



Tenants Guide to Dilapidations

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Dilapidations

We find ourselves in the midst of the largest home working experiment ever undertaken. The consequences will continue long into the future and will have a lasting impact on how businesses manage their operations.

The introduction of Covid-Secure measures for the workplace along with existing and evolving media and communication technologies will compel companies to look carefully at how they use and pay for their office space.

There are two reasons for this:

1. Health, Safety and Staff Wellbeing
2. Operating costs and economic impact of social distancing measures



Reasons for Dilapidations

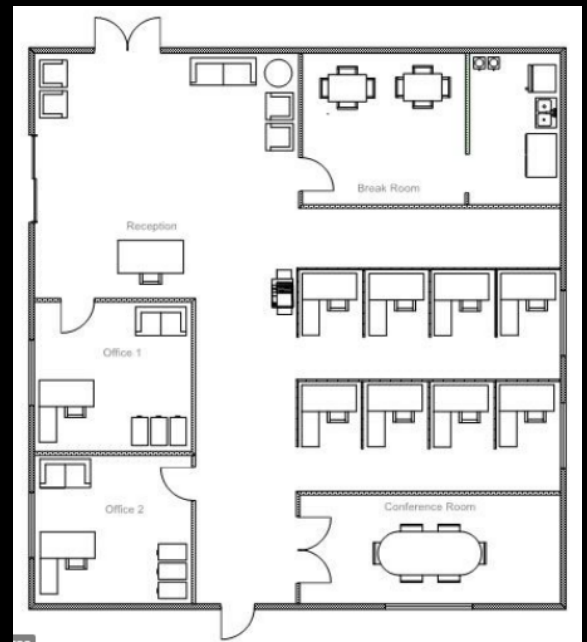
These are unprecedented times for businesses, many of which are tied to lease contracts for their office space.

If you are renting office space you may need to review your space requirements. This might be part of your space planning arrangements to ensure Safeguarding for your staff and visitors to make your space Covid-Secure.

You may also discover that you have surplus space that no longer serves your business but will cause a drain on your financial reserves whilst you are tied to a lease of a fixed term.

Consequently, businesses may decide to look at alternative premises or options for office spaces that offer more suitable arrangements and be more cost effective.

In these circumstances the tenant will be required to hand back the premises to the landlord at the end of the term. There are conditions for returning premises which will involve repair and decorations and may include the removal of tenant installations and returning the premises back to its original layout. These conditions will be set out in the lease.



Check YOUR lease

Before considering how you will return your space you need to check the conditions and liabilities under the terms of your lease. Do not go through all the trouble of finding contractors and setting out your repairs and decorations before checking your contractual obligations.

Some leases place strict obligations and conditions on tenants that might result in punitive costs if these requirements aren't properly fulfilled to the landlord's satisfaction. It is therefore important to determine the full extent of any obligations and costs to avoid nasty surprises at the end of the lease.

If you find that you are restricted by your lease but need to find a solution you might consider seeking independent advice and representation from a qualified building surveyor that specialises in the field of dilapidations work.



Dilapidations Process

Dilapidations are breaches of leases due to the condition of the property being leased, either during or at the end of the lease period. This may result from mistreatment of the property or poor or absent maintenance or repairs that are required by the lease. As indicated, further work may also be required at the end of a lease to reinstate alterations that have been made to the property by the tenant.

Tenants should be clear about their responsibility for dilapidations and reinstatement when signing a lease or carrying out alterations and should budget and account for any necessary works during the course of the lease. If they fail to do this they face the prospect of unexpected, or unaffordable works, or having insufficient time to carry out the works before the end of the lease.



If the required works are not carried out, the landlord may issue a schedule of dilapidations, or a notice to reinstate near the end of the lease (or an interim schedule during the course of the lease).

Preparation

If dilapidations works are not carried out by the end of the lease, the landlord may claim damages from the tenant (a terminal dilapidations claim). This may take the form of a 'quantified demand' setting out details of the landlord's losses as a result of the dilapidations, which may include loss of rent due to repairs being carried out. However, the landlord cannot profit from this claim, so if for example the landlord does not intend to reinstate the property, this must be taken into consideration.

These issues may result in a period of negotiation between the tenant and landlord in an attempt to agree a settlement figure. If the negotiation process fails then alternative dispute resolution or court proceedings may be necessary. Settlement figures that can be agreed are often a quick solution for both parties.



Health and Safety

You will need to prepare risk assessments as part of your program of repairs and decorations to ensure safe working. You will also need to establish a method of working to take account of your access and egress of men and materials during the works.

