the tenant may be responsible if they have raised the level of a pathway above dpc or stored building materials so as to bridge dpc.

### Moisture ingress

#### **Possible causes.....**

Moisture ingress may arise due to missing slates or ridge tiles, defective valley gutters, defective flashings and pointing, blocked or leaking gutters, blocked cavities or air bricks/vents/trickle vents or trays, high ground water levels or other disrepair.

Leaking pipes will also lead to dampness.

#### **What to do....**

Identify the exact origin of the moisture and, if possible, have some photographic evidence of the causes.

#### **Liability....**

In most cases the landlord is liable unless the ingress is due to deliberate damage by the tenant.

## The Legal bit .....

### Condensation

#### **Possible causes....**

Normally lifestyle-related (especially if black spot mould growth (*aspergillus niger*) is present and caused by poor heating/ventilation/air circulation

#### **What to do....**

Look at the household make-up and activity – how many people?, are they at home all day?, do they smoke indoors?, use calor gas heaters?, dry washing on radiators or an unvented tumble dryer?, boil kettle or pans without opening windows? Then....

1. Ensure you have a photographic record of damp spots (especially behind wardrobes etc), washing drying on radiators etc.
  2. Advise tenant of contributing factors and issue written guidance on how to avoid condensation and mould growth.
  3. Make sure all advice / information given is recorded on the file
- Consider fitting a Positive Pressure Unit to assist in managing condensation.

#### **Liability....**

Although generally the responsibility of the tenant, landlord could be liable if condensation arises as a result of disrepair e.g. defective heating, defective extractor fans, design fault

Mould growth is not generally the landlord's responsibility, but the landlord may face prosecution in Magistrates' Court under Environmental Protection Act if injurious to health (e.g. exacerbation of asthma, especially in young children)

### Before carrying out any repairs

Before attempting to eradicate rising damp and/or condensation, the fabric of the building must be free from ingress of moisture and leaks. The contractor will be able to see much more than the surveyor was able to see, having removed the plaster, skirting boards and floor boards before commencing work on the dpc. Therefore, ensure all works to the fabric are carried out before repairing or installing a new dpc.

Please get in touch if you have any queries regarding any aspect of the above.

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### **About John Kershaw (FRICS)**

*John has experience of many aspects of surveying and has prepared over 4000 CPR Part 35-compliant expert witness reports relating to Disrepair and Dilapidations claims, Negligence and Personal Injury claims and Property Valuations. He regularly gives evidence in court*

### **Key services offered**

- Building Surveys
- Valuations (including specialist valuations such as those required under SS27/28 Housing Act 1988)
- Structural Appraisals
- Dilapidations
- Disrepair
- Fault Diagnosis
- Boundary Disputes

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### **Dates for your diary.....**

**Don't forget to book your place at our free lunchtime seminars coming up in June.....**

#### **Disrepair**

25th June - Wakefield (Chevin HA)

#### **ASB**

17th June - Brighouse (Pennine Housing 2000)

#### **Housing Management**

23rd June - Sheffield (Arches Housing)

### **Contact us**

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