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JUNE 2015

R22 REFRIGERANT:
A dilapidations perspective

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DILAPIDATIONS

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R22 REFRIGERANT: A DILAPIDATIONS PERSPECTIVE

Since 1 January 2015, phase-out legislation (EC regulation EC2037/2000) has outlawed the use of ozone depleting R22 and other HCFC refrigerants for maintenance and servicing purposes. Many thousands of air conditioning units in the United Kingdom still currently utilise R22 refrigerant. However, as the phase-out legislation didn't require either Landlords or Tenants to replace systems using refrigerant R22, the continued use of such systems beyond 1 January 2015 is legitimate. Repairs can be legitimately undertaken to plant and equipment that use R22 so long as they don't involve works associated directly with the refrigerant. But, should the maintenance of the system require the R22 refrigerant to be handled, decanted or topped up, this is prohibited.

From the date when production of R22 equipment was ceased, manufacturers were obliged to have spare parts available for a period of 10 years. However, as much of the plant and equipment used in refrigeration based air conditioning systems in the UK is manufactured in Asia, the availability of spares and components varies; recent experience has confirmed that delivery periods can range from several weeks to months. This impacts on the continuing use of the systems.

Depending on the item of plant or equipment in question, works involving the R22 refrigerant may necessitate significant alterations, or replacement.

R22 hasn't been installed in new air conditioning systems since the early 2000's so the systems are now at least 13 years old and in many cases approaching or beyond the end of their economic life factor. CIBSE advises that the typical economic life factor for local systems (e.g. Split systems and VRV systems), is 10-15 years and up to 20 years for the majority of chillers. Economic life factors are an irrelevance in dilapidations disputes; it is 'disrepair' that is considered. In the majority of cases the repair of DX and VRV systems using R22 refrigerant is not the best solution and replacement is advised. The refurbishment of chillers to use an alternative refrigerant shouldn't be discounted since in some cases this may prove to be an attractive option in the short term. But the lower efficiency of 'drop in' refrigerants may breach the lease obligations to yield up the premises in good condition (and performing to the same capacity) as when the lease commenced. Modern split systems, VRV systems and chillers are notably more efficient than the equivalent equipment from the early 2000's, so capital costs as well as 'cost in use' should be fully evaluated when repair or replacement needs to be considered. A tenant at lease end will not be interested in the potential energy savings and other costs in use.

In the case of owner occupied property, the onus will fall on them to undertake works to air conditioning systems using R22; however, the situation is likely to be more complex when a property (or part) is subject to a lease. The covenants in the lease will play an important part in determining who is responsible for repair or replacement works.

For tenants with leases ending shortly after 1 January 2015 they should have aimed to maintain the system in repair and, as part of this process, professionally validate the system just prior to lease end so as to demonstrate to the Landlord that it is in working order and will therefore satisfy their lease repair obligations. A breakdown occurring before or at lease expiry, that cannot be legally repaired, could give grounds for the Landlord to claim for a new system.

The tenant might argue that, even if the R22 system was delivered up in repair, the Landlord would still replace it as no reasonably minded incoming tenant would agree to a new lease with a R22 based system at the property. This would be a supersession defence to the claim.

Where a lease ends well beyond 1 January 2015, the tenant will need to take action. If they do nothing there is a very good chance of a breakdown and the R22 system becoming obsolete. They will suffer not only the cost of the replacement system, but also operational downtime from breakdown to completion of the work.

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For leases ending after 1 January 2015 there is a chance that the Landlord will be handed back a building with an undesirable R22 system. If this were to be the case the Landlord should establish if the system is in disrepair. Reviewing the maintenance records and validating the system is advised. If repairs are required that cannot be legally undertaken by the tenant this may enable the Landlord to substantiate a claim for system replacement.

The building services elements of many dilapidations claims can be substantial, and air-conditioning installations are expensive systems requiring upgrades in order to maintain both function and statutory compliance. Leases will not have been written with the phase-out of R22 in mind and, as such, it is inevitable that many landlord and tenant disputes will arise in the future. Case law will undoubtedly help to provide some clarity on the matter.

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