Noisy works such as drilling, and hammering will need to be timed so as to minimise disturbance to neighbours.



Regulatory consent

Make sure that you seek and obtain relevant building regulations, party wall requirements and construction design and management regulations.

Works Management

You might consider the services of a building surveyor to help with the process, negotiation, schedule of works and management of the works. ITango can help you procure the professional services so that you can feel fully supported during this process.



Valuation and Protocols

The valuation of works required, or the loss of value to the property can be complex calculations, and so both parties may wish to appoint surveyors to offer advice and prepare the appropriate documentation. Further specialist advice may be necessary for complex components or aspects of a property, such as building services plant. Court proceedings may also involve expert witnesses.

A 'Pre-Action Protocol for Claims for Damages in Relation to the Physical State of Commercial Property at Termination of a Tenancy' (the 'Dilapidations Protocol') is available from the Ministry of Justice. This describes the conduct the court expects the parties to follow before commencing proceedings, setting out a process and timetable for the exchange of information, and establishing standards for the content and quality of schedules of dilapidations and quantified demands.



Lease clauses to be aware of when considering your dilapidations

We summarise the type of clauses that are typical in leases, which will or may have a significant bearing on your approach to dilapidations and obligations for returning your premises to the landlord. This is important because you may be liable for some things that you haven't considered. You will also be accountable to your landlord for the actions of your contractors during these works.



DEFINITIONS

It is important to recognise the extent of those premises and parts of the building as well as tenant equipment that exclusively serves the demise and installed by the tenant.

"Demised Premises" Usually includes any additions alterations and improvements carried out during the Term of the lease.

INCLUDING the following:-

- all walls wholly within the Demised Premises which are not load bearing walls.
- the internal plaster coverings and plaster work of the walls surrounding the Demised Premises and the doors and door frames within the Demised Premises.
- the plaster coverings and plaster work of the load bearing walls and partitions lying within the Demised Premises and the doors and door frames and other installations fitted in such walls and partitions.
- the plaster coverings and plaster work of the ceilings and all screeds and/or floorboards and any other surfaces of the floors of the Demised Premises (including carpets vinyl covering and tiles).
- all Conduits which are situated within the Demised Premises and which exclusively serve the same.
- all pavement lights and trap doors (if any) forming part of the Demised Premises.
- all glass (including plate glass) in the windows doors and rooflights of the Demised Premises.

BUT EXCLUDING:-

the Main Structure the external windows and windows frames and the external doors and door frames set in the Demised Premises.

TENANTS COVENANTS including Repairing obligations

The tenant is responsible for ensuring that the 'entire' premises are kept in repair. The definition of repair varies depending on the original lease.

The Tenant will usually agree with the Landlord to:-

In relation to any landlord's fixtures that belong to the Demised Premises that need repair or replacement with other fixtures of a similar description quality and value to the satisfaction of the Landlord.

- To replace all broken glass or glass panels within or encompassing the Demised Premises whether the same be broken or damaged by the negligence of the Tenant.
- To ensure the servicing of electrical and mechanical installations and equipment within and serving the Demised Premises. This servicing regime will usually be required to be by regular frequency and carried out by suitably qualified persons approved by the manufacturers of the equipment and by the insurers of the Demised Premises. The tenant may also be required to replace equipment if it becomes dangerous.
- To keep the Demised Premises and all Conduits in a clean and tidy condition and properly cleansed and free from obstruction. This might include a requirement to clean the windows (both inside and out) on a frequent basis or at least once per calendar month. The use of suitably qualified and competent window cleaning contractors will be required. This is especially where there is a requirement for safe working at height.

There is usually an obligation to decorate the premises every 5 years and in the last year of the Term. Such requirements will often include guidance and direction on how the decorations are to be carried out as well as the quality and treatment required.

The areas to be decorated will usually be described and include interior surfaces of external windows and frames and the interior surfaces of external doors and door frames and sometime roof lights / windows (if there are any).



- Washing down all washable surfaces and painting and decorating to include two coats of good quality paint to be in a colour previously approved by the Landlord.
- All works are often required to be carried out in a good and workmanlike manner.
- to keep in good and substantial repair and condition any external window latches and window locks affixed to and serving such windows and windows frames.

