



Dilapidations

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Dilapidations



- (1) How do age, character, location of a building and the length of the lease affect the tenant's liability for dilapidations?
- (2) How do you apportion liability through a chain of sub-tenants?

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Valuing dilapidations

- Identify scope of T's repairing obligations
- Identify extent to which T in breach (disrepair)
- Consider age of premises
- Consider character/locality of premises
- Then consider impact of s.18(1) LTA 1927



- Scope of obligations

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Disrepair

Proudfoot v Hart [1890] 25 QBD 42

“keep the premises in such repair, as having regard to their age, character and locality would make them reasonably fit for the occupation of a tenant of the class who would be likely to take them.”

Anstruther-Gough-Calthorpe v McOscar [1924] 1 KB 717

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1. What is the physical subject matter of the covenant?
2. Is the subject matter in a damaged or deteriorated condition?
3. Is the nature of the damage or deterioration such as to bring the condition of the subject matter below the standard contemplated by the covenant?
4. What work is necessary in order to put the subject matter of the covenant into the contemplated condition?
5. Is that work nonetheless of such a nature that the parties didn't contemplate that it would be a liability of the covenanting party?

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Post Office v Aquarius Properties Ltd [1987] 1 All ER 1055
- date of comparison is date of construction

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- Likely class of tenants
- Age
- Character and locality
- Emphasis on what is reasonable

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Nature of Repair

- Repair physically possible (Hammersmith v Creska [1999] All ER (D) 644)
- Not possible to repair/repair would be obsolete (Elite Investments v Bainbridge [1986] 280 EG 1001)
- Statutory improvements (Postel Properties v Boots [1996] 2 EGLR 60)
- Flexibility to encompass improvement (Minja Properties v Cussins Property Group [1988] 2 EGLR 52)

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Inherent defects

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- Impact of Section 18(1) LPA 1927

‘Damages for a breach of covenant or agreement to keep or put premises in repair....shall in no case exceed the amount (if any) by which the value of the reversion....in the premises is diminished owing to the breach of such covenant or agreement....’

Excludes redecoration

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Latimer v Carney [2006] EWCA Civ 1417

Section 18(1) valuation

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“In particular no damage shall be recovered ... if it is shown that the premises ... would at or shortly after the termination of the tenancy have been or be pulled down, or such structural alterations made therein as would render valueless the repair covered by the covenant or agreement.”

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Passing liability down the chain

- (1) Covenants in sub-leases to perform the repairing covenants in the head lease.
- (2) Liability to repair as between head landlord and sub-tenant

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Sub-tenant's covenant with tenant

Covenants in sub-leases to perform the repairing covenants in the head lease

- Independent obligation
- Covenants of indemnity
- Performing the covenant

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As between head landlord and sub-tenant

No privity of contract, but

Direct covenants may be required on grant of sub-lease

Direct liability may arise

- On surrender of head lease
- On forfeiture of head lease

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Tiger Aspect Holdings v Sunlife [2013] EWCA Civ 1656

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