

DILAPIDATIONS CLAIMS: AN OVERVIEW

1. Introduction

1.1 At the heart of any dilapidations dispute is the appropriate meaning to attribute to the words of a repairing covenant. This paper considers, first, the process of construing repairing covenants and establishing whether a landlord or a tenant has a remedy in any given case. Secondly, the various remedies open to the parties will be considered. This paper is, as the title suggests, an overview of a particularly voluminous and complex topic. The purpose is, therefore, to provide a sketch of the various aspects of a typical dilapidations claim (whether by a landlord or a tenant), highlighting some of the issues which might require further consideration in the circumstances of a particular case.

1.2 This paper is not concerned with claims in the residential context, where the principles set out below are supplemented by statutory intervention (such as the covenants implied by section 11 of the Landlord and Tenant Act 1985).

1.3 Whilst, ultimately, it will be for a Judge to determine the disputed issues, in a dilapidations claim, much will turn on the strength of the expert evidence. In all but the most straightforward claims, experts will be engaged by both parties and it is important to ensure that the evidence supports the claim or defence to which it relates. Expert evidence is considered, briefly, below, at paragraph 5.7.

2. The Approach to Liability

2.1 The first section considers how to approach an allegation that there has been an actionable breach of the repairing covenant. The authors of *Dowding & Reynolds on Dilapidations* (4th Edition) have devised a five-stage process of analysis, which is considered, below.

Stage 1: Identify the subject matter of the covenant - What physical item is the landlord or tenant being asked to repair?

2.2 An ideal lease would set out very precisely the item or part of the demised premises in respect of which the landlord or tenant has undertaken a given obligation. However, it is common to find that general words such as “structure”, “exterior”, or “the demised premises” have been used. Draftsmen will also use precedent leases which may not be suitably adapted to the particular building in question. The following points should be borne in mind.

2.3 The question is one of construction. The descriptive words used in clause, any plans attached to the lease, and the physical nature of the premises are all relevant to the exercise. In one case a covenant to repair the “main timbers” in a lease of a steel framed building was construed as referring to the steel frame (Plough Investments Ltd v Manchester City Council [1989] 1 EGLR 244).

2.4 There are often cases, especially in leases of parts of buildings, where the network of leases does not carve up the parts of the building between the tenants with precision. So for example, joists in the floor space between the third and fourth floor of a block may equally belong to the ceiling of the third floor or the floor of the fourth floor. Simply referring to the demise as “the third floor flat” does not assist. There are several presumptions that can operate, subject to contrary indications in the leases:

- (1) A lease of a top floor of a multi-occupied building generally does not include the common roof.¹

¹ Cockburn v Smith [1924] 2 KB 119.

- (2) A lease of an entire building generally does include the roof.²
- (3) The roof space will probably be included with the demise of a top floor.³
- (4) The whole of the external walls enclosing the property is usually part of the demise, in the absence of an express⁴ or implied indication to the contrary.
- (5) Anything projecting from, or affixed to, the external walls is usually part of the demise.⁵
- (6) Internal vertical walls between two neighbouring demises probably each include one half of the wall.
- (7) The floor (for example, of a first floor flat) will extend at least to the underneath of the structure supporting the floor above it.⁶

2.5 In accordance with the general rule that anything attached to the land becomes part of it, if the tenant makes any alterations or additions affixed to the property they become part of the demise. Reinstatement of alterations is a topic in itself which is not the subject of this seminar.⁷ For present purposes, it should be assumed that repairing obligations will apply equally to the alteration or addition.

² Strandley Investments Limited v Barpress [1987] 1 EGLR 69.

³ Hatfield v Moss [1988] 2 EGLR 58.

⁴ In a well-drawn commercial lease, it is common to find not only a list of those items within the building which form part of the demised premises, but also those items specifically excluded.

⁵ Sturge v Hackett [1962] 3 All ER 166.

⁶ Graystone Property Investments Limited v Margulies (1984) 47 P & CR 472.

