
Be Aware Of Your Dilapidations Liability

Neil Gilbert, head of dilapidations at Tuffin Ferraby Taylor (TFT), highlights the changing nature of dilapidations claims arising from the economic crisis.

As a product of the recession and economic uncertainty, landlords are quite understandably taking a much more aggressive approach to dilapidations which arise at the end of a commercial property lease, in order to minimise their losses when a tenant vacates a building. This has come as a quite a shock to many tenants, many of whom having previously enjoyed a good working relationship with their landlord during the lease term.

One can begin to understand landlords' current predicament when one considers that in these troubled economic times, the prospect for many at the end of a lease is a vacant building that provides no income for some period of time. And it can soon become a cost as the period of empty rates relief ends.

Landlords will generally offer incentives to tempt their tenants to remain in place with lease renewals or extensions however, when they decide to leave with the building in disrepair or in an altered state, claims will vigorously be pursued for damages to recover any losses in returning the building to a condition suitable for letting on the open market.

For those tenants not aware of lease end dilapidations liabilities, it can come as a serious dent to their level of profitability or even put firms in a distressed state due to the potentially significant financial implications of a Landlord's claim. Dilapidations, namely the repairs, redecoration and reinstatement works required for a building under the terms of a lease, are often a hidden cost for property occupiers, simply because the leasehold obligations are not fully appreciated against the nature of the property being leased.

It is essential that tenants are aware of their obligations at the outset so that liabilities can be appropriately managed to avoid any unnecessary shocks. Tenants not only need to understand the implications of the lease covenants but how these translate into maintenance commitment, the significance of making alterations on their particular building and the financial liability that comes with this.

We highlight below several steps that should be taken to assist tenants in understanding this liability and to assist in the planning process to prepare for this inevitable expenditure.

For those about to take a new lease:

The time to begin the planning process is before signing the lease. It is essential that tenants invest in a building survey prior to commitment in order to understand the liabilities that they are committing to.

A thorough survey report will highlight the building elements that are likely to warrant maintenance expenditure during the lease term together with elements that will reach their life expectancy. Prior to lease the tenant has a strong bargaining position and armed with this advice may be able to negotiate limited liability on elements such as this. More and more often we are preparing schedules of condition to be appended to leases to limit the tenant's liability in this respect.

The survey report can also be extended to incorporate a planned maintenance schedule which will detail the works and expenditure necessary to maintain the building in accordance with lease covenants. This enables the tenant to plan for repairs and to account for the expenditure throughout the lease term rather than being faced with a one off unexpected claim at lease end.

A good survey report will also review the proposed lease clauses in relation to the expected levels of maintenance as determined by the lease clauses, in order to highlight any areas of ambiguity in association with the solicitor. This can prevent dispute at lease end and ensures both Landlord and tenant are clear on what is expected once a lease has terminated.

Taking control of the situation at this stage in a pro-active manner will provide for lease clarity, enable future liability to be quantified and, in the longer term, enable tenants to plan for inevitable expenditure, minimising the financial impact on their core business.

For those already in occupation:

Tenants currently in leasehold arrangements should not necessarily despair. The opportunity to influence lease terms may have passed, however, the sooner that liability can be quantified the sooner the tenant can plan to minimise the financial impact this may have.

A dilapidations assessment mid-term will provide quantification of this liability, the only difference being that the time to plan and spread the expenditure is limited by the remaining term of the lease. Time is therefore of the essence in these cases.

Having the likely dilapidations works clarified together with a budget cost mid-term, will enable the tenant to make choices in dealing with the issues at an early stage. Certain repairs can be made to the building in a planned maintenance regime where it suits the business, other works may prove impractical to undertake whilst the tenant is in occupation however, tenants' can account for these by provisions in their accounts to smooth the effect of the likely Landlord claim at lease end.

For those at lease end:

If you have come to the end of your lease and left the property in a dilapidated or altered state then, you can expect a claim from the landlord if you have not already received it.

Dilapidations law and protocols dictate how these claims should proceed and you will need a building surveyors' professional advice to defend any claim. The current thrust of this legislation and the associated protocols is to deter spurious or exaggerated claims by landlords in an attempt to regulate the process and to minimise the number of cases entering into litigation.

Dilapidations law can be complex and it is the interpretation of this law into the physical works necessary together with their cost, to return a building to tenantable condition that still causes claims to be misrepresented. Professional advice is essential and may involve other professionals' advice including valuation surveyors and Solicitors.

The overriding message to tenants is "be aware" of your dilapidations liability, preferably prior to entering into it, and "account" for the inevitable expenditure you are committed/committing yourself to in a commercial property lease. This will enable you to "plan" at as early stage as possible to minimise the potential impact on your business.

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