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Q&A

Is there a time limit on claims?

Q Is there a time limit within which a dilapidations claim must be brought?

A Good practice as set out in the PLA protocol on dilapidations requires a schedule of dilapidations to be served within two months of the end of the lease.

There is no real penalty if the landlord serves a schedule later than this, however.

Technically, a claim can be brought at any time within 12 years of the end of the lease, but the longer the

landlord leaves it to bring a claim the more difficult it will be for him to establish the claim.

File under: 12 Property law. February 22, 2010

Do the plans for the property matter?

Q What if the landlord intends to demolish or redevelop the premises?

A Section 18 of the Landlord and Tenant Act 1927 does not permit a landlord to recover more from its tenant than the diminution in value of the freehold as a result of the tenants failure to honour its repairing obligations.

If the landlord has an intention at the end of the lease to redevelop the premises, the fact the premises

might be in disrepair is irrelevant, as the landlord will have suffered no loss.

File under: 12 Property law. February 22, 2010

Do I have to pay for loss of rent?

Q The schedule of dilapidations says that I have to pay the landlord for loss of rent while work is being done. Can the landlord do this?

A Yes. The landlord's claim is for the damages that he will suffer as a result of the disrepair and that can include the loss of rent during the period that it is anticipated the landlord will be unable to re-let the premises.

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unheard of for landlords and their surveyors to throw everything into a schedule of dilapidations, including (literally) the kitchen sink, regardless of whether they are matters for which the tenant is responsible under the lease.

Protocol

The Property Litigation Association Protocol on Dilapidations is intended to reduce the scope for argument.

It is not compulsory to use it, but failure to materially follow the protocol may result in costs penalties if the dispute ends up in court. To be successful there will need to be transparency between the parties and

- The schedule should give sufficient space for your comments on the breaches alleged, the extent of works and the likely cost. You should respond within a reasonable period (not usually more than six weeks). That response should be sufficiently detailed to enable the landlord to understand your views on each item
- The parties are encouraged to exchange documents at an early stage and to engage in negotiations, the parties' experts being required to meet on a without prejudice basis. Several meetings may be necessary to reach as much agreement as possible

Landlord and Tenant Act 1927, so that the landlord cannot recover more than the decrease in value of its reversionary interest in the property caused by the tenant's repair breaches.

Debate often rages over the value of the landlord's interest and what effect the tenant's breaches have on its value.

Dilapidations claims usually involve complex issues including the interpretation of the lease, the impact of legislation and the landlord's future intentions for the building.

Claims can go through lengthy and expensive negotiations, or even end up in court, because the two sides

'Find out the landlord's intentions for the building. If – for example – the pub is to be sold for development as residential flats, then the landlord cannot claim money for repair works from you'

the protocol calls for an earlier exchange of information and better pre-action investigation.

The following are some of the main points of the protocol:

- The dilapidations schedule should be served by the landlord within a reasonable time, normally not more than two months after the end of the lease

- Both parties should explore the possibilities of mediation or other forms of alternative dispute resolution as a means of resolving the claim.

Protection for the tenant

The tenant is not entirely unprotected and a partial defence is provided under section 18 of the

cannot agree on the final bill. Taking specialist advice at an early stage is therefore vital. ■

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Index

- 1 In court
- 2 Types of licence
- 3 Licence applications
- 4 Running a bar
- 5 Permitted hours
- 6 Extensions
- 7 Music/entertainment
- 8 Betting and gaming
- 9 Trading standards & measures
- 10 Employment law
- 11 Food and hygiene
- 12 Property law
- 13 Health and safety
- 14 Signs and notices
- 15 Outside the premises
- 16 Children and young people
- 17 Landlord and Tenant Act

If you have a legal query write to: Legal Advice, The Publican, Ludgate House, 245 Blackfriars Road, London SE1 9UY