⁷ However, frequently, a significant part of the average schedule of dilapidations will be devoted to the reinstatement of alterations, if not in terms of the number of items in the schedule, at least in relation to the overall cost of compliance. This, therefore, is a topic which must also be considered in some detail when considering how to make or respond to a commercial dilapidations claim.

2.6 There are certain stock phrases which have been the subject of substantial consideration and interpretation by the court, although the terms of a particular lease and its context will always take precedence over judicial decisions relating to the same phrase, but in a different document with a different contextual background.

- (1) *Building*: This word is subjective and depends on the facts and circumstances of each case. *“It is impossible to give any definite meaning to it in the loose language which is used in some cases. Anything which in the nature of a building might be within one covenant and the same erection might not be a building with reference to another covenant”* – Paddington Corp v A-G [1906] 1 AC 1.
- (2) *Structure*: Can either appear as a synonym for “building”, i.e. by way of reference to a structure in its own right, but might also (more usually) be used in the sense of “the structure of a building”, i.e. a subsidiary part of the whole. This can be taken to mean each and every part of the building bar decorative items, or it could mean only the essential structural elements, e.g. supporting walls/foundations etc.
- (3) *Main structure*: “Main” qualifies “structure”.
- (4) *Exterior*: Generally includes all external parts – i.e. roof, chimneys, external cladding, gutters, pipes walls, doors, windows and window frames – “the skin of the house”. Distinct from “structure”.
- (5) *Interior/interior of the demised premises/internal parts of the premises*: First, define the demised premises. Then, invert meaning of exterior – usually includes all internal parts, visible or invisible, structural or decorative. Windows can be problematic – are they internal or external?

- (6) *Main walls*: “Main” qualifies “walls”. “*Those which support the structure of the building or have directly to do with its stability*” - Holiday Fellowship Ltd v Hereford [1959] 1 WLR 211.
- (7) *Main timbers*: “Main” qualifies “timbers”.
- (8) *Roof*: Usually includes the exterior of the roof and its supporting structure, excludes non-roof elements e.g. chimney stacks, parapet walls and guttering.
- (9) *Windows*: Usually includes all parts of the window – frame and glass. Skylights and horizontal glazing is more difficult. Could form part of roof or wall. However – “*A window is not less a window because it is not capable of being opened, nor is it less a window because it is not fixed in a vertical plane*” – Easton v Isted [1903] 1 Ch 405. Modern glass buildings require more care in drafting, because in lay terms may more naturally be said to have glass walls or ceilings.
- (10) *Landlord’s fixtures*: Could refer to items affixed after the letting of the premises, whether by landlord or by tenant but which he has no right to remove. Either way it is likely that it only includes things which can be described as fixtures, and does not refer to integral parts of the building.

Stage 2: Is that item in a damaged or deteriorated condition or not?

2.7 There can be no breach of a repairing obligation unless there is disrepair. This may seem to be an obvious truism, but in fact there can be circumstances where a building is in a particularly bad condition without there being material disrepair to an item or feature for which the landlord or tenant is responsible. The question is whether that item is in worse physical condition than it was previously.

2.8 In the case of Post Office v Aquarius Properties Ltd [1987] 1 All ER 1035 the basement was ankle-deep in water after a rise in the water table. The tenant's covenant was to "*keep in good repair and condition the demised premises and every part thereof*". The building had been erected in the 1960's, and the water was able to enter the basement because of defect in the construction of the kicker joint between the walls and floor. Apart from that the kicker joint was in the same physical state that it had been when it was put in, and the water had not caused damage to any part of the building. It was said that there was "*no escape from the conclusion that if, on the evidence, the premises demised are and at all times have been in the same physical condition...as they were when they were constructed, no want of repair has been proved for the which the tenants could be liable under the covenant.*"