Yield up (handing back the premises)

- When the term expires the tenant will return the premise to the landlord with vacant possession. This is particularly important where the tenant has operated a break clause which is subject to a condition precedent. There are examples of case law tenants have found their break clauses to be invalidated because of a failure to comply with the obligation to return the premises. In some cases, tenant's contents that have been left behind will provide sufficient grounds for the landlord to claim that the break tenant's break clause is waived because of a failure to meet the conditions for vacant possession. This can prove to be very costly for a tenant, especially where commitments to new premises have been made elsewhere.
- The landlord may choose to recovery its costs for the removal and disposal of any contents that have been abandoned within the premises by the tenant. These landlord costs may be subject to a punitive rate of interest which will accrue on the charges until the charges have been settled by the tenant.
- The tenant will often be responsible for arranging the testing of electrical, gas and other services serving the Demised Premises and to supply the resulting test certificates and other documentation.

Comply with Statutes

This relates to the observance and compliance of appropriate Acts of Parliament orders, regulations and byelaws that might relate to your demised premises. There is usually a requirement for the tenant to indemnify the Landlord in such matters.

Comply with Notices

There may be a requirement to pass details to the landlord of any notices that are issued by a public authority. These notices often relate to statutory powers. Notice to the landlord will be required within a timely manner, usually with 7 days.

Planning

Usually a requirement to comply with Planning Acts and consents permissions and conditions that affect the Demised Premises. These might include works carried out on the premises or the use of the premises.

Remedy defects

To repair and make good to the satisfaction of the Landlord's Surveyor all breaches, defects and wants of reparation for which the Tenant may be liable.

Permit Landlord to enter to remedy defects

This gives the landlord right of entry to go into the tenant's premises and carry out repairs and decorative works where the tenant has failed to perform these obligations. These landlord works would be done at the tenant's cost and may include the landlord's surveyor's fees as well as the contractors costs for labour and materials.

Fees

To pay or indemnify the landlord against all costs charges and expenses (including professional fees) incurred by the Landlord:-

- incidental to or in contemplation of the preparation and service of a schedule of dilapidations or notice to repair.
- in connection with or in procuring the remedying of any breach of covenant on the part of the Tenant.
- in connection with the approval and supervision of any permitted works to or affecting the Demised Premises.



Fire Precautions

Typically, to comply with requirements and recommendations of the appropriate authority and those of the insurer's in relation to fire precautions affecting the Demised Premises and the impact on the building as a whole, particularly for those areas outside of your demised premises.

There is also a standard obligation to keep the Demised Premises sufficiently supplied and equipped with fire-fighting extinguishing apparatus and appliances to ensure safe working and protection during the course of the works.

Such requirements will be set out in your contractors health and safety risk assessment for your works.



Alter services

There might be a prohibition to alter or to add to the electrical installation wiring or related services within the Demised Premises without your Landlord's prior written consent. There will be references to the relevant Institutions of Engineering and Technology and the regulations of the electricity supply authority.

To repair or replace any electrical installation wiring or other services in the Demised Premises if it becomes dangerous or is required. The use of suitably qualified contractor/s approved by the Landlord is often stated.

Alterations

Not to make any installation or alteration to the structure.

Not to make any internal erection alteration or addition to the Demised Premises without landlords previous written consent. There might be a reinstatement obligation requiring the tenant to put the premises back to its previous state when the tenant returns possession to the landlord on expiry of the lease. You will be required to provide plans, specifications and risk assessments and method statements and submit these to the landlord for his approval as part of the consent process.



Not to cause nuisance

Not to use the Demised Premises or any part thereof in a manner which may be a nuisance to the Landlord or other occupiers.

This is especially relevant during noisy and disruptive works. There will usually be a requirement to keep the Landlord indemnified against proceedings and damages that might arise out of a breach or nuisance. Complaints can arise from neighbouring premises or local officials as part of any planning or building regulatory requirements.



Regulations

To comply with all reasonable regulations imposed by the Landlord for the management of the Building. This might relate to access and movement out of the building.

Propping open fire exits and carrying materials and rubble out of the building can present particular challenges for the tenant, his contractor, and the landlord. Remember, your landlord has obligations to other occupiers and neighbours and may be liable for the actions of 3rd parties if the works are not properly supervised and co-ordinated.

Indemnity

To indemnify the Landlord from all liability in respect of any injury to or the death of any person or damage to any property or the infringement or destruction of any right arising out of the repair, condition, or any alteration by the Tenant.

The tenant may need to seek appropriate indemnity insurance cover. A contractor will have insurance for this purpose, but you will need to check with the landlord to make sure that the level of cover is correct and complies with your lease obligations.

Not to vitiate insurance

Not to do something that would invalidate the landlord's insurance.

To pay additional premium/s

To pay the Landlord the amount of any increase in the insurance premium where this is attributable to the works carried out on behalf of the tenant in respect of its alterations to the Demised Premises.

