

The Sting In the Tail

John Byers of Langley Byers Bennett – experts in Commercial Dilapidations gives a few tips for Tenants dealing with Dilapidations

Occupying a building can be an expensive business with many costs involved. In addition to rent, rates, service charge, maintenance, cleaning and other costs; dilapidation costs can arise often unnoticed on unexpected occasions with expensive consequences.

What Are Dilapidations?

Most commercial leases will contain repair obligations the Tenant has to fulfill. Often this means to maintain the property in good condition, and leave it in the sort of condition that a new occupier would expect to find it when they start a lease.

Dilapidation issues tend to raise their head at certain intervals during a lease, particularly at a rent review, at the end of a lease, during a new lease negotiation or upon the exercise of a break clause.

Langley Byers Bennett's Top Tips for Dealing with Dilapidations

1. Prior to signing a lease, a Tenant should consider an ongoing **Schedule of Condition**. The purpose of such a schedule is to record the condition of the property at a particular time (i.e. at the signing of the lease). The usual purpose of the schedule, which should be agreed between both parties and then attached to a lease, is to modify or clarify the repairing obligations. The idea being that the Tenant is not obliged to put the building back into any better condition than that existing at the commencement of the lease.
2. **Do not ignore the claim**. Even if you feel the Landlord's claim is spurious or excessive do not ignore it but treat it seriously.
3. **Take good professional advice** from your solicitor and an expert Chartered Building Surveyor.
4. **Make provisions** for dilapidation costs arising in the future. Review your lease or tenancy agreement and take advice as to what your obligations and costs may be in the future.
5. Carry out regular maintenance work. **Deal with repairs as they arise** and not allow them to accumulate. Often substantial damage can arise from relatively simple matters that are not put right when they should be. If this has not been done then a Chartered Building Surveyor should be employed to assess the building condition, prioritise repairs and prepare a planned maintenance programme.
6. **Consider your lease terms carefully** particularly if you are considering exercising a break clause or nearing the end of a rent review is approaching.
7. **Do not assume** your only obligation is to repair your building to match the condition it was in when you took it. Even if the building was old and dilapidated when you started you may still have an obligation to improve it so that it is handed back to the Landlord in better condition than it was originally.
8. **Keep all records**. If you have asked the Landlord about repairs for which they have an obligation (perhaps on the outside of the building) and they have not done so, keep a careful record of when problems were brought to the Landlord's attention; and of the damage that may be occurring to your accommodation as a result.
9. **Plan alterations carefully**. You probably have an obligation to change them back afterwards. When making alterations to your property consider how easily changes can be undone and removed afterwards so that you reduce the cost of reinstating the building at the end of your lease.

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