

DILAPIDATIONS UNDER SECTION 18 CAP ON DAMAGES

In this troubled times dilapidations are once again becoming significantly contested area as the property market has been in decline.

When a tenant becomes to vacate often tenants will have given little thought to the question of dilapidations and their responsibilities to keep the landlords building in repair whereas the landlord will often have paid a high price for his investment property will be keen to extract the maximum amount of money from the tenant.

Whilst the Property Litigation Association (“PLA”) has prepared a Pre-action Protocol to be used in dilapidation cases this provides guidance only.

When a tenant is thinking of vacating it is vital that they give thought to the question of dilapidations and in particular should consider obtaining expert’s surveying advice both as the extent of any schedule and whether or not Section 18 of the Landlord & Tenant Act 1927 will provide a cap on damages.

Section 18 in effect provides that any damages which a landlord can recover shall not exceed the amount by which the value of the landlord’s reversion has been diminished as a result of the breaches of covenant and that no damage shall be recovered if it can be shown that in whatever state the premises were in they would after termination of the tenancy be demolished and/or have alterations made which would render valueless any such repairs.

As a result therefore it is vital that consideration is given as to what the landlords intentions are. Tenants should not be afraid to ask the landlord.

Under the PLA Pre-action Protocol a schedule should be served by the landlord which should include a Section 18 valuation. The RICS has also issued a Guidance Note on dilapidations highlighting that consideration should be given as to whether a diminish valuation should be prepared.

The areas relating to dilapidations is often highly complicated and emotive and careful consideration should be given at the outset as to what items actually are dilapidations. Often schedules will include many items which actually go beyond the tenants repairing covenant and even if which your matter for repair are not items which should never necessarily affect the value of the property.

A careful analysis at an early stage by professional advisors can ensure whether you are landlord or tenant you achieve the best possible outcome.

If you require any further advice or assistance with regards to any matters relating to dilapidation please contact David Whitney on 0208 735 9783 or dw@hpwsolicitors.co.uk

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