



Quick Guide

Disrepairs: Guide to Using Section 82 of the Environmental Protection Act 1990

Starting a Complaint

Section 82 of the Environmental Protection Act 1990 can be used by tenants living in unhealthy conditions caused by your landlord in council, housing association or private landlord premises.

It provides a legal remedy for a 'person aggrieved' where they are living in conditions which are a 'statutory nuisance' which means that they are 'prejudicial to health' or are likely to be so.

Normally, proceedings are taken by the tenant, can also be brought by any occupier who is affected.

The procedure should only be followed once the landlord has been notified of a disrepair which the landlord hasn't addressed or failed to address properly. This should be followed by working through the complaint procedure. If both of these are ineffective in getting the landlord to address the issue, the Section 82 procedure might be appropriate.

Legal Support

As a legal procedure, this process does require legal support if you can get it, and this can be problematic.

It is necessary to prove the case 'beyond reasonable doubt' (the criminal standard) so you will need experienced representation and a good case.

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There is no Legal Aid available for Section 82 actions but some solicitors will specialize in helping on a no-win, no fee basis. Also, barristers from the Bar's Pro Bono unit may sometimes help.

If the court is satisfied that the nuisance still exists at the date of hearing or is likely to recur, then it has to make a nuisance order and also award prosecution costs. It may also fine the defendant.

Failure to comply with the order by the landlord is a serious criminal offence punishable by a substantial fine.



Types of Disrepairs

The term 'Statutory Nuisance' is an old Victorian public health concept; some examples include (but the list is not exhaustive):

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- Any type of dampness including rising (in either walls or solid floors), penetrating and condensation dampness/mould growth and flooding problems;
- Leaking roof, defective guttering or leaking service pipework;
- Defective bath and toilet waste; non-functional, leaking or overflowing toilet. Blocked drains or sewage surcharge from manholes etc.;
- Rat, mice, cockroach issues; accumulations of guano caused by pigeons nesting (sometimes blocking rainwater outlets) and sometimes red, Ghost and Pharaoh ant infestations (where ants bite) or bedbugs;
- Rubbish accumulations because any form of rubbish attracts rats; or
- Ventilation issues - either windows don't open, or are defective or broken, or they have the wrong type of mechanical extract system as this is often related to mould growth.

Using the Procedure

The procedure is commenced when the person aggrieved serves a 21-day notice (letter before action) on either the landlord's Chief Executive or top paid officer. It can also be sent to the person 'for the time being receiving the rack rent' because by accepting rent, they make themselves legally responsible. This is a useful procedure for use against letting agents.

The notice should include the tenant's address and contact details, with the following suggested format:

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"I write to draw your attention to the poor conditions existing at the above property (give address)

I am of the opinion that the conditions (as set out in the attached schedule of defects) constitute a "statutory nuisance" in that they are "prejudicial to health" or "likely" to be so.

Unless action is taken by yourselves to abate and prevent a recurrence of the statutory nuisance within the prescribed period of 21 days, I shall have no alternative but to lay an information in my local Magistrates Court"

(Signature)

This is a self-help procedure so it isn't necessary to have a full technical schedule but it does help. It tells to the landlord where the defects are and which rooms are affected, as do photographs which have to be labelled.

You will also need Expert Evidence from either an Environmental Health Officer (which can be the Council's officer) or a surveyor.





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The expert needs to revisit the property at the expiry of the 21 day notice to check whether the nuisance has been addressed, which is important in terms of costs.

If the disrepair hasn't been addressed and there remains a risk to health, then the solicitor will ask for the case to be listed for a court hearing, and it will be for the judge to decide whether the case is upheld.

SHAC

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