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EXPERTS IN PROPERTY



Dilapidations and Section 18 Valuation: An Overview



Before entering a lease, whether commercial or residential, it is important for landlords and tenants to understand various concepts in order to minimise risks and avoid disputes in the future. One of the basic concepts they should know is dilapidations, a common subject of conflict between the two parties at the end of every lease term.

What is 'dilapidations'?

The Royal Institution of Chartered Surveyors (RICS) has defined dilapidations as the “breaches of lease covenants that relate to the condition of a property during the term of the tenancy or when the lease ends”. To put in simple terms, dilapidations are ‘exit costs’ that the landlord demands from the tenant during or towards the end of a lease.

Dilapidations covers breaches of the tenant’s obligations detailed in the lease agreement which mainly concern maintenance, repairs, damages and alterations made to the property. In a claim document called a Schedule of Dilapidations, the landlord or their surveyor lists down all the breaches on the agreement that the tenant has committed as well as necessary remedial works and corresponding costs based on the condition of the property at the end of the lease. The Schedule of Dilapidations will then be issued to the tenant towards the end of the lease in which liability costs can be larger than a 12 months’ rent. Dilapidations and remedial works should be carried out by the tenant before the end of the lease term. After the expiration of the lease term, the landlord will issue a more specific document detailing the damages that can cause the property to depreciate in value.

To include further details of the alleged breaches and financial consequences of such violations, the landlord will provide the tenant a document called a Quantified Demand after the end of the lease. Details of this document may be different from what was stated in the Schedule of Dilapidations as the Quantified Demand can include additional costs such as the value of loss of rent and service charges. The tenant or their surveyor should reply through a letter or email (known as Response) to address Schedule of Dilapidations and/or Quantified Demand within 56 days after receiving them.

After the issuance of all documents and notices, surveyors appointed by the landlord and tenant will negotiate to recommend a settlement figure. If both parties fail to agree on a figure, the landlord has the right to pursue a litigation guided by the Dilapidations Protocol. The Dilapidations Protocol is a document issued by the Ministry of Justice saying that parties involved in dilapidations cases should attempt Alternative Dispute Resolution (ADR) before proceeding to courts. It encourages both parties reach a settlement and promotes efficient management of dilapidations cases without having the need for litigation.

For landlords and tenants looking for a cheaper option, ADR may be considered. There are various forms of dispute resolution through ADR: Mediation, Arbitration and Independent Expert Determination. Mediation is the most popular form of ADR. It is commonly applied to dilapidations cases and has a high success turnout.

However, dispute resolution through mediation involves a relatively expensive costs (although slightly cheaper than litigation costs). Another increasingly popular approach due to lower costs involved is through Expert Determination. Through this approach, a single expert will make the decision on the dilapidations case which should be followed by both parties. Arbitration, on the other hand, abides by the Arbitration Act and takes in the expertise of an Arbitrator. The Arbitrator's decision is also binding on both the landlord and tenant. These two approaches have high success rates when it comes to disputes related to rent reviews and service charge.

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Resolving disputes may sometimes involve various specialists. Some cases may require other practitioners to look into certain features of the property or building including the lifts, air conditioning system, and cladding.

Complex dilapidations cases involve a chartered valuation surveyor to prepare a specialist valuation report called a diminution valuation. However, there are some cases where the diminution valuation is not required (through Section 18).

What are Diminution and Section 18 Valuations?

Dilapidations claims may be issued by the landlord during the last three years of the lease term. The purpose of dilapidations claims is not to increase the value of the property, thus giving profit to the landlord, but instead, to avoid the property from depreciating and to return it to its original condition. Several laws cover dilapidations claims to ensure its impartiality. These laws include common law and the Section 18 (1) of the Landlord and Tenant Act 1927. Basically, Section 18 (1) concerns damages brought by breaches of a repairing agreement. Other breaches such as redecorations and reinstatement works are covered by the common law.