2.9 That decision followed an earlier decision of the Court of Appeal in Quick v Taff-Ely BC [1986] QB 809, in which a tenant sued the council landlord in respect of a house which, as a result of severe condensation, damp and mould, was "*virtually unfit for human habitation*". The claim was made under s.11 Landlord and Tenant Act 1985, under which the landlord had an obligation to keep the structure and exterior of the house in disrepair. The tenant wanted the landlord to replace the metal windows and lintels with wood or UPVC. However, the house was an old build, built as per the regulations and building standards then in force. The metal windows and lintels were still in good condition *per se* and there was therefore no disrepair to be remedied. Dillon LJ said: "*..the key factor...is that disrepair is related to the physical condition of whatever has to be repaired, and not to questions of lack of amenity or inefficiency.*"

2.10 The outcome in Quick v Taff-Ely may have been different if the landlord had been under an obligation to repair or keep in repair the decorative or interior

elements of the premises. Such an obligation may have required more than merely cosmetic works, although this is a question which belongs to Stage 4 (paragraph 2.24 et seq below). However, as the statutory obligation was only to keep the structure and exterior of the house in repair “*the covenant [only came] into operation when there [had] been damage to the structure and exterior which requires to be made good*”.

2.11 In considering whether the item is in a worse condition “than it was previously” the historical date of comparison is the date of construction and not the date of the lease. “...[I]f, on the evidence, the premises demised are and at all times have been in the same physical condition...as they were when they were constructed” – Post Office Ltd v Aquarius; the comparison is therefore between “...the condition now and the condition at the date of construction” – Gibson Investments v Chesterton Plc [2008] 2 P&CR 494.

2.12 Damage or disrepair is a question of the physical state of the item. It does not have to be a total failure of function – nor does a failure of function equal disrepair (consider the kicker joint in Post Office Ltd v Aquarius). Ordinarily only those items which are the subject of the repairing obligation are relevant, but there are times when repair to part of a whole can lead to the reasonable conclusion that the whole requires repair or replacing.

2.13 A more nuanced approach is required in respect of covenants to “*keep in good repair and condition*”. *Prima facie* it can be argued that if there is no disrepair or damage then the item is in good repair and condition and no work is required by the covenantee. However, in Credit Suisse v Beegas Nominees Ltd [1994] 4 All ER 803, Lindsay J. considered such an approach to be too rigid. In that case he was considering a landlord’s covenant to keep a building in good and tenable condition. He said,

“One cannot sensibly proceed from ‘No disrepair, ergo no need to repair’ to ‘No disrepair, ergo no need to put or keep in the required condition’...all that is needed, in general terms, to trigger a need for activity under an obligation to keep in (and put into) a given condition is that the subject matter is out of that condition...”;

and in that case held that the necessary condition was such

“...as having regard to the age, character and locality of the property, would make it reasonably fit for the occupation of a reasonably minded tenant of the class likely to take it...”.

2.14 This consideration aside, if there is no disrepair or damage by reference to the date of construction then no obligation under the repairing covenant is triggered and the analysis stops here.

Stage 3: If it is, is it in such a bad state as to fall below standard required by the repairing covenant?

2.15 Assuming there is in fact deterioration or damage, has it been so bad that the obligations under the repairing covenant are triggered? It is not enough for a claimant to say that there is disrepair. He must be able to say that there is disrepair which makes the item fall below the legal standard imposed by the term of the covenant.

The general covenant to repair

2.16 In Proudfoot v Hart (1890) 25 QBD 42 Lord Esher MR said “good repair” meant “much the same thing as tenantable repair”. Scrutton LJ said in Anstruther-Gough-Calthorpe v McOscar [1924] 1 KB 716 –

“I do not think there is any substantial difference in construction between ‘repair’, which must mean ‘repair reasonably or properly’ and ‘keep in good repair’ or ‘sufficient repair’ or ‘tenantable repair’ or most of the various phrases cited to us”.

