

2008, and T was without heating and hot water for six months, after which hot water, but not heating, was restored. There were drafty defective windows that leaked. From December 2008, L and his sister phoned and texted T continually, telling him to leave. They attended without appointment, and T was threatened and told it was 'not safe' to remain. T was awarded £2,000 for harassment; £2,000 exemplary damages; £9,250 for disrepair (25% of rent May-December 2008; 75% of rent December 2008-June 2009; 43% of rent from June 2009 onwards); £2,995 for failure to protect deposit (and deposit to be protected within 28 days). *Fakhari v Newman* (Woolwich County Court; 7 January 2010). Source: *Legal Action Housing* ([www.lag.org.uk](http://www.lag.org.uk)).

## LANDLORD AND TENANT – RESIDENTIAL

### Consultation – qualifying works

L must consult residential Ts when carrying out 'qualifying works' (works of repair, maintenance or improvement which will require any T to pay more than £250). There is a compulsory two-stage consultation procedure, and L may possibly have to serve a third notice of 'reasons for appointment'.

L must serve notice on the Ts (and on any recognised tenants association (RTA)). The notice must describe the proposed works in general terms (or specify a place in time where a description can be inspected); state why L considers it necessary to carry out the works; invite written observations and provide an address and timescale for a receipt; and invite the nomination of parties through whom L should try to obtain estimates).

The Ts and any RTA must be given 30 days in which to submit observations and to suggest contractors. L must then try to obtain at least two estimates for the work, one from a contractor wholly unconnected with L. L must try to obtain an estimate from any contractor that a T or the RTA has nominated. L must then prepare a statement for at least two of the estimates, setting out the estimated cost of the works and providing a summary of the observations received, together with L's response. Any estimate that L has obtained from an contractor nominated by the Ts or the RTA must be included in the statement. The statement must be attached to a notice and sent to the Ts and the secretary of any RTA. They then have 30 days in which to make any observations.

Only then can L enter into a contract. However, unless the chosen contractor is a nominee of a T or RTA (or had submitted the lowest estimate), L must provide a further notice within 21 days of entering into the contract. That notice must state the reasons for L's choice, or specify a place in time for inspecting a statement setting out those reasons. L must also summarise and respond to any observations it has received.

Note that these provisions apply to all 'dwellings' and cover all residential leases (except those granted by an LA for less than 21 years, or pursuant to

right to buy provisions). As is well known, they are interpreted strictly and an L who fails to follow the letter of the law can be limited to only claiming £250 from each T. Source: [2010] NLJ 720.

### Consultation – qualifying long-term agreements

A qualifying long-term agreement is where a third party (eg a managing agent or maintenance contractor) agrees to provide services to a building for more than 12 months. If the annual cost to any individual T is more than £100, then L must follow a strict two-stage consultation (similar to the one for *qualifying works*, and possibly give a third notice of 'reasons for appointment').

L must serve a notice on the Ts and secretary of any RTA, describing in general terms the nature of the goods or services and any qualifying works to be provided under the agreement, and stating why they are necessary. Any T, or RTA, has a right to nominate contractors, from which Ls should try to seek estimates, and also has a right to make observations within a period of 30 days from the date of the notice. L must have 'regard' to those observations.

L must then prepare at least two proposals, using at least two of the estimates received. One must be from a party that is wholly unconnected with L, and any estimates obtained from the Ts' or RTA's nominee must be the subject of a proposal. Each proposal must identify the proposed contractor and any connection between it and L; include an estimate of the relevant contribution for each tenant (or if that is not reasonably practicable, an estimate of L's expenditure); include a statement as to the provision for the variation of any amount specified in, or to be determined under, the proposed agreement; where the proposed agreement relates to the appointment of a managing agent, include a statement as to whether the agent is a member of a professional body and whether it subscribes to a code of practice; contain a statement of the intended duration of the agreement; and summarise previous observations made by the Ts or RTAs to L (and set out L's response).

Notice of these proposals is given to each T and the secretary of any RTA. The notice must invite further observations and provide an address and timescale. L must have regard to written observations received during the second 30-day consultation period. It also has to formally notify the Ts or RTA of its choice of contractor with reasons, in the same way as for qualifying works.

Finally, note that there are separate consultations required when 'qualifying works' are to be carried out by a contractor who is already in place under a qualifying long-term agreement, and those works are expected to exceed £250 per T. This may arise where L has entered into a long-term agreement (eg for the repair and maintenance of lifts) but the same contractor has been asked to carry out major repairs or a refurbishment that will trigger a consultation. In this situation, only one consultation notice is served, and one consultation period of 30 days is allowed. It is not necessary to invite nominations for contractors from the T or RTA, since the contractor will already have been chosen. But, L must 'have regard', and respond to, observations made. Source: [2010] NLJ 720.

**Forfeiture  
– misleading  
notice?**

If arrears of ground rent arise on a long tenancy, then a draconian remedy for L is to threaten forfeiture of the lease. But, L must first send T a prescribed notice. However, it is now suggested that the wording of that prescribed notice is misleading and may confuse Ts.

There are special provisions for forfeiture in relation to small amounts of rent over short periods of time. Section 167 of Commonhold and Leasehold Reform Act 2002 says that L 'may not exercise a right of... forfeiture unless the underpaid rent (a) exceeds the prescribed sum [£350], or (b) consists of or includes an amount which has been payable for more than a prescribed period [three years]'. Thus, L cannot forfeit a lease unless either the rent due is in excess of £350, or has been payable for more than three years.

The complication is that the Landlord and Tenant (Notice of Rent) Regs 2004 say that a notice served under s167 of the 2002 Act must contain wording saying that those provisions 'prevent your L from forfeiting your lease for non-payment of rent... if the amount owed is £350 or less, or none of the unpaid amount has been outstanding for more than three years'. But, that sentence conveys to T that L may not forfeit the lease if the rent due is below £350 or the rent has been payable for less than three years, so L may only forfeit if both the rent due is in excess of £350 and has been payable for more than three years. That, of course, is inconsistent with the wording of s167; eg if the rent outstanding is under £350, but has been outstanding for more than three years, then L can forfeit under s166 (even though the wording in the 2004 Regs says that L cannot forfeit because the amount outstanding is less than £350).

The end result is that L is required to serve a prescribed notice under the 2002 Act, which, in accordance with the requirements of the 2004 Regs, is misleading. But, such a notice will be valid in law although L would have made a potentially misleading statement to T. One can foresee a situation where T would be induced into a false sense of security if he relied totally on the wording under the 2004 Regs. On that basis, Ts could conceivably argue that negligent mis-statements were made to them by their Ls. Accordingly, an article in the *SJ* suggests that the prescribed wording should be used, but Ls should consider including a covering letter to T which properly explains the meaning of s167 of the 2002 Act. Source: *Davis Blank Furniss Solicitors*.

**Enfranchisement  
– valuation**

How do you value the premium to be paid by T to L on an enfranchisement? Strictly speaking, the premium is made up of three elements: (i) the diminution in value of L's interest; (ii) L's share of the marriage value; and (iii) any compensation payable. In practice, of course, this is specialist valuation work and few solicitors can claim to understand the complexities involved. However, we do recommend an excellent introductory article which contains an explanation of the steps involved, together with sample calculations. It is highly recommended, [2010] 251 PLJ 9.

One point worth bearing in mind is that any enfranchisement claim will be valued as at the date that the competent L receives the claim. Accordingly, where the market values are rising and falling, it will have an effect on the