



A clear, impartial guide to

Dilapidations

For use in England and Wales.



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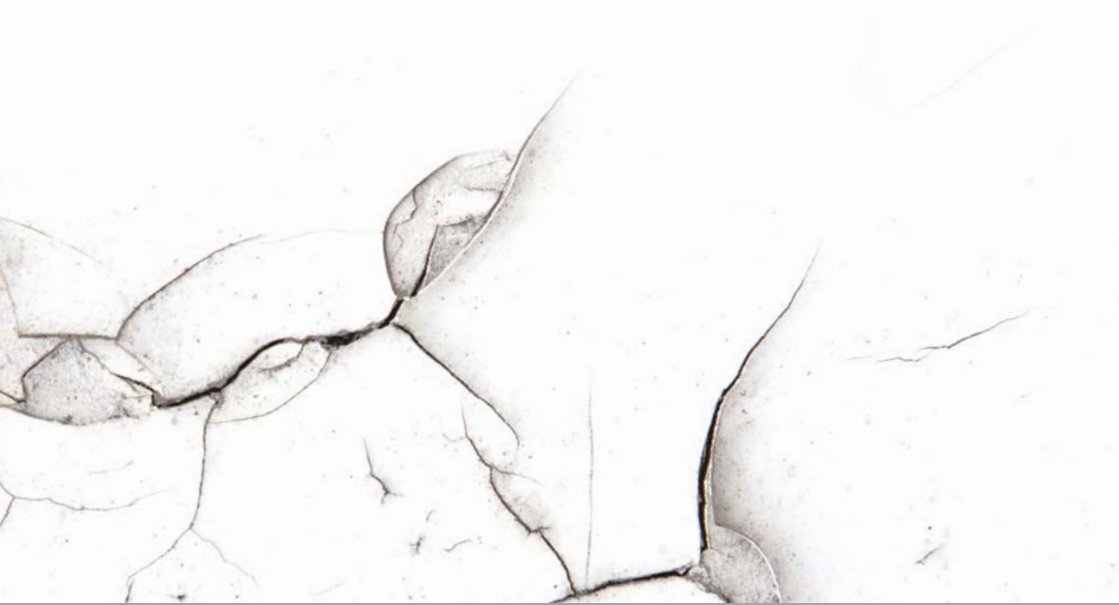
Introduction

“Dilapidations” refers to breaches of lease covenants that relate to the condition of a property during the term of the tenancy or when the lease ends.

This guide provides information for tenants and landlords on things to consider when dealing with a dilapidations claim made by a landlord at or near the end of the lease term. It focuses on the basics of the dilapidations process only and does not deal specifically with leases which end because of the exercising of a break clause.

This guide relates to the law and procedures for commercial property in England and Wales, other parts of the UK have their own law and processes which can be different to the information in the guide. Whilst the Dilapidations Protocol only applies to commercial disputes it is likely that its procedures will also be regarded as best practice in residential disputes.

Whether you are a tenant or a landlord, using the services of a chartered surveyor during a dilapidations claim will prove invaluable. They will offer clear and concise information and advice to help you through a claim.



Definitions

The following definitions are commonly used when dealing with dilapidations so it is worth bearing them in mind.

A Schedule of Dilapidations is the document prepared by the landlord (or their surveyor) listing outstanding reinstatement, repair, legal compliance and decoration items to the property, suggesting remedial works and, in some cases, estimating the cost of the remedial works.

A Quantified Demand is a document setting out further details of the allegations. It is prepared by, or on behalf of, the landlord and is issued after the end of the lease. It will include details of what the landlord considers to be its likely loss as a consequence of the alleged breaches. The loss may be different to the cost of the works that will be in the Schedule of Dilapidations.

A Response is the reply from the tenant (or their surveyor) to the Quantified Demand and/or the Schedule of Dilapidations. This is usually a letter/email and a Scott Schedule.

A Scott Schedule is an extended version of the Schedule of Dilapidations which enables the tenant (or their surveyor) to respond to the content of the Quantified Demand and/or the Schedule of Dilapidations.

The Dilapidations Protocol is a document published by the Ministry of Justice setting out the courts' expectations of the landlord and tenant about lease-end dilapidations. The protocol is available on the Ministry of Justice website.

