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Dilapidations



The law and practice of dilapidations are often not well understood. The introduction of a Pre-Action Protocol for Dilapidations and Royal Institution of Chartered Surveyors Guidance Notes do provide greater clarity.

The term 'dilapidations' refers to breaches of Lease covenants that relate to the condition of the property, and the process of remedying those breaches.

Dilapidation
di,lapi'deif(e)n/
noun

1. *the state or process of falling into decay or being in disrepair.*
"the mill was in a state of dilapidation"
 - o *repairs required during or at the end of a tenancy or lease.*
plural noun: dilapidations

Cyril Leonard's Chartered Building Surveyors act on behalf of both Landlords and Tenants to help them understand potential dilapidations liabilities on or before Lease end, agree strategies and also act on their behalf to negotiate dilapidations settlements. Cyril Leonard has a long history of preparing Schedules of Dilapidations on behalf of Landlords as well as acting on behalf of Tenants to negotiate Schedules of Dilapidations which have been served by Landlords.

We illustrate on the following pages examples of typical dilapidations instructions we have undertaken for both Landlord's and Tenant's.



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County Hall, London

Cyril Leonard were instructed to advise the Owner of County Hall in connection with dilapidation liabilities arising out of the vacation of part first floor by an Art Gallery. This followed earlier instructions where Cyril Leonard advised the Owners concerning repair and refurbishment works arising from the operation of hotels within the building. We prepared Schedules of Dilapidations in respect of the Grade II Listed accommodation vacated by the gallery and priced schedules were then utilised in court action to settle disputes between the parties.



Portland Building, Crawley

Cyril Leonard were instructed to advise in connection with dilapidation strategy to be adopted in connection with the termination of the Tenants Lease for this 40,000 sq ft property. Inspections were undertaken, Schedules of Dilapidations drawn up and a financial settlement negotiated with the Tenant prior to refurbishment of the property being undertaken by the Landlord for reletting. Cyril Leonard project managed the subsequent refurbishment.



St Dunstons Hill, London

Cyril Leonard were instructed by Fund Clients to advise on refurbishment strategies for this building following termination of the Tenant's Lease. This resulted in the drawing up of Schedules of Dilapidations incorporating detailed analysis and review of the M&E installations and the service of schedules on the outgoing Tenant. The issues of reinstatement, supercession and diminution in value were raised in the context of arriving at a negotiated settlement prior to disposal of the property for refurbishment by a subsequent purchaser.



Tachbrook Street, London

Cyril Leonard were instructed by retail Tenants to represent their interest following receipt of terminal Schedules of Dilapidations prepared and served by the Landlord's Surveyors. We entered into negotiations with the Landlords and were successful in negotiating a significant reduction in the Landlord's claim and arriving at a settlement.



Prince Frederick House, London

Cyril Leonard were instructed by the Owners of this property to procure its refurbishment for reletting following termination of Tenant's Leases. Schedules of Dilapidations were drawn up taking into consideration the Client's future intentions and reflecting supercession and financial settlements were negotiated and agreed with the Tenants prior to the refurbishment of the property for reletting.



Southampton

Cyril Leonard were instructed to act for outgoing Tenant's of this 33,000 sq ft office property following receipt of a terminal Schedule of Dilapidations received from the Landlord registering a claim of circa £650,000. Following the commissioning of a Section 18 Valuation and detailed review and assessment of the Landlords claim, as a result of extensive negotiations a settlement was achieved on behalf of the Tenant in the sum of £350,000.

What is the extent of a Tenant's obligations?

The exact scope of repairing covenants have been the subject of much Court scrutiny and the law changes. Points to note typically may include:

- The use of the phrase "in repair" includes an obligation to put the property into repair if it is in disrepair at the start of the lease. To limit potential problems a tenant may try to limit their liability by reference to a Schedule of Condition. Alternatively, the Tenant may insist on a lower rent to reflect the costs of putting the premises into repair.
- The standard of repairs required may depend on the length of term, age and location of a property.
- An obligation to keep in good repair and condition can require works to be carried out even if there is no disrepair.
- A covenant to keep a property in good repair and condition is more onerous than good repair alone.
- An obligation to repair will not usually require the tenant to make improvements – whether something is an improvement will involve a consideration of whether the works create something recognisably different from what would have resulted if the disrepair had merely been remedied.

