



# The TFT Purple Book

A Guide to Dilapidations in the UK

# **The TFT Purple Book:**

**A Guide to  
Dilapidations in the UK**

**Jon Rowling**

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First Edition

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## Table of Contents

<b>List Of Cases Referred To</b>	7
<b>List Of Statutes (Etc.) Referred To</b>	10
<b>Foreword</b>	11
<b>The Author</b>	13
<b>Glossary</b>	15
<b>Chapter 1 – Overview</b>	29
Conflicts of interest	29
Are other technical consultants required?	32
Instructions	35
Check the lease end date	38
Document review	39
Are removal / reinstatement notices required?	42
Access arrangements and inspections	44
Professional fees	48
Schedule of dilapidations preparation	49
Quantified demand preparation	55
Quantified demand and schedule of dilapidations sent to tenant	61
Meeting	62
Response preparation	64

## Table of Contents

Negotiations	67
Offers to settle and costs	70
Alternative Dispute Resolution	77
Diminution valuations	77
Settlement	83
<b>Chapter 2 – Classification Of Items</b>	84
Integral items	85
Chattel or Fixture	86
Landlord’s fixture or tenant’s fixture	97
Landlord’s chattel and tenant’s chattel	103
<b>Chapter 3 – Repair</b>	105
The boundaries of the demised premises	105
The classification of items	109
Condition obligations	112
Repair obligations	114
<b>Chapter 4 – Reinstatement</b>	131
The configuration of the premises at the start of the term	131
Licensed works	132
Non-licensed works	138
<b>Chapter 5 – Dispute Resolution</b>	148

Negotiation	150
Mediation	152
Conciliation	155
Neutral evaluation	155
Expert determination	156
RICS Dilapidations Dispute Resolution Scheme	157
Arbitration	162
Litigation	163
Expert witnesses	164
<b>Chapter 6 – The Measures Of Loss</b>	167
Breaches of the obligation to repair	167
Breaches of obligations other than ‘to repair’	169
<b>Chapter 7 – TFT Two Step Approach To Supersession</b>	172
Step One: Mitigation	172
Step Two: Causation	173
<b>Chapter 8 – Engineering Services</b>	176
The tenant’s obligation to repair	177
Alterations to engineering services	179
Equipment exclusively serving the premises	180
Compliance with statute	181

## Table of Contents

Testing and validation	182
When to engage a services engineer (or any other specialist)	183
How to use a services engineer (or any other specialist)	184
<b>Chapter 9 – Dilapidations During The Lease Term</b>	186
Interim schedules of dilapidations	186
Repairs Notices	192
<b>Chapter 10 – Break Options</b>	194
Acting for a tenant (tenant exercising the break)	194
Acting for a landlord (tenant exercising the break)	200
Landlord exercising the break	201
<b>Chapter 11 – Statutory Rights To Renew LEASES</b>	202
<b>Chapter 12 – Avoiding And Minimising Disputes</b>	204
Before the terms of the lease are agreed	204
Lease renewals	209
Assignment of leases	211
In preparation for lease end	212
At / after lease end	218
Settlement of dilapidations disputes	220
<b>Chapter 13 – Northern Ireland</b>	221
<b>Chapter 14 – Scotland</b>	222

Legal and court systems	222
Different terminology	222
Differences in common law	223
Differences in legislation	229
Differences in procedure	230
Structure of leases	230
Payment clauses	231
<b>Appendices</b>	234
<b>Appendix A – Diminution Valuations</b>	235
<b>Appendix B – The Dilapidations Protocol</b>	239
<b>Appendix C – The Roles Of The Building Surveyor</b>	248
<b>Appendix D – Comments On Notable And Recent Cases</b>	252
The fundamental cases	252
Recent general dilapidations cases	254
Other useful cases	257
<b>Index</b>	261