Things a tenant should consider

Before signing a lease

You should familiarise yourself with the terms of the lease and its dilapidations implications before signing the contract. A chartered building surveyor can advise you on the implications of the clauses you are signing up to.

During the lease term

You should consider the potential of future dilapidations liability during the term of your lease and budget for it. If you carry out alteration works to the premises then it is likely that your landlord may require to you reinstate those alterations before the lease ends.

Near the end of the lease

You should be aware of the extent of dilapidations work you have committed to complete. This can be a complicated assessment and it would be normal for you to engage a chartered building surveyor who is experienced in dilapidations to advise you.

Unless you have completed all the building work which the lease you signed and any licences for alterations required you to carry out, you should expect to receive a Schedule of Dilapidations from your landlord. If you have made any alterations to the property during your lease, your landlord may serve you with a notice to reinstate the alternations you have made.

This notice can be included in the Schedule of Dilapidations or sent separately.



If dilapidations works are not complete before the end of the lease term then your landlord can claim damages from you to recompense them for the adverse financial position they may find themselves in.

Landlords should not profit from dilapidations payments so the amount set out in the Quantified Demand may be less than the one in the Schedule of Dilapidations. This could be for a number of reasons including the landlord planning to redevelop or upgrade the property, or that a new tenant wants the premises left as they are. For this reason it may be difficult to decide whether to complete the work before the end of the lease or to wait for the landlord to send a Quantified Demand.

The Quantified Demand could include additional costs, if the landlord can show that they suffered a loss due to you not completing the works before the end of the lease, such as loss of rent and service charge.

The Schedule of Dilapidations and Quantified Demand might also include an allowance for irrecoverable VAT.

After the end of the lease

You should have received a Schedule of Dilapidations and, within about 56 days after the end of the lease, a Quantified Demand. You will be expected to respond to the Schedule of Dilapidations and/ or Quantified Demand within 56 days of receiving them. Your response will need to be endorsed by you or your surveyor.

Normally your surveyor and the landlord's surveyor will meet to narrow the differences to recommend a settlement figure to you and the landlord. If a settlement is not possible then you may be faced with potential litigation from your former landlord. The Dilapidations Protocol states that parties in dilapidations cases should consider alternative dispute resolution (ADR) before going through the courts.

Where a Schedule of Dilapidations is not sent

Even if your landlord does not send you a Schedule of Dilapidations you may still have potential dilapidations obligations. A chartered building surveyor can give you advice on any potential cost of these obligations.

Things a landlord should consider

Timing is important. Before the end of the lease you may need to serve Notices on your tenant so that they reinstate alterations made to the property during the lease. Then, as a general rule, you should issue a Schedule of Dilapidations and a Quantified Demand within about 56 days after the end of the lease term.

It is normal to engage a chartered building surveyor to prepare a Schedule of Dilapidations on your behalf. Before they prepare the Schedule of Dilapidations the surveyor will ask you what your intentions for the property were on the date the lease ended. This is so that your surveyor can endorse the Schedule, which is a requirement of the Dilapidations Protocol. Your answer must be honest and full as it may be reviewed by a court in years to come.

When preparing the Schedule of Dilapidations, your surveyor will use an industry standard form which will be sent to the tenant. If you do send a Schedule of Dilapidations to the tenant before the end of the lease term you are expected to update it at the end of the lease term.

The Schedule of Dilapidations will normally set out the cost of the works which the tenant should have completed. The Quantified Demand may necessarily be set at a lower figure as the amount you are claiming should not exceed your likely loss. If the tenant's breaches of the terms of the lease have not caused you to suffer a loss then you must not include these items.

The reasonable cost of works that the tenant should have carried out is likely to be the main guide to the amount of compensation you seek; however, the law does not allow this to exceed the amount by which the property had in fact been devalued by the tenant's breaches at the end of the lease.

Once your former tenant has been sent the Quantified Demand and/or Schedule of Dilapidation, they have about 56 days to send you a Response which has been endorsed by the tenant or their surveyor. The Response will set out anything your former tenant is disputing.

Normally your surveyor and the tenant's surveyor will meet to narrow the differences to recommend a settlement figure to you and the tenant. If a settlement is not possible then you may be faced with potential litigation with your former tenant. The Dilapidations Protocol states that parties in dilapidations disputes should consider alternative dispute resolution (ADR) before going through the courts.

Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) is a formal setting for dispute resolution without involving the courts. It can take various forms and may be a cheaper option to settle a dispute than going through the courts. Forms of ADR suitable for dilapidations include:

Expert determination

This means that a single expert makes a decision on the case that is binding on both the landlord and tenant.

Mediation

This is when the two parties, their advisers and a mediator meet, where the mediator helps to facilitate a mutually acceptable settlement.

Arbitration

Arbitration is a private form of dispute resolution. It is similar to litigation but is governed by the Arbitration Act. The Arbitrator's decision is binding on both parties.

The negotiation that the surveyors for both parties take part in during a dilapidations dispute is a form of dispute resolution. The Dilapidations Protocol requires the landlord and tenant to consider ADR. Neither party can be forced to undertake ADR but the court, if the claim goes that far, may expect ADR to have been attempted. Any unreasonable refusal to ADR may be taken into account by the courts when award of costs are considered.

Complex cases

Disputes about dilapidations can be very complex and can involve a number of specialists. For example if a landlord has not completed the dilapidations works but is proposing to litigate to recover damages from the former tenant, a specialist valuation report on the property will need to be prepared (called a diminution valuation). This is usually prepared by a chartered valuation surveyor.

Other specialists may be necessary to advise on particular aspects, such as lifts, air conditioning, cladding, land contamination etc. If the dispute does end up in the courts then barristers will probably need to be engaged to review the case and act on behalf of the parties.

If the dispute cannot be resolved and does end up in the courts then expert witnesses will probably be required. It is normal, but not a requirement, for the parties' surveyors to be engaged as expert witnesses. This is because of their prior involvement and knowledge of the dispute. If this does happen then the surveyors' duty will be to the courts and not the parties that originally appointed them.



Useful links

A downloadable copy of the Dilapidations Protocol can be found on the Ministry of Justice website:

Ministry of Justice

www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-claims-for-damages-in-relation-to-the-physical-state-of-commercial-property-at-termination-of-a-tenancy-the-dilapidations-protocol

Information about Alternative Dispute Resolution can be found on the RICS website:

RICS Dispute Resolution Service

www.rics.org/drs

RICS has a detailed Dilapidations Guidance Note which can be purchased from the website. It is free for RICS members to download.

RICS

www.rics.org



Free RICS guides

RICS has a range of free guides available for the property issues listed here.

Development issues

Compulsory purchase
Home extensions

Home hazards

Dilapidations
Flooding
Japanese knotweed
Subsidence

Neighbour issues

Boundary disputes
Party walls
Right to light

Residential

Buying a home
Buying and selling art and antiques at auction
Home surveys
Letting a property
Property auctions
Renting a property
Selling a home

Further information

We hope this guide is useful to you. If you'd like to know more about Dilapidations, or how RICS can help, please contact us.

Visit our website

www.rics.org/consumerguides

alternatively email

contactrics@rics.org or call the RICS Contact Centre **02476 868 555**

Consumer helplines

RICS offers telephone helplines giving you 30 minutes of free advice on:

- Boundary disputes
- Party walls
- Compulsory purchase.

Just call **02476 868 555** and you will be put in touch with an RICS member local to you, willing to provide a free 30 minute initial consultation. Lines are open

0830 –1730 (GMT), Monday to Friday.

Find a Surveyor

Contact us if you want to find independent, impartial advice from a qualified professional with good local knowledge.

Look out for firms that are 'Regulated by RICS'. Estate agents and surveying firms that are regulated by RICS are easy to spot as they use 'Regulated by RICS' on their stationery and promotional material.

To find an RICS firm in your area visit

www.ricsfirms.com

alternatively email

contactrics@rics.org or call the RICS Contact Centre **02476 868 555**

RESOLUTION

SPECIALISTS IN DILAPIDATIONS

Resolution are qualified in both the building surveying and valuation aspects of dilapidations claims (being RICS Registered Valuers & Chartered Building Surveyors) giving us a unique position of holistic knowledge and a one stop shop offer. We cover all parts of a dilapidation claim – from initial survey through to successful claim, negotiation and settlement and are adept in surveying and production of schedules and accurate cost assessments in line with the lease.

Our RICS Registered Valuers undertake regular S.18 diminution in value claims. With a detailed grasp of case law and an in-depth knowledge of local markets, Resolution are able to provide accurate advice.

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Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the valuation, development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to markets and effecting positive change in the built and natural environments.

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