24 March 2016

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Tenanted buildings - dilapidations claims

What are the practical issues of dilapidations claims and how should FMs charged with taking care of tenanted buildings deal with them? Richard Robinson outlines the responsibilities.

24 March 2016 | **By Richard Robinson**

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FMs of tenant companies are often tasked with maintaining the condition of ageing buildings at minimal cost in order to provide a suitable working environment for their companies' employees.

But how does this sit with the legal responsibilities a tenant company may owe to its landlord when considering issues as to disrepair? What are the risks and how can they be managed?

1. What is a dilapidations claim?
This is a claim for damages for the alleged failure on the part of the tenant to comply with the repair (and other) obligations in a lease. A tenant is normally obliged to keep the rented property in a certain standard of repair and condition. If that standard or condition deteriorates during the tenant's occupation of the property, the landlord may have an actionable claim.

Dilapidations claims are often brought by a landlord at the end of the lease when a 'schedule of dilapidations' is prepared by a building surveyor and sent to the tenant.

Often this schedule will suggest certain remedial works are required and the landlord will then request a sum of money in lieu of these works having been carried out.

But a tenant should be wary of this approach and consider whether what the landlord is seeking actually represents the damages properly recoverable at law as a consequence of an alleged breach of contract (the lease and other lease documentation).

In many instances a costed schedule sent by a landlord will have little bearing on the actual damages at law that they are entitled to recover.

2. Defending a claim
To properly defend a dilapidations claim it is best to bring together a team of professionals to analyse the tenant's actual liability. The team is likely to include a specialist solicitor, building surveyor and valuation surveyor, but could also require other professionals.

This may look expensive, but the costs savings that expert advice can achieve may far outweigh the initial expenditure. It is not unknown for advisers to offer their services on a 'no-win no-fee' arrangement, but these should be approached with caution.

3. Interim claims, FM obligations
Issues relating to dilapidations should not be left until the end of the lease but regularly reviewed. While many FMs will, of course, regularly review maintenance issues for their properties it does not necessarily follow that their company's repairing liabilities are being met.

Although many landlords only bring dilapidations claims against a tenant at the end of a lease it is possible for interim claims to be brought by a landlord during its term. The tenant's lease should be checked to determine whether it includes provision for the landlord to bring an interim repair claim.

Such provisions will usually require the tenant to remedy any breaches of the repair obligations within a certain period of time, failing which the landlord will be entitled to enter the premises, carry out the works and claim the costs back as a debt.

4. Check the lease

Determining that such a clause exists in the company's lease may assist an FM when negotiating maintenance budgets with its financial controllers. If there is such a clause, there is a risk that if the property is not properly maintained, the landlord could enforce an interim claim against the company. Again, advice from specialist solicitors and surveyors can help identify these risks for FMs.

5. Service charges
Most leases of office space will include obligations to repair on both the landlord and tenant. Maintenance of shared services, communal areas and the exterior of the building are likely to be the responsibility of the landlord under a lease's service charge provisions.

Here, the landlord may be obliged to carry out certain works to maintain the building, but will likely have the ability to charge that cost back to the tenant pursuant to the service charge provisions in the lease.

So it is important to determine whose responsibility it is to maintain specific parts of the building before any works begin. The landlord should not carry out works and claim them back under the service charge provision if those works are the tenant's responsibility.

Tenant FMs should also consider whether the landlord is obliged to consult with them before carrying out certain work under the service charge provisions. It should also be borne in mind that a landlord's costs of carrying out works under the service charge should be reasonable and that the landlord may not be able to pass on the costs of significant repair works if the lease is nearing expiry.

6. Conclusion
It is normally in both the landlord's and tenant's interests to maintain a property to a high standard. A well-maintained property usually contributes to the wellbeing and productivity of a tenant's employees and should help to maintain the value of the property.

But determining the responsibility for repair under the terms of a lease involves technical issues that need to be assessed properly to understand the true liability owed by one party to another. There is much that FMs can do to mitigate repair risks by putting together the right professional team from the start of a tenant's occupancy of their premises.

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