2.17 The general covenant is to keep the item in substantial, as opposed to perfect, repair. It is usually assessed by reference to the age, character and locality of the premises, as would make them reasonably fit for the occupation of a reasonably minded tenant of the class likely to take them. That standard was used in Credit Suisse v Beegas (see above), but it is based on much older 19th century authority, going at least as far back as Belcher v Mackintosh (1839) 2 Moo. & R 186, and Proudfoot v Hart, and approved by the House of Lords in Summers v Salford Corp [1943] AC 283.

2.18 Obviously over time and especially during the course of long leases the character of a locality and the class of tenants it attracts is likely to evolve. The general rule is that in this case the reference date **is the date of the grant of the lease**. This is in obvious contrast to the reference date for the physical disrepair, which is the date of construction. The sense of this approach is a reflection of the fact that it is aimed at defining the standard of repair the contracting parties had in mind when they entered the contract. That standard is the legal obligation imposed on the covenantee, and remains so even if the passage of time might have eroded or improved the quality of the surrounding area.

2.19 It follows *a fortiori* that the standard imposed is unaffected by any breaches of the tenant’s or landlord’s own obligations. The covenantee cannot argue that as a result of his historical failure to repair, the building is now commercially unattractive and requires a lesser standard of repair. However the age of a building can affect the standard of repair expected. Again in Proudfoot v Hart Lord Esher MR said:

“...the age of the house is very material with respect to the obligation both to keep and to leave it in tenantable repair. It is obvious that the obligation is very different when the house is fifty years older than it was when the tenancy began”.

In a more modern context, Scott J said in Plough Investments Ltd v Manchester City Council [1989] 1 EGLR 244,

“Nor, in my opinion, would the [obligation to repair] include the removal and replacement of every cracked brick or block, no matter how small the crack. There were cracks when then leases were granted. A building of this sort, over 60 years old, is bound, in my view, to have some cracks in the bricks or blocks.”

So although the original repairing obligation is defined by reference to the buildings character and age etc. at the date of the lease, those aspects which relate to the natural ageing of the building will not transmute into more onerous obligations as time goes by. The tenant is not required to return the building to the landlord in the same condition as it was when it was let. He is required to return in such condition as is appropriate in relation to its age from time to time.

2.20 In considering the condition of the premises at the date of the lease it is important to distinguish between their general condition and particular items of disrepair. The general condition is relevant to assessing the standard of repair agreed upon between the parties. The standard they will be taken to have agreed will differ if the lease is of an old three bedroom terraced house in a slum area or of a multi-story AAA rated development in Canary Wharf. But specific items of disrepair will be taken to fall within the scope of the covenantee's obligations.

2.21 If, for example, the tenant undertakes to put or keep the roof in good and tenantable repair, then he will be obliged to repair the roof even if it was already

in disrepair at the date of the lease. His covenant amounts to an agreement that he will leave the premises in better condition than when he found them, if there were defects at the start of the lease. In Payne v Haine (1847) 16 M&W 541 it was said that:

“If, at the time of the demise, the premises were old and in bad repair, the lessee was bound to put them into good repair as old premises; for he cannot ‘keep’ them in good repair without putting them into it. He might have contracted to keep them in the state in which they were at the time of the demises. [But] This is a contract to keep the premises in good repair, as old premises; but that cannot justify the keeping them in bad repair because they happened to be in that state when the [tenant] took them.”

2.22 In ordinary terms the physical life span of a building may be different than its commercial life span. This is particularly true in the case of purpose built structures. One need only think of the Millenium Dome or the new Olympics 2012 athletics stadium for recent and current examples. The athletics stadium currently being built at Stratford will no doubt be physically able to last for many years, but even now it is being debated whether it can survive as commercially useful structure once the Olympics are over. Fast forwarding to the closing ceremony of the Olympics 2012, could the tenant of the stadium argue then that its commercial life expectancy is relevant to the standard of repair? The effect of Ladbroke's Hotels Ltd v Sandhu [1995] 2 EGLR 92 per Robert Walker J is that it will not. It may well be relevant for the purposes of calculating damages under s.18 Landlord and Tenant Act 1927 (as to which see 3.27 to 3.34 below), but it should have no impact on the essential question that the building in question in terms of its age and structural life expectancy ought to be put into or kept up to a particular standard.

