

The world of dilapidations is littered with case law, legislation, guidance notes and protocols, however, the premise is simple;

Identify breaches of lease covenants that relate to the condition of a property and set out the necessary works to remedy the breach.

Clearly it is not quite as simple as that, given the number of claims that have reached court and the legal precedents that have been set as a result. At Compass, we take the view that neither the landlord nor tenant wishes to be embroiled in ongoing disputes for months on end. So how do we go about achieving appropriate settlements in a swift manner for our clients;



- ▶ **We are acutely aware of timings**
- including time sensitive lease covenants and protocol timings.
- ▶ **We plan ahead** - Working with landlords and tenants to gear up for break dates and lease expiries.

- ▶ **Knowledge** - Our dilapidations surveyors have many years of experience working alongside industry experts and lawyers using RICS Guidance Notes on Dilapidations and the Dilapidations Protocol.

- ▶ **Negotiation skills** - dilapidations is a law based and technical discipline, but the 'business-end' of a claim is all about the art of negotiation.

Typical End of Lease Dilapidations Process

1

Landlord appoints a dilapidations surveyor

2

Schedule of dilapidations is served on the tenant

3

Tenant instructs a surveyor to assess the claim and negotiate liabilities where appropriate

4

Tenant either undertakes the works or agrees a settlement

5

Completion and sign of the dilapidations liabilities

DILAPIDATIONS ADVICE FOR LANDLORDS

Dilapidations is not a profit-making mechanism within the lease. The agreement to a financial settlement should only cover the actual loss incurred due to the tenant's failure to uphold the lease covenants. A landlord can only expect a tenant to yield up the property in a condition that is determined by the lease covenants.

In certain circumstances, the landlord can serve the tenant with a Repairs Notice. Provided the notice is appropriately served, and the tenant fails to comply with the notice, the landlord can gain the right to enter the property to carry out the essential works, reclaiming the cost of the works as a debt from the tenant. Most modern leases allow such a mechanism for the landlord, which is known as a Jervis v Harris Clause. The landlord must ensure that this process is executed with caution, giving careful consideration to the sensitivity of the lease covenants as a whole and the tenant's right to quiet enjoyment.

Case law surrounding the Dilapidations process is highly detailed hence the reason many landlords choose to appoint the services of a suitably qualified and experienced surveyor.



DILAPIDATIONS ADVICE FOR TENANTS

It is vitally important for a tenant to scrutinise the covenants of a lease before signing on the dotted line. At Compass, we have dealt with numerous cases whereby the tenant's defence is 'It was like that then we moved in'. Unfortunately, a desperate plea for forgiveness and compassion from the landlord at the end of the lease is likely to be as useful as the surveyor that you thought about appointing before signing the lease – but didn't!

The appointment of a surveyor from the outset may save a tenant thousands of pounds come lease termination. A surveyor can appraise the condition of the property at lease commencement, drawing up a Schedule of Condition that limits the tenant's repairing liabilities.

It is often advisable for a tenant to appoint a surveyor to undertake a Dilapidations Liability Assessment during the lease term, to budget for repairs and other works that may need to be carried out. At Compass, we have saved tenant's considerable sums of money by appropriately advising them when to carry out regular planned maintenance to reduce their liabilities at lease end.

At Compass, we offer a free lease review as part of our Dilapidations service to assist our tenant clients in making informed decisions regarding their future property strategies.

The Cost of Dilapidations

Landlords can usually charge the tenant the cost of appointing a surveyor to prepare a Schedule of Dilapidations. It may also be possible, dependent on the terms of the lease, to claim the cost of fees for the monitoring of a tenant's repair work and any settlement negotiations carried out by a surveyor.

If you are a landlord or tenant and would like some initial advice from one of our dilapidations experts, please get in touch.

Relevant Links

[RICS Dilapidations Guidance Note »](#)

[Dilapidations Protocol »](#)