



TFT Dilapidations Arbitration Rules Scotland





Dilapidations Arbitration Agreement – Scotland

This Agreement is dated20.....

The Parties to this Agreement are:

..... (the "Landlord")

And

..... (the "Tenant")

The Parties hereby agree to refer the dilapidations dispute relating to:

..... (the "Premises")

By virtue of a lease dated (the "Lease")

to arbitration by a single arbitrator [either] employed by Tuffin Ferraby Taylor (TFT) Ltd

[or] appointed by the Chair of the Royal Institution of Chartered Surveyors Scotland

[or] [delete as appropriate] (the "Arbitrator")

The arbitration will be conducted in accordance with the TFT Dilapidations Arbitration Rules current at the date of this Agreement.

Signed (for or on behalf of the Landlord)

Name

Signed (for or on behalf of the Tenant)

Name



TFT Dilapidations Arbitration Agreement – Scotland

Version: TFT DAR S 1.1

Dated: August 2018

1.0 Timings and appointment

- 1.1 The arbitration shall be deemed to have started when either party serves a Notice of Arbitration on the other party. The party serving the Notice of Arbitration will be deemed to be the Claimant. The party receiving the Notice of Arbitration will be deemed to be the Respondent.
- 1.2 Service of the Notice of Arbitration shall be in writing to the registered address of the Respondent or, if there is no registered address, to the last known address. The Claimant shall send a copy of the Notice of Arbitration to the proposed Arbitrator if the identity of the proposed Arbitrator is known at that time.
- 1.3 Within five working days of receipt of the Notice of Arbitration, the Arbitrator will contact both parties, to acknowledge receipt and to confirm to the parties whether, subject to a conflict of interest check, the Arbitrator is in a position to act in a timely manner. The parties agree that this five working day period would commence on completion of any annual, sick or other leave the Arbitrator may be on at the time the Notice of Arbitration is sent to the Arbitrator.
- 1.4 If the Arbitrator is not in a position to act in a timely manner, the parties will either agree to wait for the Arbitrator to become available or, if either party objects, both parties will, without undue delay, apply to the President of RICS for the appointment of a suitable alternative arbitrator.
- 1.5 If the Arbitrator is in a position to act in a timely manner, the Arbitrator will conduct a conflict of interest check in accordance with then-current RICS guidance. The Arbitrator will confirm the results of the conflict of interest check to both parties within 10 working days of confirming that the he or she can act in a timely manner.
- 1.6 If the Arbitrator considers that a fair minded and informed observer might conclude that there is a real possibility of bias, the Arbitrator will inform both parties. The Arbitrator may decline the appointment or may indicate that he or she can still act. If, within two working days, either party objects to the appointment of the Arbitrator because of a potential, actual or perceived conflict of interest, the Arbitrator will decline the appointment. Under these circumstances the parties will, without undue delay, apply to the Chair of RICS Scotland for the appointment of a suitable alternative arbitrator.
- 1.7 If the Arbitrator continues with the appointment the Arbitrator will confirm his or her terms of engagement to the parties.
- 1.8 The Arbitrator's fees will be charged on a lump sum basis, calculated as a proportion of the amount in dispute, subject to a minimum fee, to disbursements and to VAT, as follows:



Amount in dispute

Up to £50,000.00

£50,000.01 to £100,000.00

£100,000.01 to £250,000.00

£250,000.01 to £500,000.00

Over £500,000.00

Arbitrator's fee

£5,000.00

10% of the amount in dispute

8% of the amount in dispute

6% of the amount in dispute

4% of the amount in dispute, or subject to agreement

- 1.9 All fees are subject to VAT at the then-prevailing rate. Reasonable disbursements such as travel costs, subsistence, accommodation, printing, room hire, stenographer, advisers, etc will be added to the Arbitrator's fee.
- 1.10 The fees identified here do not allow for a hearing. If a hearing is to be held, the Arbitrator will be entitled to reasonable additional fees.
- 1.11 The fees identified here relate to the preparation of one Award on the substantive issue(s) only and not for the preparation of multiple Awards or any subsequent Award on the question of expenses.
- 1.12 If unreasonable volumes of documentation are produced, the Arbitrator has the right to charge additional fees. It is anticipated that, for each £100,000 of amount in dispute, each party will limit itself in total to one A4 lever arch file of single-sided standard-sized text.

2.0 Conduct of the Arbitration

- 2.1 The Arbitration will be conducted in accordance with the Arbitration (Scotland) Act 2010 and the TFT Dilapidations Arbitration Rules - Scotland, as modified by agreement between the parties or as the Arbitrator so directs. The seat of the arbitration will be within Scotland.
- 2.2 All documents can be sent to the Arbitrator by email. All documents sent to the Arbitrator shall be simultaneously copied to the other party (or their representative). No 'without prejudice' content shall be sent to the Arbitrator by either party without the prior authority of the other party.
- 2.3 The Arbitrator will refrain from reading all correspondence until such time as the other party (the receiving party) has confirmed that there is no 'without prejudice' content or within five working days of receipt, whichever is the sooner.