2.23 Sometimes, there is an exception for “fair wear and tear”. The ordinary effect of such a formula is to relieve the covenantee of liability for ordinary and reasonable use of the premises contemplated by the lease, and the normal action

of nature over the course of time. However liability can arise in respect of damage consequential to fair wear and tear. For example, some rendering may crack slightly as a result of wind and rain over time. That is fair wear and tear and the covenantee need not remedy it. But if, as a result, water seeps in and causes water damage, rotting timbers etc., the covenantee may well be liable to repair. In Regis Property Co Ltd v Dudley [1959] AC 370 the House of Lords held only defects which are the direct result of fair wear and tear are excluded. In this example, only the crack need not be repaired, but the water damage must be addressed. Of course, it may be that the best way to remedy the water damage is to seal the crack, but again that is a Stage 4 question, to which we now turn.

Stage 4: What needs to be done in order to bring it up to the standard expected by the repairing covenant?

2.24 The basic rule is that the work which the covenantee is obliged to perform is that which is reasonably necessary to remedy the defect in the item. It may include work making good, but it will not extend to work which is merely desirable but not necessary. There are more complicated features which arise, for example when there are several methods which could achieve the same purpose and when one balances cheaper but repetitive patch repairs which will address the immediate damage versus more expensive one-off, but longer lasting repairs.

2.25 These questions are often particularly pertinent for a landlord who may have carried out repairs he wishes to recover through service charges, or under a Jervis v Harris clause against a non-repairing or non-cooperative tenant. The tenant may often challenge the repairing method adopted by the landlord and the amount of money it cost, arguing that even if the work had to be done it could have been done less extensively and/or more cheaply.

The rule of thumb

2.26 The basic rule is that the repairing party must adopt such a method of repair as a reasonable surveyor might advise is appropriate in all the circumstances. This may extend to an obligation to replace entirely if patch repairs are not reasonable or sensible. The mode of repair only needs to be *a* sensible method of repair – there may well be several methods of achieving the same result. Whichever method is chosen it should be effective to put the damaged item into the necessary standard required by the covenant.

2.27 Where all other considerations are equal the cheaper option is generally the appropriate one. This may differ slightly in the context of a landlord carrying out works under service charge provisions because in those circumstances, as the landlord may be exercising a right and not performing an obligation. There may be more leeway to allow the landlord to carry out more expensive work if it is reasonable in all the circumstances.

Works going beyond immediate patch repairs

2.28 There is no point adopting a method if it will only need to be repeated again and again. In Gibson Investments Ltd v Chesterton [2002] 2 P&CR 494 Neuberger J said:

“The person carrying out the work should ensure that the work he carries out is not futile. In some circumstances, therefore, performance of the covenant is not achieved if the work proposed will not remedy the covenant [problem] once and for all”.

2.29 This principle explains the decision, for example, in Elmcroft Developments Ltd v Tankersley- Sawyer [1984] 1 EGLR 47 where the landlord was required to insert an entire damp proof course rather than simply patch up repairs to plaster as and when it became affected by damp.

2.30 Another facet to consider is that there will often be occasions when a surveyor would advise that it is reasonable to carry out a combination of work which addresses immediate repair issues and also aims to prevent future damage. This may be a question of cost-effective repair work, and/or an inherent feature of a job well done. The case law on this subject establishes that work does not cease to be repair merely because it includes preventative measures aimed at preventing future disrepair.

The standard of work

2.31 Obviously the standard of the work must be such that the standard required by the covenant is met. Given that the covenant standard can be affected by the age, character and locality of the building, it is possible that there might be some variation in the commensurate standard of work. So, for example, regular red stone brick may be appropriate for an average suburban house, but Regency stone would be appropriate for mansion block on the perimeter of Regents Park, London. The same flexible yardstick is applied to assessing the requisite standard of workmanship.