What can a Landlord do if premises are left in 'disrepair' at the end of a lease?

During the term of the lease, the Landlord's remedies typically include a claim for damages, forfeiture, re-entry for the landlord to repair and then re-charge costs to the tenant (pursuant to a "Jervis v Harris" clause) and specific performance of the terms of the lease. Not every one of these remedies will be appropriate on every occasion.

A claim for damages is the Landlord's only remedy once the lease has expired and it is subject to a number of limitations.

What damages can the Landlord recover?

The Landlord can usually recover the reasonable cost of undertaking the works plus loss of rent including service charge and rates for the period until the works have been completed. However, the amount claimed will be subject to a cap on the level of compensation claimed in accordance with Section 18 of the Landlord & Tenant Act 1927 which provides that damages are limited to the diminution in the value of the Landlord's reversion caused by the breach. Damages will also be limited or possibly not recoverable at all where it can be shown that the property is to be either demolished or where significant structural alterations are to be carried out which render the repairs pointless at the end of, or shortly after, the end of the term.

Any breach of other covenants (including decoration, reinstatement of alterations etc) are not limited by section 18 (unless the breach also constitutes a breach of the covenant to repair) and damages will be assessed according to common law principles.

[Please note that every claim and property should be assessed individually to take into consideration the specific circumstances and Lease covenants applying.]



Buckingham Street, London

Cyril Leonard's Project & Building Consultancy team were instructed by Fund Clients to act as Landlord's Surveyors in connection with the expiration of two separate leases within this building. Terminal Schedules of Dilapidations were prepared and served on the Tenants. Settlements were negotiated with both out-going Tenants and the Landlord recovered 90% of each actual claim.



Cavell House, Charing Cross Road, London

Cyril Leonard were instructed on behalf of Landlords to prepare and serve a terminal Schedule of Dilapidations on the outgoing Tenants in connection with this 30,000 sq ft office and A1/A2 use property following termination of the previous occupiers tenancy. The Landlord's claim included substantial work required to the building services installation to reflect the Landlord's intentions for refurbishment of the property.



Concord Point, Park Royal

Cyril Leonard were instructed by Institutional Landlords to advise them in connection with the Tenant's dilapidation liabilities and subsequently to prepare and serve a terminal Schedule of Dilapidations on the outgoing Tenant of this substantial 80,000 sq ft industrial property in Acton, West London.

The Landlord's Lawyers then pursued a claim against the outgoing Tenant.



Kingfisher House, Aylesbury

Cyril Leonard were instructed by the Owners of this early 1970's purpose built 90,000 sq ft office building to prepare and serve a terminal Schedule of Dilapidations on the outgoing Tenant. We registered a claim against the outgoing Tenant of £190,000. This resulted in a settlement being achieved at circa £110,000 which compared against the Landlord's expectation of nil recovery.

Contact

Cyril Leonard
Chartered Surveyors
22 Gilbert Street,
Grosvenor Square
London
W1K 5EJ, United Kingdom
T: +44 (0)20 7408 2222
F: +44 (0)20 7491 4292
www.cyrilleonard.co.uk

For further information on any of these projects or the range and scope of services available from Cyril Leonard please contact

Simon Blausten +44 (0)20 7408 4626
simon.blausten@cyrilleonard.co.uk

Jonathan Slater +44 (0)20 7408 4640
jonathan.slater@cyrilleonard.co.uk

Simon Rooke +44 (0)20 7408 4602
simon.rooke@cyrilleonard.co.uk

or visit our
website at www.cyrilleonard.co.uk

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