DILAPIDATIONS!...WHAT DILAPIDATIONS?

There are few topics within the Landlord and Tenant relationship more likely to give rise to disputes between a landlord and a tenant than a schedule of dilapidations served at the end of a lease. John Abbott, a property litigation partner at Silverman Sherliker LLP looks at the impact and the operation of the Dilapidations Protocol.

The scope for argument following the service of schedule of dilapidations upon termination of a lease is endless. Are there breaches? And where do they lie? Are the alleged breaches matters that are prescribed by the repairing obligations contained in the lease? In the past there has been a tendency for Landlords to throw everything into a schedule of dilapidations, including (literally) the kitchen sink, with little regard to the repairing and redecorating provisions contained in the lease and for tenants to fight every small point no matter how unreasonable.

The purpose of the Dilapidations Protocol is to bring dilapidations a thing of the past.

The Pre-Action Protocol for Claims in Relation to the Physical State of Commercial Property at the Termination of the Tenancy (the Dilapidations Protocol) came into force on 1 January 2012. It should make the endless arguments, costly and lengthy litigation over claims based on schedules of dilapidations, including (literally) the kitchen sink, with little regard to the repairing and redecorating provisions contained in the lease and for tenants to fight every small point no matter how unreasonable.

The Dilapidations Protocol supersedes the Property Litigation Association (PLA) Protocol on Dilapidations. The PLA Protocol was perhaps overly prescriptive in its attempt to set out best practice and there was no real compulsion to follow it.

It is now almost a year since the Dilapidations Protocol was formally adopted as part of the Civil Procedure Rules and landlords, tenants and their surveyors now have to get used to working under the regime of a pre-action protocol.

The Introduction to the Dilapidations Protocol sets out very clearly its purpose in these terms:

“The Protocol sets out conduct that the court would normally expect prospective parties to follow prior to the commencement of proceedings. It establishes a reasonable process and timetable for the exchange of information relevant to a dispute, sets standards for the content and quality of schedules and Quantified Demands and, in particular, the conduct of pre-action negotiations.”

So from this introduction alone it can be seen that:

1. The court will at some point consider the pre-litigation conduct of the parties.
2. The parties will be expected to follow the processes and timetables set out by the Protocol.
3. The parties must exchange information because transparency is paramount.
4. Schedules of dilapidations should follow the standards set by the Dilapidations Protocol for content and quality.
5. The parties are expected to participate in pre-action negotiations.

Of course much of this is not new, even without a pre-action protocol most dilapidations claims settled without the need for litigation. Dispute resolution lawyers are used to pre-action protocols. They are nothing new. Pre-action protocols have been an integral part of the Civil Procedure Rules for many years and for various types of claim. Where a specific protocol does not exist lawyers are expected to behave as if one did exist.

The Dilapidations Protocol sets out three objectives:

1. To encourage an early and full exchange of information.
2. To enable the parties to avoid litigation by agreeing settlement before proceedings.
3. To support the efficient management of proceedings if litigation cannot be avoided.

The things both parties should do.

1. Respond to the landlord within 56 days.
2. Use the schedule provided by the landlord (where appropriate).
3. Respond in sufficient detail to enable the landlord to understand the tenant’s views.
4. The Response should include certain endorsements.
5. Negotiate. There should be a meeting within 28 days of the tenant’s Response.
6. Consider Alternative Dispute Resolution as a means of achieving a resolution. In my experience, mediation is very effective in bringing about a settlement.

With so much scope for argument in any schedule of dilapidations, the Dilapidations Protocol provides and encourages the parties to take a reasoned and rational approach towards the dilapidations claim. This should lead to early and less expensive resolution of claims than may have previously been the case. Failure to substantially follow the protocol requirements may result in sanctions so it is in the parties’ interests to work together and follow the spirit of the Dilapidations Protocol.

The things the landlord should do.

1. The schedule should be prepared in accordance with the forms annexed to the Dilapidations Protocol itself and should be separated into relevant categories such as repair, reinstatement and redecoration. This should make it easier for the breaches to be identified and related to the relevant lease provisions.
2. The schedule should be sent within a reasonable time, in most cases 56 days after the end of the lease will be considered to be a reasonable time.
3. The schedule should contain certain endorsements, perhaps the most notable one is an endorsement regarding the landlord’s intentions for the property.
4. If there is a Quantified Demand the schedule should set out and substantiate the monetary sum claimed.
5. The things the tenant should do.
   • Respond to the landlord within 56 days.
   • Use the schedule provided by the landlord (where appropriate).
   • Respond in sufficient detail to enable the landlord to understand the tenant’s views.
   • The Response should include certain endorsements.

John Abbott, Partner Silverman Sherliker LLP

www.silvermansherlikerco.uk
MAP ANNOUNCES THE WINNER OF IT’S CHRISTMAS QUIZ

MAP’s Christmas Quiz proved to be very popular. After sifting through many answers we are pleased to announce Kerry Walker from Todd & Hartridge as the winner of a superb jeroboam of champagne. Well done Kerry. I hope you didn’t drink it all at once!

ONLINE QUOTATION – A BIG SUCCESS

MAP’s 24 hour online quotation has proved to be a great success.
It’s quick, simple online quote system accesses database information to supply an on-the-spot quotation. Why not try it for yourself?
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ASBESTOS IS BIG NEWS

On the 27th February MAP hosted its first CPD Presentation of 2013. The presentation focused on asbestos and we were astounded by the response we received from the property and legal sector. Needless to say, the event was a great success.