Stage 5: Is the work, despite the fact that it is below the standard expected by the repairing covenant, nevertheless of such a nature that it was not contemplated by the parties?

2.32 Despite all that has been said about the covenantor being under duty to carry out the work necessary to bring the item in question up to the standard contemplated by the covenant it remains important that what is being required of the covenantee is an act of repair, and not something above and beyond that. If the work demanded by the covenantee goes above and beyond mere “repair” then

the court may well find that its demand goes beyond the level of work that was originally intended by the parties.

2.33 First, it may be the case that the covenantor is faced with an “inherent defect” in the design of the building or premises. This refers to an inherent defect or flaw in the design of the building, as opposed to a defect in the quality of the workmanship or materials. This kind of defect may become apparent over time, for example, as building techniques develop and improve. That said, the concept of inherent defect has rarely assisted parties seeking to avoid repairing obligations. In Ravenseft Properties Ltd v Davstone (Holdings) Ltd [1980] QB 12, where the defence failed, the test was said to be “...*whether that which the tenant is being asked to do can properly be described as repair, or whether the on the contrary it would involve giving back to the landlord a wholly different thing from that which he demised*”.

2.34 Second, and more usefully, the court may consider whether as a matter of fact and degree the proposed works amount to repair or something more than that. That exercise is very subjective and fact-sensitive. The courts have avoided applying a precise definition to the scope of the word “repair”, but rather, have sometimes compared and contrasted it with words and phrases such as renewal, improvements, important improvements, different in substance, different in nature, and giving back a new and different thing. To cite Neuberger J in Gibson Investments Ltd, and with overtones of Ravenseft v Davstone;

“The cases establish...that the work will not be repair if it involves giving something back to the landlord wholly different from that which he demised”.

2.35 This latter “fact and degree” approach is much more widely tested in the case law, and the question it poses has been set against a wide variety of factual

circumstances. As the question is by definition subjective it is not easy to deduce hard and fast rules, but a variety of factors can be identified as relevant to the analysis in general.

2.36 First, and unsurprisingly, the age, character and locality of the premises are important. If the building is very old, and especially if it is very old at the beginning of the lease, work may well be outside the scope of repair. In Lister v Lane [1893] 2 QB 212 Lord Esher MR said “...a tenant who enters upon an old house is not bound to leave it in the same state as if it were a new one”. In Torrens v Walker [1906] 2 Ch 166, and in holding the covenantor not liable in respect of a 200 year old building Warrington J recorded that “*The building...was absolutely worn out and had come to the end of its time. Its condition was not due to any neglect on the part of the lessor, but to the effect of time and the elements on the materials used...*”. A covenant in respect of a new build is, in contrast, much more likely to be upheld as genuine repair work – indeed there are cases where the date for judging the appropriate condition was the date of expiry of the lease and not the start date (e.g. where the covenant was to leave the premises in good and tenantable condition).

2.37 Second, the length of the lease is also a factor which weighs in the balance. In Lister v Lane the lease was only for seven years. If it had been a much longer lease it may be that Lord Esher MR would have been less quick to find that repair works which amounted to substantial rebuilding of an old building were not within the scope of the repairing covenant. In Norwich Union Life Assurance Society Ltd v British Railways Board [1987] 2 EGLR 137 the lease in question was for 150 years, and Hoffmann J said:

“...in such a case it is not as inconceivable as it would have been in Lister v Lane that the tenant should have accepted an obligation to rebuild the premises when they come to the end of their natural life”.

2.38 Third, is the covenantor the tenant or the landlord? In Ravenseft v Davstone the landlord was liable to install a damp proof course; in Eyre v McCracken [2000] 80 P&CR 220 the tenant was not.

2.39 Fourth, the nature of the work – does it involve repair of part or of the whole? Does it involve structural repair? Will the covenantor be obliged to carry out the work in certain way by legislation or will modern methods radically improve or alter the premises? Another consideration is the cost of the works relative to the value of a whole new building. If the cost of works is so high as to be comparable to rebuilding an entire structure it strongly suggests that what is being sought goes beyond mere repair.

