

Dilapidations - What are they?

Dilapidations are generally considered to be items of disrepair which are covered by the repairing obligations in a lease. The reference to dilapidations is often referred to at a time when the lease ends (or can be during the lease term) and tends to be in respect of breaches of tenant covenants relating to the physical state of the premises.

It is usual and fairly common to find covenants dealing with repair and decoration in commercial leases as well as covenants to deal with the state of the premises at the end of the lease term (including the obligation for the premises to be reinstated where alterations have been carried out by the tenant) and covenants which deal with obligations of the tenant to comply with statute. A lease can also be qualified by reference to a schedule of condition which is a schedule of photos showing the state of the premises at the start of the lease. Further obligations can be referred to in additional supplementary documents such as a licence for alterations. It is crucial that the terms of a lease or any supplementary documents are carefully considered to establish the extent of the tenant's obligations.

A schedule of dilapidations is drawn up by a landlord (who is likely to instruct a surveyor) and refers to the clauses of the lease which reflect the tenant obligations in connection with the state and condition of the premises. The schedule of dilapidations will detail matters such as the decorating and repair obligations, reinstatement alterations etc. and will identify where repairs to the premises are required. The landlord's surveyor will also include the landlord's surveyor's opinion of the cost of carrying out the works.

Upon receipt of a schedule of dilapidations, a tenant should consider instructing a legal representative and an independent surveyor to assess the extent of the tenant's liability. It is a point of note that there is also a statutory limit on the sum a landlord can claim for dilapidations. Section 18 (1) of the Landlord & Tenant Act 1927, limits the damages available for breach of a repairing covenant to the diminution in value of the landlord's reversion caused by the breach. Generally speaking, a court would assess what the diminution in value of the premises actually is as a result of the breach of repairing covenant, and any damages would be limited to this sum. A landlord may however be able to make an additional claim for the loss of rent to reflect the period necessary to carry out works to the premises. In this case, a landlord would need to show that the landlord has been unable to re-let the premises which has then resulted in a loss of rent.

If you require advice and guidance in relation to dilapidations, please contact a member of our commercial property team who will be more than happy to assist.
