



OAK INVESTMENT MANAGEMENT GROUP



MARCH (2) 2014

Dilapidations in Real Estate

Dilapidations is the commercial real estate term for the value due to a landlord at the end of a tenancy for restituting the real estate to its former condition save normal 'wear and tear'. There are so many subjective terms in this definition that there is no surprise that this is an area that can generate huge controversy between landlord and tenant.

At the point that a tenant signs a lease (or a sub-tenant assumes one) there is typically a 'headline' rent and other important ongoing commercial commitments but there is also a promise to restore the building to state in which it was found. Typically, this does not mean that an a top specification office of the 2000s needs to be re-modelled to the top specification of the 2020s it just means that the office needs to be of the same quality as the start of the lease save for the effects of normal occupational use.

A dilapidations claim is at the end of a tenancy or when a tenant has decided to vacate a property. As a result the process can become quite contentious – because neither side has anything to lose. Unsurprisingly, the owner wants to maximise the 'damage' done and the tenant wanting to minimise the 'damage' done during the term of the lease.

The landlord and the tenant can appoint professional representatives who can try and put evidence supported figures on this. Ideally they can iron out the differences sufficiently to recommend a settlement figure to their respective clients. There are various issues here of give and take but usually a solution can be found.

Documentation is very important is the whole process. Together with the documentation at the beginning of the lease (detailing exactly how the building was when it was first occupied) all changes that have been authorised by the landlord (known as licences to alter) need to be collated and assessed as to whether the restitution was at the expense of the owner or of the tenant. The assumption with a fully insuring repairing lease would be that everything would be at the expense of the tenant unless stated otherwise.

It is easy for landlords to be glib about assumptions on dilapidations amounts, they do exist and are fully enforceable but often the sums that assumed that can be extracted from a vacating tenant are often a lot less than what might assume. It is also very important that the form and the correct legal methods are adopted i.e. serving of notices etc. needs to be done in the correct way. It is very important for an agent, an asset manager, an investment manager and ultimately an owner to be on top of the details regarding dilapidations – there is a great deal of jargon around but if this is all cut through then a clear understanding of the potential net liability can become clear.