



Falcon Chambers

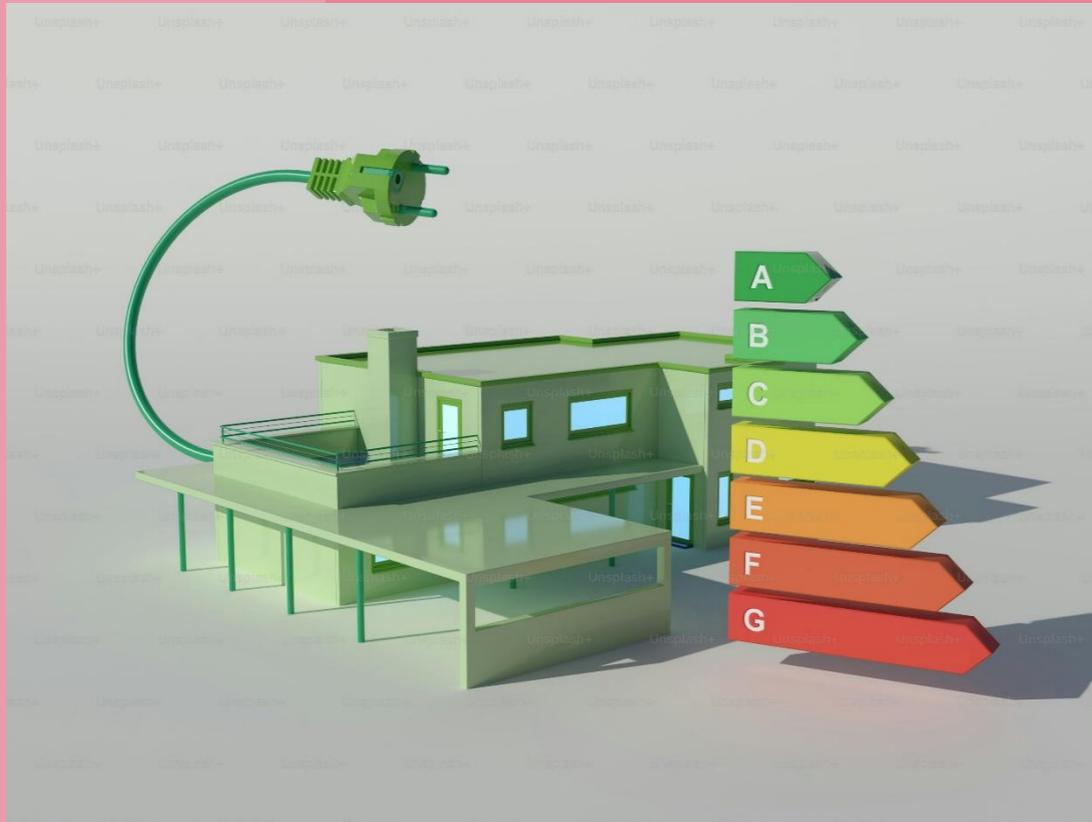
MEEES: problem solving

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What is MEEES?



Energy Efficient (Private Rented Property) Regulations 2015/692

- Current minimum level of energy efficiency is E
- The Regulations do not impose a duty to do any works
- Regulation 27 imposes a prohibition against letting sub-standard properties



- From April 2023, letting a property includes continuing to let. Some important exemptions such as leases for less than 6 months
- Regulation 2(4): The Regulations do not affect any duty to carry out works to a property
- Regulation 26: Lease of a sub-standard property is still a valid lease

What is MEEES?



Impact of MEES on Dilapidations Disputes

Can a landlord require a tenant to improve the energy efficiency of a property?

- If there is no disrepair, a landlord is unlikely to be able to rely on either a covenant to repair or a covenant to comply with statutory obligations
- If there are several methods of repair, the tenant will not usually have to choose the method which would improve energy efficiency level of the property
- Additional risks to landlord if a penalty notice is served under Regulation 38 and lease does not permit access for works



Impact of MEES on Dilapidations Disputes

MEES and s.18 of the LTA 1927

- S.18 of the LTA 1927 imposes two ceilings on damages claims for terminal dilapidations
- If the property is sub-standard and cannot be re-let, the first ceiling may be a problem for the landlord
- If the landlord intends to undertake structural alterations to improve the energy efficiency level, the second ceiling may be a problem for the landlord



MEEES and Rent Review: Troubling Hypotheticals

MEEES and Rent Review

What if the Premises are Non-Compliant on the Review Date?

- MEEES does not prevent a legal estate from being created
- **Problems with the Hypothetical Transaction**
- An assumed unlawful letting on the review date?
- Hypothetical letting only unlawful because tenant's improvements are disregarded?
- **Problems with the Hypothetical Parties**
- The real landlord may qualify for an exemption, but does the hypothetical one?



MEES and Rent Review: Troubling Hypotheticals

MEES and Rent Review

Reviewing Non-Compliant Premises

- Hypothetical transaction will proceed because it has to.
- Are there access rights for the landlord?
- Do other assumptions help?
 - Assumed fit out and ready for occupation?
 - Assumption that use will be lawful?
 - Assumption of tenant compliance with lease and statute?
- Dealing with disregards that lead to non-compliance.



MEEES and Rent Review: Troubling Hypotheticals

MEEES and Rent Review

What can the Valuer Do?

- Hypothetical transaction must take place
- But in the real market.
- Is there a market? What is it?
- What is the real risk of a penalty for unlawful lettings?
- Can exemptions be invoked (such as six month lettings, or others)?
- Does one assume reasonable cooperation to ensure compliance with MEEES?





MEEs and Lease Renewals

Can Landlords Protect Themselves on Renewal?

- LTA 1954, section 35; *O'May City of London Real Property Co* [1983] 2 AC 726
- *Cairnplace Ltd v CBL (Property Investment) Co Ltd* [1984] 1 WLR 696
- *Wallis Fashions Group Ltd v CGU Life Assurance* [2000] 2 EGLR 49
- *Clipper Logistics v Scottish Equitable*
- Law Commission Consultation Paper on 1954 Act hints that significant changes might be on the horizon



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