



What Is Dilapidations? And everything you wanted to know about saving money when tackling a claim?

Dilapidations are breaches of covenant to repair a building as contained in the terms of a lease. Such breaches can take many forms, but a leaking roof or lack of redecoration are two obvious examples. Dilapidations are often wrongly considered by tenants as insignificant in comparison with rent, rates and service charges when they are seeking new premises. However, the liability to repair can have serious financial implications and therefore the tenant would be advised to seek the advice of a dilapidations specialist on opportunities to avoid, limit or mitigate dilapidations before entering into a lease, or how to deal with a claim when a schedule of dilapidations has been served upon them.

At the end of a lease it is important that the property is handed back to the Landlord in the condition set out under the terms of the lease, or that adequate compensation is made if this is not the case. Repairing obligations may be technically complex and hold potential pitfalls for landlords or tenants. Many commercial leases contain a variety of repairing and redecorating obligations on the part of tenants, outlining the condition in which the landlord expects the leasehold property to be both maintained during the currency of the lease and handed over at the end of the term.

If a property is not maintained in accordance with these leasehold obligations, the landlord may wish to exercise his rights under the lease and serve a notice to repair on the tenant to comply, or otherwise face the prospect of the landlord gaining Court approval to re-enter the property to undertake the works himself at the tenant's expense. Furthermore, the landlord might even wish to pursue forfeiture of the lease as an alternative remedy for the breaches of lease. Such Notices to Repair served during the currency of the lease are usually accompanied by an Interim Schedule of Dilapidations that outlines the breaches of lease and the works required. Towards, at or even after the end of a lease, Schedules of Dilapidations are often prepared by landlords, either to inform tenants of their expectations for the condition of the property on the day of handover, or alternatively, to outline their claim for damages arising from the tenant not handing back the property in a condition commensurate with their leasehold obligations.

Dilapidations are a complex and contentious aspect of the landlord and tenant relationship. No two dilapidations claims can be identical because no two buildings are exactly the same, nor will the lease covenants or other circumstances necessarily be similar either. It therefore follows that a tenant is always prudent to seek specialist advice ideally before contracting into a new lease, or certainly when served with a schedule of dilapidations in respect of an existing or historic lease.

A schedule of dilapidations often comes as a shock to a tenant who sees the works deemed necessary and the costs associated as being highly excessive for the size and condition of the unit. In most circumstances however the breaches claimed and costs apportioned are valid and come about because the lease terms were not properly considered at the start of the term. Dilapidations claims can run into tens or hundreds of thousands of pounds, therefore the right advice when negotiating a lease can literally 'save a fortune'. A good consultant can advise tenants on the condition of a property before undertaking a lease, advise on the implications of the proposed repairing obligations, carry out a dilapidations assessment to determine the likely outlay at the end of the lease term and if appropriate, prepare and agree a schedule of condition of the property which may limit the future repairing liabilities of the tenant.

If your circumstances are such that you have already signed a lease and a schedule of dilapidations has been served upon you it does not mean to say that there is no negotiating stance to reduce the claim. Just because the landlord's surveyor believes that he is right, does not mean that he actually is! Dilapidations can be a complex art as opposed to a science and as such, there are many technical arguments and contradictions that can be called upon by a dilapidations specialist acting on behalf of a tenant in order to negotiate a reduced settlement.

It should be noted that the repairing covenants within a lease are critical. Many tenants are under the misapprehension that if the property was in a poor state of repair when they signed the lease, then they can hand it back in poor order. If the repairing covenants in the lease don't say this, then it may simply not be the case, so **BEWARE** it's not only the condition of the building that matters but what's written in the lease. All too often I see tenants who are not represented enter into a poor deal with a 'clued up' landlord. A few hundred pounds worth of professional advice before you sign a lease can save thousands at the end, as well as save a huge amount of stress and sleepless nights. Most experienced dilapidations surveyors should be able to advise tenants prior to entry into lease agreements. Often this will lead to the production and agreement of a detailed Schedule of Condition, which when attached to and referred to within a new lease, can significantly reduce a tenant's liabilities.