List of cases referred to

<i>@SIPP Pension Trustees v Insight Travel Services Limited...</i>	231
<i>Anstruther-Gough-Calthorpe v McOscar</i> .....	119
<i>Arnold v Britton</i> .....	231
<i>Baroque Investments Ltd v Heis</i> .....	135
<i>Berkley v Poulett</i> .....	88
<i>Boswell v Crucible Steel Co</i> .....	85
<i>Botham v TSB</i> .....	89, 95
<i>Brace v Calder</i> .....	126, 173
<i>British Eventing Limited v HMRC</i> .....	211
<i>Car Giant Limited and Acredart Limited v The Mayor and Burgesses of the London Borough of Hammersmith</i> .....	81
<i>Co-operative Insurance Society Ltd v Fife Council</i> .....	224
<i>Courtwell Properties Ltd v Greencore PF (UK) Ltd</i> .....	71, 219
<i>Creska v Hammersmith</i> .....	192
<i>Customs and Excise Commissioners v Cantor Fitzgerald International</i> .....	211
<i>Customs and Excise Commissioners v Viva Gas Appliances Ltd .....</i>	142
<i>Dem-Master Demolition Ltd v Healthcare Environmental Services Ltd</i> .....	124
<i>Duke of Portland v Woods Trs</i> .....	228
<i>Elitestone Ltd v Morris</i> .....	92
<i>Finch v Underwood</i> .....	198
<i>First Port Property Services Limited v The Various Long Leaseholders of Cityscape</i> .....	114
<i>Fitzroy House Epworth Street v The Financial Times Limited .....</i>	197
<i>Gibson Investments Ltd v Chesterton plc</i> .....	117
<i>Gore v Naheed</i> .....	149
<i>Hammersmatch Properties (Welwyn) Ltd v Saint-Gobain Ceramics and Plastics Ltd &amp; Anor</i> .....	76
<i>Holland v Hodgson</i> .....	95
<i>Horwich v Symond</i> .....	94
<i>Jervis v Harris</i> .....	192, 193

## List of cases referred to

<i>Joyner v Weeks</i> .....	125, 168
<i>La Salle Receptions Ltd v Canadian Camdex Investments Ltd</i> 95	
<i>Latimer v Carney</i> .....	167
<i>Linda Courts Residents Association</i> .....	141
<i>Maddox Properties Ltd v Davies</i> .....	52, 56
<i>Mapeley Acquisition Co (3) Limited (In Receivership) v City of Edinburgh Council</i> .....	231
<i>Matthey v Curling</i> .....	135
<i>Mellhuish v BMI (No. 3) Ltd</i> .....	92
<i>Moor Row Limited v DWF LLP</i> .....	228
<i>New Zealand Government Property Corp v HM&amp;S Ltd</i> .	102, 144
<i>Norfolk Square (Norfolk Section) Limited v M&amp;P Enterprises (London) Limited</i> .....	31
<i>NYK Logistics Ltd v Ibrend Estates</i> .....	195, 196
<i>Peel Land v Sheerness Steel</i> .....	85, 90, 93
<i>Pembury v Lamdin</i> .....	129
<i>PGF II SA &amp; PGF II (Lime) SA v Royal &amp; Sun Alliance Insurance plc</i> .....	49, 214
<i>PGF v OMFS</i> .....	71, 108
<i>Post Office v Aquarius</i> .....	115, 116
<i>Proudfoot v Hart</i> .....	118
<i>Prudential Assurance Co Ltd v James Grant &amp; Co (West) Ltd .....</i>	228
<i>Reynolds v Ashby &amp; Son</i> .....	92
<i>Riverside Park Limited v NHS Property Services Limited</i> .....	90, 133, 144, 196
<i>Riverside Property Investments v Blackhawk Automotive</i> ...	49, 62
<i>Ruxley v Forsyth</i> .....	147, 169
<i>Scottish Discount Co Ltd v Blin</i> .....	226
<i>Scottish Mutual Assurance Society Ltd v British Telecommunications plc</i> .....	43, 135
<i>Secretary of State for Communities and Local Government v South Essex College of Further and Higher Education</i> .....	196
<i>Smiley v Townshend</i> .....	52, 56
<i>South Essex Partnership NHS Foundation Trust v Laindon Holdings</i> .....	94, 95, 141
<i>Sunderland v Newton</i> .....	98

