

Property

Dilapidation in Commercial Leases

Is your lease coming to an end or are you thinking of ending your lease early?

When a lease comes to an end, the tenant is usually pre-occupied with moving on and the one thing which is often neglected is whether they have complied with their obligations under the lease. The landlord's main objective will be to ensure the property will be returned in a good and marketable condition.

Where the landlord considers there have been breaches of the tenant's covenant, they will serve a formal notice on the tenant to require remedial action to be taken. This will normally accompany a Schedule of Dilapidation, which is essentially a list of the alleged breaches and the repair works required by the landlord.

A schedule of dilapidation can be served during the lease term, but for the purposes of this article we are focusing on the type served after the end of the lease, known as Final Schedule of Dilapidation.

What tenants need to know

Once a lease has expired and the property has been returned to the landlord, the tenant does not have an automatic right to return to the property to undertake works. The landlord will be at liberty to decide unilaterally the nature and extent of repairs, which may not reflect the tenant's liability. It is always good practice to review all the tenant obligations in the lease and take all necessary actions before the expiry or intended exit of the lease. The tenant can also ask the landlord or their agent to inspect the property prior to the date of exit.

What landlords need to know

The main objective of dilapidation is to protect the landlord and return them in the position they would have been in had the tenant complied with the lease obligations, but not so that the landlord can profit from the procedure. The standard of repair only needs to be appropriate for the nature of the property and there is no requirement to upgrade or improve the condition of the property. However, the difference between repair works and improvement works are not always clear cut. Landlords therefore need to strike a delicate balance.

Once a lease has ended, both parties will want to move on and the last thing they want is to start a litigation battle on what the condition of the property was like some 10 years ago. An effective way of reducing the possibility of a dispute is to draw up a photographic schedule of condition, which evidences the condition of the property before the lease is entered into. The tenant will just need to ensure the property is returned in the same condition as shown in the photographic schedule of condition.

Unfortunately, in reality dilapidations can get a lot more complicated. The tenant may not agree with the landlord's alleged breach or the tenant's interpretation of the repairing covenant may not be in line with the landlord's understanding. The photographic schedule of dilapidation itself can also be a point of contention, e.g. where authorised works have been carried out during the term of the lease. If an agreement is reached then both parties will sign a dilapidation agreement otherwise the dilapidation claim can lead to a protracted and costly litigation case.

Crafting appropriate and specific clauses during the lease negotiation stage can help increase the rigidity of the lease obligations and therefore avoid any ambiguity leading to dispute. Past cases have shown the importance of wording of the covenant in the lease when assessing damages for dilapidation claims. Courts are also generally reluctant to change the standard of repair agreed at the outset of the lease.

If you require advice in relation to your business lease, please contact the property department at 3HR Corporate Solicitors.

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