

Dilapidations

Are you aware of your obligations?

It can come as a nasty shock towards the end of a lease when the landlord requires extensive work from the tenant to remedy damage or disrepair or to put the premises back to its original state if the tenant has made internal alterations. If the tenant does not carry out this work, he or she may be required to pay the cost of having it done.

As a tenant you may be able to challenge the landlord's list of required repair work, referred to as a "schedule of dilapidations". To be in a strong position to mount a challenge you need to consider the dilapidations question right at the outset, with the help of your chartered surveyor, before you sign a lease.

What are dilapidations?

The term is normally used to cover defects and disrepair which you as tenant will be required to deal with or pay to have remedied when you vacate the premises that you have leased.

When do I need to start thinking about dilapidations?

Before you take a lease. A survey will establish the condition of the premises, giving an indication of work that may be needed, both immediately and later. If the premises are already in bad repair, special considerations apply (see below). During the term of the lease, regular or planned maintenance can avoid greater expense later. It is usually a good idea to record the condition and layout of the premises before you occupy.

What if the premises are in a poor state at the outset?

Most commercial leases require the tenant to put and keep the property in repair. Unless you and the landlord specifically agree otherwise, the fact that the premises were in a poor condition when you took them on is largely irrelevant. You still have to put them right. You should therefore negotiate for a lower premium or a lower rent to compensate for costs that you face.



Alternatively, persuade the landlord to agree that the premises be returned at the end of the lease in a condition similar to the state in which you took them. In this case, after you have had the premises surveyed, make sure that their condition is established, recorded and attached to the lease as a "schedule of condition". You should ensure that your solicitor varies the lease clauses to reflect the reduced obligations.

When is the landlord likely to submit a dilapidations claim?

Generally speaking, landlords do not serve dilapidations claims earlier than three years before the end of the lease. If you, as tenant, have a statutory right to a new lease, the landlord probably will not serve a dilapidations claim unless or until you indicate that you are unlikely to renew your lease.

What is the position on alterations I have made?

This depends on the terms of the lease and any licences that the landlord granted you to make alterations. On granting consent for alterations the landlord probably required that at the end of the lease you restore the property to its original state if requested to do so.

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What if I cannot reach a compromise with the landlord?

If you cannot reach agreement, the landlord has recourse to the court, but this is a slow process and expensive for both sides; both parties will generally avoid litigation if they can. Consult your solicitor as well as your chartered surveyor if things look like they are taking this course – in a court hearing your chartered surveyor will be able to act as an expert witness on your behalf.

Alternatively, disputes can be resolved by mediation, expert determination or arbitration. The Royal Institute of Chartered Surveyors (RICS) has a list of accredited experts and arbitrators who can be appointed by both landlord and tenant to resolve the dispute.

Supersession and recent changes to the law

There is often a misconception that if a landlord is seeking to redevelop a building following lease expiry, the tenant is exempt from liability for dilapidations. That is not the case as there are exceptions to this principle, covered under Section 18(1) of the Landlord and Tenant Act 1927.

This provides that the landlord's intentions at the date of lease expiry have to be considered when assessing dilapidation liability. Only if either of the following situations occurs (on or shortly after the date of lease expiry), the liability is removed if:

1. The premises are going to be completely pulled down;
- or
2. A proposed structural alteration is being made which would render any covenanted repairs irrelevant.

Unless the intended works fall into either of these categories, there is still a liability for the tenant to comply with lease covenants even if there is an intention to develop the buildings (including change of use under permitted development) on expiry of the lease.

Therefore, unless the landlord thinks your alterations have added value, you will probably be required to reinstate the property at the end of the lease or pay the cost. The exception is if neither the lease nor the licence for alterations gives the landlord the option of requesting reinstatement.

Do I have to accept the landlord's dilapidations claim in full?

No, do not accept it without taking professional advice first. A chartered surveyor may be able to reduce the figures and / or demonstrate that certain items should not have been claimed. The landlord may not in fact intend to repair the property; he or she might plan to demolish or alter. In these circumstances you would have a good defence in law to the claim because landlords should not claim for more than they have actually lost.

If you would like a free initial consultation with one of our chartered surveyors, please contact:



Neil Cuckson
BSc MRICS

Partner
Building Consultancy (Manchester)
t. 0161 214 4670
e. ncuckson@matthews-goodman.co.uk



Alex Cocking
BSc (Hons) MRICS

Partner
Building Consultancy (London)
t. 020 7747 8831
e. acocking@matthews-goodman.co.uk



George Riley
Dip BS FRICS

Associate
Building Consultancy (Liverpool)
t. 0151 242 8965
e. griley@matthews-goodman.co.uk