

## Dilapidations

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### Introduction

The dilapidations clauses in commercial leases contain the tenants' obligations to repair and maintain the property. These are also called dilapidations "covenants". These repairs, maintenance, and other works can be carried out by the tenant or by a contractor hired by the tenant to do the work.

These responsibilities are set out in the lease and are likely to be:

- repairing any damage
- decorating
- making sure that the property complies with statutory obligations like gas, electricity, water, health and safety, asbestos, and any other legislation or regulations
- hand over the property (or "yield up") at the end of the lease in a certain condition or state of repair, usually in 'good' condition
- reinstate any alterations the tenant or a previous tenant has made

Although these responsibilities are usually in the lease, they might also appear in licences to do works or alterations, or in deeds of variation.

If there is no covenant that says you have to do it, then you don't! But most modern leases will be carefully drawn up to include all of these covenants.

These obligations are usually dealt with after the lease has expired or is about to expire. If you are about to have a lease renewal, where the landlord does not oppose the grant of a new lease, you would not expect to have a schedule of dilapidations served on you. That would be completely contradictory.

On the other hand, if there are serious dilapidations then the landlord may oppose the grant of a renewal lease based on disrepair.

### What can a landlord do about dilapidations?

If a tenant breaches the dilapidations clauses in a lease, there are four main things the landlord can do. They are:

- **Forfeit the lease:** the landlord can serve what is called a "Section 146 Notice" (a Notice under Section 146 of the Law of Property Act 1925). This notice will require that the tenant fix the breaches in a reasonable time. If they do not, the landlord can start Court action to terminate the lease. The landlord will also seek damages and legal costs. However, there are a number of procedural legal difficulties with this for the landlord. Once a landlord has served a Section 146 Notice on a tenant, they cannot accept, or demand rent until the dispute is resolved. Longer leases also have special protection at law. For this and other reasons, landlords usually start dilapidations claims after a lease has ended. If you would like more information about this, seek specialist professional advice.
- **Self-help:** many commercial leases allow the landlord to enter the property, carry out repair works, and then charge the cost to the tenant. Again, there are a number of procedural and practical difficulties in doing this. Landlords usually start dilapidations claims after a lease has ended.
- **Specific performance:** in theory a landlord can start legal proceedings to force a tenant to do specific works. In practice this is very rare.

- **Damages:** the landlord can claim damages. There are different legal rules depending on whether the landlord claims damages during the lease term or after the lease has finished:

If the lease is still going on, the landlord is limited to the loss of damage to their "reversion". That means the value of their property at the end of the lease. That may be difficult to calculate or prove. In practice, most dilapidations claims are started after the lease ends

After the lease has ended, the landlord can claim damages for the cost of doing the works. This can include professional fees, such as surveyors fees for serving a schedule of dilapidations (see below), and for supervising the works, and lawyers' fees, any VAT that the landlord cannot reclaim, and any loss of rent (plus service charges, rates, and so on) where the landlord can show that they are unable to relet the property due to the dilapidations.

The rules about the damages a landlord can claim are quite complicated, but in general the landlord cannot claim:

"Betterment": there will usually be a deduction where the landlord is getting something that is new, rather than old, or where there is an improvement in the property

More than the amount that the dilapidations have reduced the value of the reversion (ie the value of the property). Expert evidence is often needed to work this out

Finally, and most importantly, no damages are payable where it can be shown that the property is to be demolished or redeveloped, so that any repairs would be valueless. There are only very limited exceptions to this rule

## Procedure

A landlord who wants to make a claim against a tenant for dilapidations must follow certain procedures and timescales. The tenant should also follow these procedures. Failure by either party to do so may affect their right to claim costs and interest.

## Schedule of Dilapidations

The first step for the landlord to take is to serve a document called a Schedule of Dilapidations. This will set out each item of breach of the lease alleged by the landlord, as well as their proposals to fix each item, and the costs that the landlord is seeking.

They will need to inspect the property to do this. It is a good idea to have your own surveyor present and carry out a joint inspection. This can often save costs as the surveyors will often agree on a number of items of work.

The Schedule of Dilapidations will include a section where the tenant or their surveyor can respond with their view about whether an item is in fact a breach, or how much the tenant is willing to pay. The idea is to agree as many items as possible, and ideally all of them.

In the case of dilapidations at the end of a lease, you should be aware of the Pre-Action Protocol for Claims for Damages in relation to the physical state of commercial property at termination of a tenancy (the "Dilapidations Protocol"). This is a Protocol under the Civil Procedure Rules ("CPR"). You can read this online free of charge on the government's website.

The Dilapidations Protocol sets out a timetable for dealing with disputes. The landlord should normally serve the Schedule of Dilapidations within 56 days of the end of the lease, and the tenant should be given a reasonable time in which to respond, usually a further 56 days.

Finally, some leases (or licences to do alterations) specify a particular deadline for the landlord to serve a notice to reinstate (ie carry out works to put the property back as it was before the alterations). This is to give the tenant enough time in advance of the end of the lease to do the work.

## Dilapidations – Top Tips: A, B, C, D

- **Accounts:** a tenant who expects a claim for dilapidations should make provision for it in their accounts. You should also seek expert advice on the steps to take as well as the likely costs of any possible claim
- **Beware!** The landlord may be able to come after you as a former tenant even after you have assigned a lease, particularly if you are a guarantor or have signed an authorized guarantee agreement
- **Condition:** if at all possible, have a schedule of condition drawn up and agreed at the start of the lease. Even if you are buying an existing lease, keep a record of the condition of the property when you move in
- **Do the works:** tenants are generally better off doing the work themselves, rather than letting the landlord carry them out. This will likely give you more control over costs, including how the work is done, and should make the overall negotiation process less stressful

## Further support

The London Growth Hub has published this series of 'how-to' guides to help commercial tenants understand their legal responsibilities. [This flowchart](#) will help you identify the most relevant 'how-to' guides for your business.



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