3.0 Time Periods and Directions

- 3.1 The time periods identified below start from the third working day after the Arbitrator contacts the parties with the results of the conflict of interest check (see clauses 1.6 and 1.7, above).
- 3.2 Throughout the following stages the Claimant and Respondent will attempt to agree a Statement of Agreed Facts and a List of Issues.
- 3.3 The Arbitrator, the Claimant and the Respondent will meet either in person or via telephone conference call to agree on the Directions. It is anticipated that the Directions should be as follows:
- 3.4 Each party shall be allowed, at the discretion of the Arbitrator, to appoint an expert witness in appropriate



disciplines. It is anticipated that these disciplines will include building surveying and may also include building services engineering and valuation. The parties will consider the appointment of single joint experts in each discipline.

- 3.5 Within 15 working days of the meeting between the Arbitrator and the parties, the Claimant will issue to the Respondent and to the Arbitrator:
- **Statement of Claim.** This should include a concise statement of the nature of the claim, specify the remedy the claimant seeks; if damages, the amount claimed; whether interest is claimed;
 - All statements of evidence and copies of all documents on which it relies, including all schedules of dilapidations, diminution valuations, contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.
- 3.6 Within 15 working days of receipt of the Statement of Claim, the Respondent will issue to the Claimant and to the Arbitrator:
- **Statement of Defence** responding to the Claimant's Statement of Claim. This should include a statement of the nature of the dispute (including any **Statement of Counterclaim**), the legal and factual issues in the Claimant's Claim and any Counterclaim, its acceptance of any parts of the Claimant's Claim, its contentions as to those components of the Claimant's Claim it does not accept and the amount of any Counterclaim;
 - All statements of evidence and copies of all documents on which it relies, including all scott schedules, responses, diminution valuations, contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
 - Any objections it wishes to make to the Claimant's statements, comments on the Claimant's experts' reports and explanations for the objections.
- 3.7 Within 15 working days of receipt of the Statement of Defence, the Claimant may issue to the Respondent and to the Arbitrator:
- A **Response** responding to the Respondent's Statement of Defence;
 - A **Response to the Counterclaim** responding to the Respondent's Statement of Counterclaim.
- 3.8 Within 15 working days of receipt of a Claimant's Response to the Counterclaim, the Respondent may issue to the Claimant and to the Arbitrator:
- A **Reply** responding to the Claimants Response to the Counterclaim.
- 3.9 Within 5 working days of publication of each party's documents, the other party will confirm to the Arbitrator whether any documents contain any without prejudice material. If any without prejudice material is identified, the Arbitrator will direct the parties accordingly.
- 3.10 There will be no hearing unless it was agreed at the meeting between the Arbitrator and the parties that there would be a hearing. If a hearing is to be held, the arrangements will be agreed by the parties or directed by the Arbitrator. If a venue for a hearing is to be selected, the Premises should be considered.



4.0 Disclosure

4.1 Disclosure will generally be limited to the documents required to be enclosed with the parties' submissions. The parties can agree that further disclosure may be given. If either or both of the parties consider that further disclosure should be given, but there is disagreement about some aspect of that process, either party may apply to the Arbitrator for directions. The parties should assist each other and avoid the necessity for such an application.

5.0 Site visit

5.1 If the parties agree or if the Arbitrator directs that there should be an inspection of the Premises, the parties shall co-operate in making arrangements.

6.0 Procedure and Award

6.1 The Arbitrator may make directions or rulings as he or she considers to be appropriate.

6.2 If a party fails to comply with the timescale or any direction, the arbitrator may continue and make a decision in the absence of any submission or document.

6.3 The Arbitrator will make an Award on the substantive issue(s), i.e. save as to expenses, within 30 working days of the last submission, or such longer period as the Arbitrator shall direct.

6.4 The Award will include reasons. The extent of reasons will be proportionate to the amount in dispute and the time available to the Arbitrator.

6.5 When the Award is completed and signed, the Arbitrator will notify the parties and will issue the Award to the parties once payment of the Arbitrator's fees has been made in full. The arbitrator will issue a fee account to each party for 50% of the total fee. Each party is jointly and severally liable for all fees.

7.0 Expenses

7.1 The assessment of the parties' expenses will be reserved for a further Award to enable the parties to agree those expenses.

8.0 Powers

8.1 The Arbitrator has the powers identified in the Arbitration (Scotland) Act 2010, including within the default rules, except as modified by the TFT Dilapidations Arbitration Rules - Scotland.

9.0 Confidentiality

9.1 The parties and the Arbitrator agree that any hearings, materials, awards, reports and all other documents relating to the arbitration are confidential and shall not be disclosed to any third party without the prior written consent of the other party (or both parties), save for any application to the Court.



10.0 Disapplication of default rules

10.1 The parties agree that the following default rules from the Arbitration (Scotland) Act 2010 will be disappplied: 1, 2, 5, 6, 22, 40, 41, 53 and 69.

End

