

## **REPAIRS AND INSURANCE**

This is an overview of certain terms and conditions in commercial leases in England & Wales. Commercial leases are leases at a market rent of a retail, office, or industrial property or building at market rent usually for a term of 15 years or less.

### **Repairs**

Responsibility for repairs is a common source of dispute between landlord and tenant. The repairing obligations will be set out in the lease. In the case of a long lease of a whole building, the landlord will see the property as an investment so that the tenant should take full repairing responsibilities. In the case of a unit that is part of a larger building there will usually be a management scheme for repairing the common parts under which the tenant must make a contribution to the service charges to meet the costs of repairs.

An onerous repairing clause can entitle a landlord to serve a "Schedule of Dilapidations" requiring detailed repair and upgrade works. Leases usually provide that the landlord is entitled to inspect property and specify the required repairing works. The clauses usually state that if the tenant fails to undertake the works within a certain time limits, the landlord may enter the property to do the works and recover the costs.

A Schedule of Dilapidations can prove expensive and onerous for a tenant. In the case of a lease of a second hand building, tenants will frequently seek to have a schedule of condition incorporated so as to limit their repairing obligation to take account of the pre-existing state of repair of the building at the start of the lease.

Difficult questions and disputes can arise as to whether and to what extent repairing obligation can require a tenant to improve the premises. This would be a question of degree. A tenant repairing obligations may in practice require an element of upgrading.

In the case of a newly built property, the tenant's repairing covenant will normally apply even if the required works are due to defects in the building. For this reason, tenants should insist upon guarantees and warranties from the building contractors and designers. Alternatively, tenants may seek to remove their repairing obligations in respect of inherent latent or construction defects in the property.

A landlord will usually have repairing obligations in longer leases where there are common parts. In these cases, the landlord or management company on its behalf repairs the common parts and recovers the cost from the tenants through the service charge. This is because it is necessary that there is a mechanism to secure repair and maintenance.

Under the Defective Premises Act, a landlord who is under an obligation to repair can be legally liable for defects that cause personal injury or damage. This liability can arise even where the landlord is not obliged to repair, but has the right to do so.

A Landlord may undertake repairing obligations in short term leases.. In this case, the tenant will usually be liable for "interior" or the non-structural parts.

The Landlord and Tenant Acts provide the maximum amount recoverable by a landlord for compensation for non repair by a tenant is the amount by which the value of the reversion i.e. the landlord's interest in the property has been

diminished. Therefore the actual costs of repairs will be irrecoverable to the extent if they exceed this ceiling.

The legislation also provides that no compensation is recoverable for failure to repair if the property is to be pulled down shortly after termination of the lease or if intended structural alterations would render the repairs valueless.

### **Insurance**

The insurance obligations of landlord and tenant will depend on the terms of the lease. There are no implied obligations on either party to insure. There are different types of insurance to consider. The two principal types of insurance are in respect of damage and destruction to the building itself and insurance to cover liabilities to third parties arising from accidents and incidents on the property.

Typically, the landlord will effect buildings insurance as he will own the property. The landlord would, in any event, wish to control that the policies are put in place and ensure that full and proper cover is provided for.

Under standard practice, the tenant under a long lease pays the cost of insurance. In the case of a unit in a larger building the insurance may be included in the service charge. A tenant would ideally wish to be co-insured on the policy as there will be elements of risk and loss which it will suffer in event of destruction of the premises. However, this is usually resisted by a landlord. It will generally be possible to have a tenant's interest noted so that it would at least be notified, if the policy lapses.

Leases typically contain detailed provisions in relation to application of insurance monies in the event of damage and destruction. In longer leases the landlord is usually obliged to apply the insurance monies towards reinstatement. Usually, the landlord will be obliged to rebuild the property even if it does not have

sufficient insurance monies. This puts a very heavy onus on a commercial landlord to ensure that the risks covered and the amount insured are sufficient to enable it undertake its obligations.

The normal position is that while buildings are damaged or destroyed, the rent and tenants other obligations are suspended. The landlord should provide cover for loss of rent, which would not need to be applied towards reinstatement. There will usually be detailed clauses in relation to the position where reinstatement is not possible or practical. A tenant may look for an option to terminate in the event of damage destruction.

The issue of liability insurance is a distinct matter. Claims in respect of accidents and damage arising on or near property will usually be the responsibility of the tenant. However, the landlord may be liable for damages where the accident is in any way attributable to the original state and condition of the building. Usually a landlord will want an indemnity in respect of claims arising during the course of the lease. A landlord may require specific minimum levels of public and employer's liability insurance, to which both the landlord and tenant are parties.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.