To cap off the level of damages that a landlord can claim at the end of a lease term, Section 18 (1) has set out limitations of liability for dilapidations and repair costs. Using Section 18 (1), the tenant may provide defence to reduce dilapidations payments through two aspects (also known as limbs):

(1) The first limb states that:

“Damages for a breach of covenant or agreement to keep or put premises in repair...shall in no case exceed the amount (if any) by which the value of the reversion in the premises is diminished owing to the breach of such covenant or agreement...”

This means that the landlord can't claim repair costs larger than the amount by which the property had been devalued by the tenant's breaches at the end of the lease. It is important to note that this limb only applies to repairs (sometimes on redecoration) but not to reinstatement works. This limb requires the landlord to prove that the property is mitigating any loss in this regard.

(2) The second limb states that:

“... and in particular no damage shall be recovered if it is shown that the premises would at or shortly after the termination of the tenancy have been or be pulled down, or such structural alterations made therein as would render valueless the repairs covered by the covenant or agreement.”

In simple terms, no damages can be recovered by the landlord if alterations that would render dilapidation works valueless will be done upon the expiration of the lease in the property. This also applies if the property or building is to be demolished at the end of the lease term or if there are proposals to redevelop the property or to carry out major refurbishment works.

When making claims, it is worth reiterating that the intentions of the landlord should not be considered. Instead, dilapidations claims should be approached objectively, as if in the eyes of the general market. In this way, the course of action will be reasonable.

A diminution valuation is needed to determine the loss brought by all breaches including disrepair. Using two assessments, diminution valuation measures the difference between the value of the property in condition left by the tenant with the property's value after repairs which comply to the terms set out in the lease.

A chartered surveyor or valuer must be engaged to perform these valuations as diminution value is difficult to determine.

How can you avoid the risk of dilapidations?

Dilapidations disputes can be very serious and can cost both parties huge sums of money. To avoid the risk of dilapidations, the landlord and tenant must consider the issue at the earliest stage.

Ensure you have a copy of records and documents from the start of the lease negotiations

When drafting the lease, both parties should agree on the demised premises, and obligations for redecoration, repair and reinstatement of alterations and include these in the lease. Wordings in lease clauses are sometimes hard to understand. If the terms are unclear, a chartered building surveyor or a solicitor can provide both parties advice on the clauses they are signing up to. Lack of familiarisation and misunderstanding of the lease agreement are the common causes of disputes that bear serious implications in the future.

As a tenant, it is your responsibility to commit to the property and satisfy all the obligations stated in the lease. Manage your property well and perform good maintenance so as to avoid damages and minimise liabilities at the end of the lease term. During the term of the lease, keep in mind all future dilapidations liability and prepare a budget for it.

If you want to undertake alterations to the property, make sure that you obtain a formal permission (known as Licence to Alter) from the landlord and follow all the specified procedures in the lease. The landlord may require you to reinstate all the alterations before the lease term ends. Perform all your dilapidations obligations before the end of lease.

To help with disputes that will come up, ensure that you have a copy of records and documents from the start of the lease negotiations. Engage with an experienced surveyor as soon as you

have been issued the Schedule of Dilapidations in order to respond to it on time. Once you have received the schedule of dilapidations, your surveyor will assess your property as well as review the lease agreement to provide you with expert advice and strategy in managing the dilapidations process and reduce liability costs.

There are some cases where the landlord does not issue a schedule of dilapidations. In this case, you still need to engage with your surveyor to help you perform dilapidations obligations stated in the lease.

As a landlord, you should check if your tenants undertake alterations properly and repair works specified in the lease during the term and before the end of the lease. Appoint your chartered surveyor to identify what repairs needed to be completed and relay this to your tenant before the lease ends.


If your property remains unrepaired at the time of the lease expiration, it is your job to prepare a schedule of dilapidations to recover the costs of damages including the loss of rent while the works are being carried out. The Dilapidation Protocol requires a surveyor to endorse your schedule of dilapidations so communicate your intentions to your surveyor in order for him to understand - be honest and objective as you can since the court may review the document in the future. Common dilapidations cases require justifying reasonable repair works and its effect on the property.

Both parties should be proactive in satisfying the responsibilities and obligations to the property. Some measures that the parties can carry out include preparing a maintenance programme at the start of the lease to protect the property as well as to minimise disputes at lease-end.




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