<i>Sunlife Europe Properties Limited v (1) Tiger Aspect Holdings Limited and (2) Tiger Television Limited</i> .....	126, 177, 179
<i>Taylor Woodrow Property Co Ltd v Strathclyde Regional Council</i> .....	223
<i>Thakker v Patel</i> .....	149
<i>The Creative Foundation v Dreamland Leisure Limited and Jeremy Michael Godden and Jordan Harry Godden</i> .....	85
<i>Tiger Aspect Holding Limited and Anr v Sunlife Europe Properties Limited</i> .....	81
<i>Tiuta International Limited (in liquidation) (Respondent) -v- De Villiers Surveyors Limited (Appellant)</i> .....	174
<i>Tonsley (Strathclyde) Limited and Tonsley (Strathclyde no.2) Limited v Scottish Enterprise</i> .....	231
<i>Twinmar Holdings Limited and Klarius UK Limited and Lane Group plc</i> .....	58
<i>Wolfson v Forrester</i> .....	223
<i>Zinc Cobham 1 Ltd and others v Adda Hotels</i> .....	187

## List of Statutes (etc.) referred to

### List of Statutes (etc.) referred to

Arbitration (Scotland) Act 2010.....	230
Arbitration Act 1996 .....	162
Business Tenancies (NI) Order 1996 .....	221
Construction (Design and Management) Regulations 2015 .....	51
Electricity at Work Regulations 1989 (as amended) .....	182
Health and Safety at Work Act 1974.....	182
Landlord and Tenant (Covenants) Act 1995 .....	211
Landlord and Tenant Act 1927 .....	passim
Landlord and Tenant Law Amendment (Ireland) Act 1860 ....	221
Law of Property Act 1925 .....	48, 136, 188
Leasehold Property Repairs Act 1938.....	21, 188
Limitation (Northern Ireland) Order 1989.....	221
Limitation Act 1980 .....	140, 212
Prescription and Limitation (Scotland) Act 1973 .....	230

## Foreword

This is the first edition of a book about dilapidations in the UK. You will know that there have been other books written about dilapidations, so why another one you might reasonably ask. It is a good question so I take the opportunity of these opening paragraphs to attempt to explain my impertinence.

My aim has been to provide a reference book that I would have found useful when starting out and practicing in the field of dilapidations; a succinct but reasonably thorough romp through the various principles, procedures, reasons, uncertainties and dilapidations-related topics.

This isn't a legal text book; this isn't a guidance note; this isn't an attempt to state the law (albeit the law as understood at July 2018 is applied<sup>1</sup>); I'm not a lawyer; I'm not a valuer and, whilst I am a building surveyor, I don't attempt to tell the reader how to survey a building.

What this book does do is distil a good number of years of acknowledging that the subject is complex, of learning, reading, practicing, getting things wrong, trying again, checking constantly, and attempting to get to a position where I understand the subject well enough to explain it to others.

If there is one thing you pick up over the years, it is a gnawing realisation that the more you get to know, the more you realise you don't know; and that what you thought was certain, almost certainly isn't certain after all...

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<sup>1</sup> If you are practicing in the field of dilapidations and want a legal text book then the one I would recommend is Dowding and Reynolds' "Dilapidations The Modern Law and Practice"

## Foreword

These machinations recently led to the development of the TFT Dilapidations Flowcharts, upon which the first five chapters of this book are based. Full versions of those Flowcharts can be downloaded from the TFT website<sup>2</sup> but you don't need to have copies of the Flowcharts to read this book.