The presentation covered many aspects of asbestos and included some very interesting case studies adding to an informative and interesting CPD. Each attendee received an attendance CPD Certificate and at the end of the event we invited guests to indulge in light refreshments and liaise with other attendees.
We would like to take this opportunity of thanking ASI Environmental Limited, David Grocott, Managing Director and Candice Pollitt, Head of Marketing for presenting the CPD and to everyone who travelled to attend the event. Our next CPD Presentation is Noise Nuisance/Pollution; full details are featured on the last page of this newsletter.
The last few months has seen wind, rain, ice and snow in the UK. All weather conditions influence the condition of your property. Your property is probably the most valuable asset you have, whether you are a first time buyer, a landlord or a seasoned homeowner and in this current economic climate repair bills are an unwelcomed necessity.

MAP has compiled 10 Top Tips on how to minimize the damage to your property during a winter spell and thus save you time and money.

1. On a regular basis clean out your gutters removing any leaves and debris in order that any ice, melting snow or rain can flow freely.
2. Make sure downpipes are in good repair. This will aid with the correct flow of rain water.
3. To avoid burst pipes, insulate any exterior pipes with insulation sleeves.
4. Fix any small cracks in masonry. This will keep water from getting in between the bricks, expanding as it freezes and causing larger cracks.
5. Check pipes for small cracks and any small leaks and have them repaired.
6. Service your heating system and chimneys at least once a year to prevent fire and smoke damage.
7. Heavy rain, snow or storms can cause weak trees or branches to break and fall, which may damage your home or cause injury to people, by trimming trees and removing dead branches before the winter sets in will minimize the risk.
8. Are you in a flood risk area? If so, move any treasured possessions or important documents to a higher level.
9. Ensure the air bricks to the ground floor of your property are free from obstruction and that there is an adequate flow of air. This will reduce the risk of serious rot and damp beneath the timbers.
10. Have a specialist check any large trees near your property to avoid the risk of root damage to your property foundations.

We hope these tips prove useful during the cold spells. If you have any concerns regarding cracking, are unsure whether you are in a flood prone area or have any other property related concerns please feel free to contact us with your questions. MAP is always keen to help.

Tel: 0845 63 44 187
Email: surveys@mapsurveyors.co.uk

Jane Pilkington
MAP Surveyors

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**A: Settlement usually occurs in new or relatively new buildings or new additions to existing buildings. This is due in part to the compaction of the subsoils because of the weight of the new structure, and partly due to the drying out of the various materials, that will dry at different rates. Normally, the movement will stop after a period of time, with no additional works required other than filling and redecoration of the cracks.**

Most buildings move to varying degrees due to seasonal movement. This is due to differences in temperature and humidity. Older properties with lime mortar were able to flex and move, so when cracks appeared, say in summer, they were able to close up again in winter:

Subsidence on the other hand is more serious, and is the result of the ground beneath the foundations not being able to support the weight of the building. This is evidenced by cracks at weak points of a building, usually around window and door openings. These cracks are usually diagonal and extend through the walls, being seen on the inside and outside wall surfaces.

Trees and clay subsoil are noted for being a contributory factor in causing subsidence. This is because trees remove moisture from the subsoil (clay), which then shrinks causing the foundations to sink. Another cause is defective drains, where water erodes the subsoil which in turn is unable to support the weight of the building, causing it to sink.

The opposite of subsidence is heave, where the ground swells due to the absorption of water causing buildings to rise.

If you are worried you may have subsidence please contact MAP for expert advice.

Tel: 0845 63 44 187.
MAP’S FAVOURITE ESTATE AGENT OF THIS QUARTER

Hunters Estate Agent – Camberwell

This quarter MAP would like to highlight the efforts of Brett MacDougall, Director of Hunters Estate Agent. MAP has always found Brett to be extremely helpful, professional and knowledgeable with regards to the properties Hunters undertake and the geographical area he serves. By working hand-in-hand with MAP his clients receive a first rate service. Thank you for all your assistance.

I found your service very good, especially the follow up conversation I had with your surveyor. I would use your services again and recommend any friends or colleagues to use you.

Mr. & Mrs. Q – Bromley

It was a very good service I received from you and we were very pleased. I would use MAP again and also recommend you to other people. Thank you.

Mrs. K - Loughton

Free CDP Presentation
Hosted by

WE ❤ MAP

Noise Nuisance/Pollution
1 hour FREE CPD presentation
The CPD Presentation will provide professionals with a very broad understanding of Noise Nuisance/Pollution.

Content
• Planning – Noise related Planning conditions are often based on criteria within BS8223. What does this mean to you?
• Building Regulations – Approved Document E (ADE). What to look out for.
• Neighbour disputes / noise complaints. Who is responsible?
• Conversions – Turning a house into flats. What are the requirements?
• Robust details vs ADE. Which route should you choose for your residential development and why?
• Expert Witness.

Benefits of attending this Free CPD
• The CPD presentation is suitable for residential as well as commercial property lawyers and property linked companies.
• Companies involved in property transactions will acquire a practical understanding.
• The presentation is supported by a number of case studies.

Speakers: Simon Taylor and Dave Clarke
SRL Technical Services Limited
Light refreshments will be provided at the end of the presentation.

Time: 3.30pm
Venue: Holiday Inn Bexley, Black Prince Interchange, Southwell Road, London DA5 1ND

To register for this free event email: jpi@mapsurveyors.co.uk

www.mapsurveyors.co.uk

Remembering one life by protecting another
Helping more children to grow up loved, valued and able to fulfil their potential is a wonderful way to remember a loved one.

The NSPCC can provide special collection envelopes, making it easy for friends and family to donate at memorial services.
Some people also find setting up an NSPCC tribute fund to someone’s memory an inspiring and enduring way of honouring that special person by protecting children in their name. To set up a fund, please visit nspcc.tributefunds.com
For more information please call 020 7825 2939 or email tribute@nspcc.org.uk

Children are precious
Thank you for supporting our work with them.

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