

DILAPIDATION SERVICES

A LANDLORD'S GUIDE

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DILAPIDATIONS

WHAT IT MEANS

“Dilapidations” is a legal term. All lease agreements set out occupiers’ obligations for looking after their landlord’s property, and dilapidations generally relates to breaches of obligations by the occupier and that they have failed to redecorate and reinstate all or part of the property. Dilapidations can apply at any time in a lease.

Landlords who fail to deal with the issue of dilapidations robustly can encounter serious financial implications and may, for example, be unable to re-let premises that are in disrepair.





WHAT'S THE RISK?

There's always a risk of dilapidations with any tenancy. If these risks are not managed carefully, settling dilapidations disputes can ultimately end in the courts where significant costs and professional fees can be incurred.

Dilapidations can be a complex field but the basis is simple.

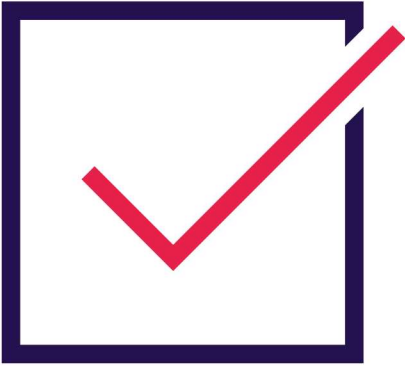
A landlord must be compensated if the tenant has breached the agreed obligations set out in a lease and the landlord has suffered a loss as a consequence.

As a landlord, you should obtain professional advice on dilapidations, ideally at the start of a lease:

- The "demise" or extent of a property must be clearly defined
- You should set out clearly tenants' obligations for repair, redecoration and reinstatement
- You should make sure your tenants carries out repairs stipulated during the lease

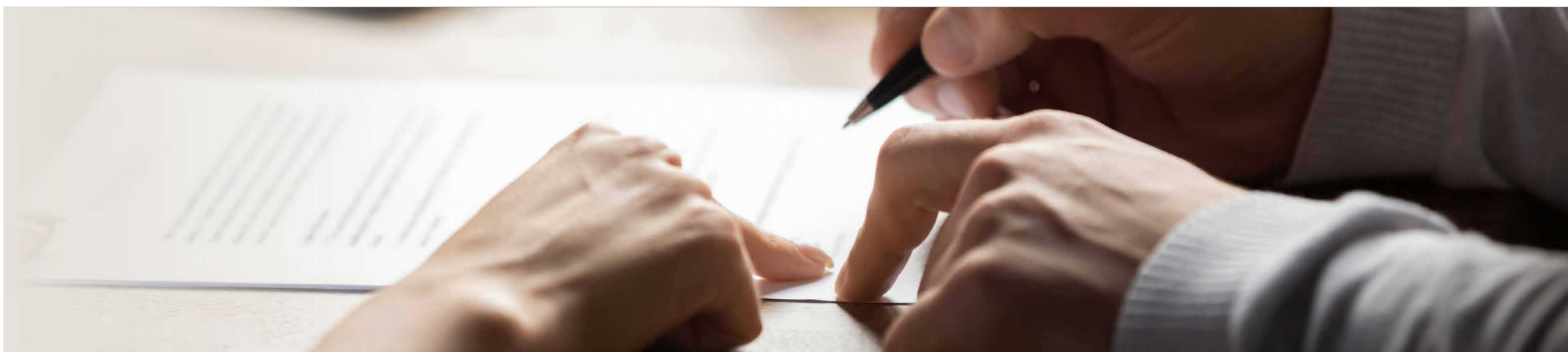
- When approaching the end of the lease, you should check that the tenant has carried out all necessary repair, redecoration and reinstatement works

By following these steps, and if your tenant has not undertaken these works by the end of the lease, you should then be able to recover the costs of remediation. You can potentially also claim damages for loss of rent while the works are undertaken.



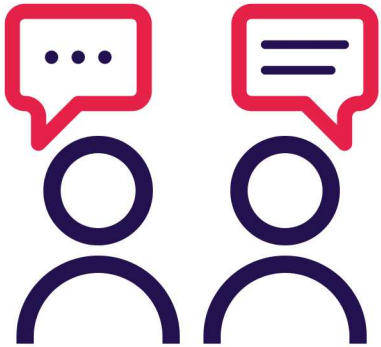
THE LEASE AND DILAPIDATIONS

- There should be specific clauses in the lease to establish exactly what the tenant's repair, redecoration and reinstatement obligations are
- Typical tenancies are "put and keep", which means the tenant must repair the property, even if it was out of repair at the start of the lease (this will be established by the tenant's surveyor and agreed by your surveyor)
- If a tenant wants to alter their premises, your surveyor can approve licences for this, and will also be able to document that the alterations are reversed at the end of the lease
- A tenant is only usually responsible for the repair of the property and not for its improvement
 - For single buildings it's usually the tenant who is liable for all repair
 - If the demise is part of a building, such as a floor in a multi-tenanted office building, the tenant is usually only responsible for the internal repair and redecoration
 - Responsibility for the structure, external and common parts usually lies with the landlord.
- If a tenant wishes to remain in the property at lease end, the lease can be renewed for another term
 - It is important to document, record and review alterations at this point
 - The appropriate reinstatement obligations should be included within the new lease
 - Any alterations the tenant has carried without a licence prior to lease renewal need to be dealt with at this point



YOU SHOULD...

