Recent Cases in Dilapidations

Oliver Held MSCSI MRICS
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Topics to be Covered

– Some Definitions
– Relevant Legislation and Guidance
– Documents Related to the Field of Dilapidations
– Recent Case Studies
– Questions and Answers
Some Definitions

Dilapidation: “The state or process of falling into decay or being in disrepair”

*Oxford Dictionaries*

Dilapidations:

“a cause of action to force a tenant to pay for dilapidations” or

“the ‘exit costs’ to the tenant of putting a property back into repair and potentially reinstating tenant’s alterations at the termination of a tenancy / lease.”

*Oxford Dictionaries / Allsops*

Schedule of Dilapidations: “a formal listing of alleged breaches of contract”

*RICS*
Landlord & Tenant (Amendment) Act 1980
Section 65:

1) (paraphrased) Where the tenant has an obligation to put or keep in repair or yield up the
demise in repair and there has been a breach of this obligation, the following will apply:

2) Damages recoverable in any court for the breach shall not exceed the amount (if any) by
which the value of the reversion (whether mediate or immediate) in the tenement is
diminished owing to the breach.

*In other words a cap can be placed on the (dilapidations) claim, which is equivalent to the
difference in value of the building in (good) repair and disrepair.*

3) Save where the want of repair is shown to be due, wholly or substantially, to wilful damage or
wilful waste committed by the lessee, no damages shall be recoverable in any court for the
breach if it is shown-

   (a) that, having regard to the age and condition of the tenement, its repair in
   accordance with the covenant is physically impossible, or
3. b) that, having regard to the age, condition, character and situation of the tenement, its repair in accordance with the covenant would involve expenditure which is excessive in proportion to the value of the tenement, (for example if the replacement of an asbestos roof with a modern profile metal sheet roof was called for on an old warehouse building) or

3. c) that, having regard to the character and situation of the tenement, the tenement could not when so repaired be profitably used or could not be profitably used unless it were re-built, re-constructed or structurally altered to a substantial extent.

SCSI Dilapidations Guidance Note:

Provides guidance to practitioners on how to prepare schedules of dilapidations and sets out a procedure for negotiation of claims.
Documents Related to the Field of Dilapidations

- Types of Schedules:
  - Interim
  - Terminal

- Other Documents Used
  - Anticipated Dilapidations Liability Reports
  - Schedules of Condition (SOC) (new leases/sub-leases)
  - Building Survey Reports (assignments)
Case Study 1: Acting for Landlord – Break Option on FRI lease 1990’s Office Building

Main Points:

• Summary claim was served,

• Detailed claim was prepared, which had to substantiate the summary claim, even though the summary claim was inflated at request of the landlord.

• Tenant had engaged a contractor to fit out their new office space.

• Tenant was able to easily redirect the contractor to complete dilapidations works on the subject building.

• Tenant commenced dilapidations works while negotiating the financial settlement and sought to deduct cost of works completed from the sum to be agreed to act as an incentive to settle quickly.

Learning Outcomes:

• Summary claims to be served with care

• If claims are to be inflated, landlord’s expectations are to be managed properly

• Warn Landlords of the risk to dilapidations claims if planning applications affecting the property are to be submitted.

• Important for landlord to disclose all matters such as development intentions/planning applications to the surveyor prior to the claim being prepared.
Case Study 2: Acting for Tenant – Break Option on IRI lease
Refurbished 1970’s Office Building

Main Points:

• Tenant engaged surveyor only three months prior to break date.

• Tenant not able/willing to complete works

• Landlord claim included loss of rent and VAT, where neither should have been applicable.

• Due to late appointment and tenant’s inability to complete works, Landlord was able to apply pressure on the tenant to settle for an excessive claim.

• Still managed to negotiate reduced loss of rent and remove the VAT from the claim, saving the tenant €78k or 30% of the original claim.

Learning Outcomes:

• Where possible surveyor to engage with tenant/tenant to appoint surveyor when the break notice is served/6 months prior to expiry.

• Right advice to be given at the appropriate time.

• Liaison with the/an agent to see if new premises can be found to allow the tenant the option to relocate and complete works.
Case Study 3: Acting for Landlord – Natural Expiry 35 Year FRI Lease 1970’s Office Building

Main Points:

• Tenant allowed the central M&E plant to fall into disrepair and redundancy. Boilers had been removed and a number of tenants had installed their own heating/cooling plant.

• Landlord served the schedule on the basis of full reinstatement of central plant and overall reinstatement back to single occupancy open plan layout.

• Landlord sold the building during the negotiation process.

Learning Outcomes:

• Difficulty encountered in seeking reinstatement of original M&E plant, when the system was known to be “not what the market wanted”

• Sale of the property during the negotiations damaged the claim. Need to advise Landlord of risks in advance.

• The more obsolescent the building, the lesser the impact of the “statutory cap”?
Case Study 4: Acting for Landlord – Natural Expiry 35 Year Lease and Break Option on a subsequent 10 Year FRI lease (same tenancy) - Office Building

Main Points:

• No express link with regard to dilapidations liability between the 35 year lease and the new 10 year lease.

• No limitation on timeframe for service of a schedule of dilapidations under the 35 year lease.

• Tenant had not been released from their liability under the 35 year lease.

• Ability to recover dilapidations under the two leases was in dispute.

• Tenant allowed the central M&E plant to fall into disrepair and redundancy. Tenant installed their own alternative systems, which they now claim (along with the remainder of the entire fit out, are landlord fixtures and fittings under the new lease)

Learning Outcomes:

• Leases should be varied as opposed to new leases being created when a continuation of tenancy takes place.

• If a new lease is created, dilapidations should be carried over/deferred to the break date/expiry of the new lease. This can be done by preparing a schedule of dilapidations at the expiry of the original lease and attaching the schedule (without costs) to the new lease.
Case Study 5: Acting for Tenant – Break Option on FRI lease with SOC - Warehouse/Office Building

Main Points:

• The landlord prepared his schedule with insufficient cognisance to the schedule of condition.

• The response was prepared and the schedule was negotiated by the surveyors.

• The tenant completed works, which were cost effective to complete when compared with the value of that work in the schedule.

• Owing to the significant difference between the landlord’s claim and the tenant’s offer, the landlord met with the tenant to try and reach a settlement.

• The difference was split and the figure was negotiated down to an agreeable amount by both parties,

• Claim: €254k Settled €100k

Learning Outcomes:

• All options available to the tenant should be explored i.e. can they complete certain works to limit their liability?

• Need to know when to step back and allow a commercial deal to take place.
Questions?
Thank You