We have also developed the TFT Two Step Approach to Supersession which, for the first time (to our knowledge), identifies a process by which this awkward and undefined concept might be navigated. The Approach formed the basis of supersession guidance in the current edition of the RICS Dilapidations Guidance Note (England and Wales); the first time that any such guidance had been attempted.

This book attempts to marry the content of the Flowcharts, the TFT Two Step Approach to Supersession and lessons learned when attempting to teach, guide and coach others through the dilapidations process. This book doesn't give answers to all the problems but hopefully assists in at least working out what questions to ask, why to ask them and where (if anywhere) to find the answers.

My thanks must go to the Partners of TFT who allowed me the luxury of the time to write; and to those who agreed to the thankless task of proofreading (especially Neil Gilbert, Daniel Cooper, Paul Spaven and Neil Wotherspoon). Everybody at TFT hopes you find this book useful and interesting. Please do share your thoughts on its content and on what you would like to see changed, removed or included in a future edition.

Jon Rowling BSc(Hons) MBA FCI Arb FRICS  
July 2018

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<sup>2</sup> [www.tftconsultants.com](http://www.tftconsultants.com)

## The author

Jon Rowling is a chartered building surveyor and dilapidations specialist who also acts as an independent expert, arbitrator, mediator and expert witness.

He is head of TFT's dilapidations, service charge and dispute resolution services, practicing from London and Edinburgh.

Lead author of:

- *RICS Dilapidations Guidance Note (England and Wales) 7<sup>th</sup> edition*
- *TFT Dilapidations Flowcharts*
- *TFT Two Step Approach to Dilapidations*
- *RICS Dilapidations Dispute Resolution Scheme*
- *RICS Consumer Guide to Dilapidations*

Jon is published regularly in journals including *Estates Gazette*; *RICS Building Surveying Journal*; *Journal of Building Surveying, Valuation and Appraisal*; and elsewhere.

Jon is a regular speaker on the subject of dilapidations and is engaged by RICS to provide dilapidations training. He was chair of the RICS Dilapidations Forum from 2010 to 2015 and currently sits on the RICS Scotland Dispute Resolution Professional Group Board.

He is regularly appointed as expert witness, including as single joint expert witness, in dilapidations, service charge, disrepair and related disputes.



## The author

Jon has been described by his peers as follows:

- “an expert in the field of dilapidations”;
- “an admired adversary amongst other dilapidations professionals”;
- “Jon is invariably first on my list”;
- “he really knows his stuff”;
- “How well-versed is Jon Rowling in dilapidations? Second to none”;
- “extremely knowledgeable”;
- “always technically assured, measured and consistent in his approach to dilapidations”;
- “fair and balanced”;
- “a straightforward and sensitive approach to negotiations”;
- “his negotiation and dispute resolution skills allow for maximum progress to be made”;
- “his in-depth knowledge, experience and consistent approach results in his extremely high success rate”;
- “a formidable challenge [to act] against him in a professional capacity”; and
- “I have no reservation whatsoever in recommending him to anyone looking for dilapidations consultancy services”.

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### Chapter 7 – TFT Two Step Approach to Supersession

In a dilapidations context, supersession is an undefined quasi-legal term typically used to suggest that part of a landlord's claim should not succeed because of something the landlord has done, plans to do, or because of something the tenant thinks the landlord might or should do.

That is not a catchy definition...

Another way to think of supersession is that the tenant's breach of their contractual obligation (whilst admitted) has not actually caused the landlord any loss.

TFT has developed what we believe to be the only published mechanism by which the parties and their advisers can attempt to navigate this rather slippery concept. The TFT Two Step Approach to Supersession was used as the basis for the guidance in the current edition of the RICS Dilapidations Guidance Note (England and Wales); the first time guidance on supersession has been given by RICS.

By setting out the Two Step Approach, we are not attempting to state the law, we are just attempting to understand and apply the law.