- Minimise disputes at the end of the lease by agreeing a planned maintenance programme at the start
- Develop your asset by agreeing a wider maintenance and improvement strategy (maybe with a landlord and / or tenant contribution) to keep the property marketable and minimises potential void periods
 - May be particularly relevant if your properties fail to meet MEES standards
 - You won't be able to sign leases or renewals for commercial buildings with EPC ratings below E (from 2023 this will include all lettings, not just new ones)
- Ensure your tenants are meeting obligations to keep your property in repair throughout the duration of a lease
 - At any point, serve an interim schedule of dilapidations if this is not the case or a repair notice if applicable
 - Most commercial leases require the tenant to pay the cost of various enforcement actions, including the cost of preparing and serving the schedule of dilapidations
- If you intend to re-let or sell, serve a schedule of dilapidations early to give them more time to have to carry out the works and the sooner you may be able re-let the vacant property
- Be aware of break clauses and ensure the tenant meets repair, redecoration and reinstatement obligations before this could be triggered
- Appoint a chartered building surveyor before the lease ends to determine repairs needed and how these can be implemented in the lead up to your tenant's exit
 - This includes any alterations made to the building that need reinstating
 - Your tenants responsibilities are to repair and to decorate amongst other things
- Your surveyor will usually issue an updated schedule of dilapidations
 - This outlines all outstanding works deemed necessary to comply with the lease
 - It will include a quantified demand to cover the estimated remedial works
- Be proactive!



DISPUTES

The level of damages that you can claim at lease end is capped by Section 18 of the Landlord and Tenant Act (1927) and by common law.

If a tenant decides not to carry out works to remedy dilapidations, there are limits on what you can recover in damages at lease end.

There are two aspects of the Act that could reduce a tenant's dilapidations payments:

No repair costs can be recovered if:

- When the tenancy is terminated (or shortly after), the landlord's building will be altered in a way that would render the repairs valueless, or the building is to be pulled down
- The value of repair costs claimed can't exceed the amount by which the value of the landlord's interest in the premises has been diminished, or reduced, by them being in disrepair

Calculating the loss

A diminution valuation is a calculation of the loss caused as a result of disrepair or other breaches and quantifies the difference between the value of the property (in lease-compliant repair) against the actual condition in which the property has been left by the tenant.

The diminution in value is notoriously difficult to determine because it depends on factors that are hard to quantify:

- Age
- Character
- Locality
- Condition
- Specification
- Demand
- Future potential uses
- Other available spaces.

This can mean that a dilapidations dispute may result.

IF YOU CAN'T AGREE

You should expect a response from the tenant to the schedule of dilapidations and quantified demand within 56 days of receipt.

Chartered building surveyors appointed by the landlord and tenant will meet and attempt to narrow the differences between the two parties to arrive at a recommended settlement figure.

Resolution can take 3 forms generally:

Mediation

The most commonly used form of alternative dispute resolution in dilapidations disputes. Nevertheless, there are likely to be substantial costs involved in this process (although less than going to court.)

Arbitration / independent expert determination / Alternative Dispute Resolution (ADR)

An increasingly popular approach to resolving dilapidations disputes: far less costly than the courts, and with the advantage of involving specialist practitioners with substantial experience in the field. Other landlord and tenant disputes such as rent reviews and service charge disputes are frequently resolved this way.

Since litigation is such an expensive process the court will usually direct the parties to ADR first.

Legal

If all else fails and the case ends up in court, each party will need to have appointed expert representatives, including a chartered building surveyor, lawyer and valuer.

Many dilapidations disputes do end up in court, and because of this the Dilapidations Protocol is in place to set out steps the court would normally expect prospective parties to have followed at lease end.

It establishes a reasonable process and timetable for exchanging information relevant to the dispute. It also sets standards for the content and quality of the schedules of dilapidations and quantified demands, and the conduct of pre-action negotiations. The ultimate aim is to give landlords and tenants a clear framework for avoiding litigation and agreeing a settlement amicably.

THE FUTURE

Leasing practice is changing. In the future, dilapidations may no longer be a matter of fundamental dispute at lease end.

This includes developments such as:

- The all-inclusive lease, where the tenant pays the landlord an all-inclusive rent to cover all expenses

associated with a property all in one single tenant-friendly rent payment and making it easy to forecast their rent outgoings without any surprises, ie

- Taxes
- Insurance
- Maintenance

- Utilities
- even janitorial services
- Capped dilapidation lease
 - Caps the tenant's exposure to dilapidations at a predetermined figure, possibly even index-linked.

CONTACT US

Our Building Consultancy team are experienced professionals who specialise in advising both owners and occupiers on legal and valuation issues that surround dilapidation claims upon the expiry of a commercial or residential lease.

We typically reduce tenant liabilities by an average of 40%-45% and can support clients at every stage throughout the dilapidations process – from initial lease advice and preparing a Schedule of Condition, to negotiating break clauses and disputes. Operating from locations across the UK and with core offices in Leeds, Newcastle, Manchester and London, we have full national coverage with expertise available locally.

Request a **free quote** or a call back from a trusted Dilapidations expert. Complete the short form available online and one of our team will call you to discuss your requirements.

Alternatively for more information, please contact Ian Harrington on **0113 209 1039**

The logo for Eddisons, featuring the word "Eddisons" in a white, sans-serif font. A small red square is positioned above the letter 'd'.