Court Report

WHAT IS THE STANDARD OF REPAIR IN LEASES? A REMINDER OF THE RULE IN PROUDFOOT V HART

Twinmar Holdings Ltd v Klarius UK Ltd [2013] EWHC 944 (TCC)

THE ISSUE

Facilities managers are often tasked with maintaining the condition of leased property on behalf of their company. But repairing damage to the property to a standard that is acceptable to the company can be completely different to that which is expected of the company under the terms of their lease. A failure to comply with the standard of repair required by the lease may leave a tenant open to an interim or terminal dilapidations claim from their landlord. While the exact repair obligations on a tenant will depend on the precise wording of their lease, it is common that such an obligation will include keeping premises 'in good and substantial repair and condition'. But what is this to be judged against?

BACKGROUND

The case of *Proudfoot v Hart* [1890) 25 QBD 42] says this type of repair term obliges a tenant to keep the premises in such repair, as having regard to their age, character and locality would make them reasonably fit for the occupation of a tenant of the class who would be likely to take them.

But the *Proudfoot v Hart* case has led many to wrongly believe that account should be taken of the level of disrepair expected for a building at the end of the lease. For example, if a lease was granted for 10 years, some have thought that, having regard to the age of the building, some disrepair would naturally occur in this time and that a tenant would not be liable for such "natural" disrepair.

The recent case of *Twinmar Holdings Ltd v Klarius UK Ltd* confirmed that this view was incorrect. *Twinmar Holdings Ltd v Klarius UK Ltd* was a case concerned with a terminal dilapidations claim brought by a landlord against a tenant of warehouse premises after the expiry of a 25-year lease.

The tenant was the original tenant under the lease and had moved in soon after the building had been constructed. In the circumstances, if the standard of repair set out in *Proudfoot v Hart* meant that the tenant could take into account the building was over 25 years old this could limit the landlord's dilapidations claim.

However, the judge, Mr Justice Edward-Stuart, clarified that *Proudfoot v Hart* should be read in the light of a later case called *Anstruther-Gough-Calthorpe v McOscar* [1924, 1KB 716]. This stated that the condition of the premises in terms of their fitness for occupation by a tenant of the class who would be likely to take them, had to be considered at the lease's start. In other words, in Twinmar the standard of repair was to keep a recently constructed building in good and substantial repair and condition. The standard of repair expected for the property at lease expiry is therefore likely to have been near pristine.

ARGUMENT

But matters are not that straightforward in terminal dilapidations claims. Twinmar reiterated that the standard of repair for the building should be judged at the start of the lease to determine if the tenant has breached its terms by allowing the building to fall below this state of repair. The teamwork of a building surveyor and solicitor would be able to assess if there had been breaches of the lease and what the necessary remedial works should be.

DEFENCE

However, a landlord's terminal dilapidations claim is then limited by the actual loss it has suffered by the tenant's breaches of the lease.

The loss is limited to the statutory cap under s.18 (1) of the Landlord & Tenant Act 1927 and common law. These say that the actual loss suffered by the landlord is the reduction in price a hypothetical buyer would make for the property at the end of the tenancy due to the tenant's breaches of the lease terms. This is usually referred to as the diminution in value of the property. E.g., a tenant may have failed to paint the walls of a building which is a breach of the lease and which would cost money to remedy. However, a hypothetical purchaser may not be interested in the failure to paint the walls as he may be happy with the current standard or have different decoration plans which would render the repainting pointless. In this scenario there would be no claim for this breach of the lease.

The teamwork of a valuation surveyor and solicitor would be able to assess this part of the claim. This may have contributed to confusion among property professionals about when the standard of repair is to be judged.

SUMMARY

- **The standard of repair required of leased premises should take into account their age, character and locality, which would make them reasonably fit for the occupation of a tenant of the class who'd be likely to take them.**
- **The standard of repair of leased premises is usually to be judged from the start of the lease as confirmed by Twinmar.**
- **Check if there have been any variations to the lease to limit the standard of repair (e.g., a schedules of condition).**
- **It is also best to see if the lease expressly refers to a level of repair for a time other than the start date of the lease (e.g., the start date of a superior or earlier lease).**
- **Remember that in a terminal dilapidations claim, valuation advice should usually be sought to decide if a landlord's claim is limited in any way.**

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