#### Step One: Mitigation

Within the field of contract law, it is an established principle of the calculation of damages that a claimant should mitigate their loss. That is to say, the claimant must take reasonable steps to prevent the loss they suffer from escalating. If the claimant fails to do so, then the amount they claim should be limited to a sum equivalent to the

amount which would have been lost if mitigation measures had been put in place<sup>82</sup>.

In a dilapidations context this means that the scope of the remedial works which a claimant landlord should claim for is the most economic form of remedial works which would have satisfied the tenant's obligation. We call this the 'Basic Works'.

At a simple level, a landlord may receive two prices to complete appropriate remedial work (and both prices are from competent and available contractors). Then, if the landlord decides to engage the more expensive contractor, the amount which should be claimed back from the tenant is the lower contractor's figure, not the amount spent by the landlord.

It is not uncommon for there to be multiple possible methods of carrying out remedial work. If a landlord selects a method of remedial work which is not the most economic method (we call this the 'Grand Works'), then the landlord should only claim for the cost of the Basic Works.

It should therefore be noted that the Two Step Approach does not suggest that, just because the landlord carries out the Grand Works rather than the Basic Works, supersession necessarily kicks in; the landlord is still able to make a claim, but not one based on the cost of the work they undertook.

## Step Two: Causation

Causation is also a standard principle of contract law damages. In broad terms it means that a claimant has to demonstrate (on the balance of probabilities) that the

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<sup>82</sup> See *Brace v Calder* [1895] 2 QB 253

## Chapter 7 – TFT Two Step Approach to Supersession

breach of the terms of the contract caused the loss which is being claimed<sup>83</sup>.

It sounds as though it should be self-evident that a breach causes a loss, but this is not always necessarily the case. Take, for example, toilets which were demised to a tenant of an office building in the 1970s. The toilets were not upgraded by the tenant, so they still look like 1970s toilets, but they do require some repair work to be completed in order to comply with the contractual obligation. The landlord claims for the cost of the repair work (the Basic Works) but strips out the 1970s toilets and replaces them with modern finishes, suitable for the current lettings market (the Grand Works).

When answering the ‘causation’ question, the claimant landlord would have to demonstrate (on the balance of probabilities) that the loss was caused by the disrepair, rather than by the toilets being outdated.

This test is also expressed as the ‘but-for’ test so; if the loss would have happened anyway, the breach cannot be said to have caused the loss.

If the landlord completes the Grand Works, a practical approach which could be used is as follows: Imagine that, rather than carrying out the Grand Works, either the tenant or the landlord had carried out the Basic Works; would the landlord still have completed the Grand Works? If the answer is ‘no’, there is probably no supersession and the landlord would claim the cost of the Basic Works. If the answer is ‘yes’ then the landlord should not claim anything, because the failure to undertake the Basic Works did not cause the loss.

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<sup>83</sup> See *Tiuta International Limited (in liquidation) (Respondent) v De Villiers Surveyors Limited (Appellant)* [2017] UKSC 77

It is acknowledged that obtaining the necessary evidence may be problematic for the tenant. However, at least the nature of the evidence which would be needed is understood.



This important new guide to dilapidations is written by a surveyor for surveyors and will also appeal to anyone else who needs to understand this often-complex subject.

The TFT Purple Book shines a light into dilapidations' darker recesses, identifying the legal context, best practice, the background to how and why dilapidations is dealt with as it is, and addresses areas of legal uncertainty. This comprehensive guide also highlights important topics which are often overlooked. It aims to serve as a single point of reference from which the reader can develop a solid foundation of knowledge. It even considers cattle, children and 'chattels-vegetable' – and not many text books can make that boast.

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*“Jon Rowling’s book is an excellent guide to the law and practice relating to dilapidations in the UK and will be invaluable to the practitioner, whether surveyor or solicitor. Of particular assistance is the helpful way the author approaches the thorny issues of how items should be classified (chattel or fixture?) and supersession. This go-to guide should save clients both time and money.”*

**John de Waal QC**  
Barrister and Mediator, Hardwicke



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