During the course of a lease, a surveyor can prepare an assessment of dilapidations to enable a tenant to manage their future liability, by ensuring that any dilapidations sum is budgeted within the company accounts throughout the lease term to spread



cost and aid cash flow. Technical advice from a specialist speeds up the dilapidations process and ultimately achieves an improved result for landlords and tenants alike.

Who's the Best person to deal with a claim?

Dilapidations are normally carried out by Chartered Building Surveyors who offer expertise during the lease term to prepare interim schedules of dilapidations or repairs notices, negotiate dilapidations claims and specify or monitor repairs. Tenants may have a number of options open to them in dealing with a claim and it is important to find a consultant who can give expert advice on the most appropriate course of action. Chartered Building Surveyors who specialise in dilapidations are highly qualified and experienced in the examination of buildings and the interpretation of repairing covenants of all types of commercial leases. They provide clients with informed advice and services relating to property dilapidations, legislation and protocol. As part of this process they are able to advise landlords and tenants how best to protect their position including the preparation of dilapidations assessments to identify dilapidations liabilities and corresponding budget costs, either before or during a lease term. The advice can often lead to the production and agreement of a detailed schedule of condition which they will also have the expertise to produce.

Dilapidations is a niche element within the building surveying profession and specialist Chartered Building Surveyors often have a vast amount of experience in preparing and negotiating claims on behalf of landlords and tenants. They should be fully aware of the latest case law and are equally conversant with a client's obligations and liabilities, whether in the capacity of landlord or tenant.

In a financially conscious market, dilapidations liabilities are becoming a significant cost to a business. Surveyors specialising in dilapidations provide clients with informed advice and services relating to property dilapidations, legislation and protocol, to ensure that an optimum solution is reached.

Where a schedule has not been served, specialist surveyors can advise a tenant how to minimise their liability and can also monitor repair work if the tenant chooses to carry out the work rather than negotiate a settlement. There will necessarily be variables for discussion and this is where specialist negotiation skills and expertise become invaluable, in forming a technical argument to reinforce any claim / defence made on behalf of our client. A good surveyor will have extensive experience in advising tenants on how to limit liability before a lease is entered into, reduce any potential claim before the end of a lease term and in negotiating a reduced financial settlement after the lease end by employing reasoned technical arguments based upon many years of experience in dilapidations negotiations.

Historically landlords tend to have a greater knowledge of dilapidations which gives them a distinct advantage when it comes to negotiation. Under the Dilapidations Protocol there is an obligation to be fair and reasonable whilst compensating a landlord for his loss, but often this reasonableness is stretched to the limit. Choose a surveyor who produces schedules of dilapidations for landlords as well as negotiating claims for tenants because they are more likely to understand the arguments for both sides and thus be able to better defend a claim, which ultimately means paying less in a settlement.

Dilapidations can be a complex and very technical aspect of building surveying and it is incredibly important from both a legislative and financial perspective that you appoint the right consultant. Don't be fooled by the large national consultancy practices, or self proclaimed specialists who offer nationwide cover. Many of these organisations simply employ a local surveyor whose true expertise and identity are unknown and with whom you can never build up a personal contact, or in the case of larger companies the work may be secured by a director but ultimately carried out by a graduate or junior surveyor who has limited experience. I know because I've been a director at a large national surveying practice!

The larger and so say niche practices try to suggest that they offer a more technical knowledge and charge accordingly. That is often simply not the case. An independent Chartered Building Surveying Company gives unrivalled experience and client contact at a more reasonable fee level.

This article has been written by Andrew Hodge MRICS RMaPS of A J Hodge Associates. He regularly act for tenants who have received Notices to Repair and/or Schedules of Dilapidations and is well-versed in the various defences and strategies that can be employed to best protect a tenant's position. He also acts for landlords in preparing and negotiating schedules. In one dilapidations case for a tenant he was able to reduce a financial claim from circa £220,000 to circa £90,000. In most cases he can achieve a reasonable saving which normally dwarfs his fee.