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Check list: how to work out dilapidations

As leases near expiry, landlords and tenants begin to focus on the condition of the premises and the likely cost of complying with the tenant repair covenants.

Those costs can have even more impact on the parties during an economic downturn. Here Michael Kilner looks at some practical considerations for landlords and tenants.

Landlords: Give your tenant lots of notice

- Consider serving a schedule of dilapidations between 12 months and six months before expiry or immediately following service of a break notice. This will encourage early settlement and make a tenant reconsider leaving because of the potential costs involved.
- Ensure all deeds are sent to the surveyor instructed, including any agreements for lease or licences for alterations and subletting. Licences to sublet sometimes include alteration provisions.
- If a schedule is being served well before lease expiry, consider whether the lease permits you to inspect the property, carry out the repair works
- and recover the cost from the tenant as a debt during the lease term.
- Give notice requiring reinstatement of alterations (if required) well before lease expiry. Failure to do so may result in such claims being lost.
- Consider whether any subtenants may also owe direct obligations to you and whether or not to serve schedules or notice to reinstate them.
- Before lease expiry, avoid creating evidence of an intention to redevelop the premises or make structural alterations because this could adversely affect a dilapidations claim.
- If a tenant is in administration, consider serving a schedule of dilapidations immediately to increase your chances of being successful in any dilapidations claim against the tenant.
- Re-inspect the premises immediately following lease expiry and ensure you have a good photographic record of any disrepair.
- To help substantiate a claim, ensure any contractor you instruct to carry out the repair works bases their tender for works on the schedule of dilapidations and that they produce appropriately itemised invoices, even if other works are also required.

Tenants: Find out your landlord's plans

- When you decide to vacate a premises, instruct a surveyor to carry out an assessment of your potential dilapidations liability.
- Consider instructing a solicitor to obtain such a report for you to ensure the document benefits from privilege and does not have to be disclosed at a later date.
- Try to find out the landlord's plans for the building. Check to see if any planning applications have been made. If it becomes clear the landlord is going to redevelop the premises or make structural alterations, you may be able to defeat the landlord's dilapidation claims.
- If the landlord has not made any plans, consider actually carrying out necessary works before your lease expires to minimise any loss of rent claim.
- Ensure your surveyor inspects the premises immediately before lease expiry and accurately records the condition by reference to photographs.
- Consider obtaining a valuation report from a specialist valuation surveyor to see if the value of the premises is likely to be affected by any disrepair.
- Check whether or not the landlord has complied with any notice provisions in the lease or any licences in relation to reinstatement.
- Make a provision in your accounts for dilapidations because the landlord usually has 12 years from lease expiry to bring a claim.

Michael Kilner is senior assistant solicitor at law firm **Maples Teesdale** where he spends a large amount of his time on dilapidations cases. He acted for Royal & Sun Alliance in the key case *PGF II SA v Royal & Sun Alliance Insurance* (13.07.10).