3. Landlord's Remedies

3.1 The following remedies are available to a landlord where the tenant is in breach of a repairing covenant:

- (1) Forfeiture;
- (2) Damages;
- (3) Entry to carry out the works and recovery of the cost as a debt; and
- (4) Specific Performance.

3.2 The choice between these remedies will usually turn on the specific facts and the landlord's ultimate aim.

Forfeiture

3.3 The landlord will only have the right to forfeit a lease where it contains a proviso for re-entry on a breach of covenant by the tenant. The effect of forfeiture is to bring the lease to an end, together with any sub-leases carved out of it. The tenant will have the right to apply for relief from forfeiture, under section 146(2) of the Law of Property Act 1925 and sub-tenants will have the right to apply for a vesting order under section 146(4). This is relevant because ordinarily, the court will only order relief where it is conditional upon the works required to comply with the repairing covenant being carried out. Forfeiture is usually, therefore, an indirect means of compelling the tenant to comply with the covenant, but with a more imminent threat of compulsion than arises in relation to an order for specific performance.

3.4 There are various pitfalls to consider when a landlord is seeking to forfeit a lease. First, it is necessary to ensure that the landlord had not waived the right to forfeit. Waiver usually occurs where the landlord accepts rent with knowledge of the breach of covenant, thereby unequivocally accepting that the lease is to remain on foot rather than be terminated by forfeiture. However, this is unlikely to arise in relation to a standard repairing covenant, since a breach of a covenant to keep in repair is a classic example of a “continuing breach”, whereby a fresh breach of covenant occurs every day the premises are out of repair.

3.5 Secondly, a notice must be served on the tenant which complies with the requirements of section 146 of the Law of Property Act 1925. The notice must specify the breach complained of, require the tenant to remedy it, in so far as it is capable of remedy and require the tenant to make compensation for the breach. It is only if the tenant fails, within a reasonable time of the notice, to remedy the breach or pay compensation, that the landlord is entitled to proceed to forfeit the lease. Where the breach is of the repairing covenant, the section 146 notice requires only that the breach be specified, not the work required to remedy the

breach. Sometimes, a schedule of dilapidations sets out only the remedial work which the tenant is required to carry out rather than identifying the defects which are said to amount to a breach of covenant. This is likely to fall at the first hurdle, as it does not comply with the requirements of section 146.

3.6 Often, a section 146 notice will stipulate a time-limit in which the tenant must complete the remedial works required in relation to the specified breaches. This is not necessary. All that section 146 requires is that a reasonable time should elapse between service of the notice and the forfeiture of the lease. If the notice actually goes further and specifies, at the outset, what the landlord considers to be a reasonable time, the landlord runs the risk that the time stipulated will be held to have been unreasonably short and thereby invalidated the notice. Conversely, if no time is specified, but the landlord issues forfeiture proceedings prematurely, it is only the proceedings which will be invalidated, not the section 146 notice and it will not be necessary to go back to square one by serving a fresh notice.

3.7 The length of time considered reasonable to remedy the breaches will vary from case to case. In all but the most minor cases, it will be necessary to take into account the need to instruct a surveyor, for that surveyor to inspect and report to the tenant, draw up plans and specifications, to tender the works and compare the prices of the tenders received. The question of what amounts to a reasonable time is one which, if disputed, would turn on expert evidence and therefore a landlord should consult with his surveyor as to when proceedings should be issued after service of a section 146 notice. However, where a tenant has made it clear that it has no intention of complying with a notice, the landlord is not required to wait a reasonable time before forfeiting: Billson v ResidentialAparments Ltd (No. 1) [1992] 1 AC 494.

3.8 Where a landlord proposes to forfeit by physical re-entry, rather than issuing proceedings, the risk is that a tenant will seek an injunction to be re-

admitted to the premises if it is considered that a reasonable time has not elapsed. Moreover, where the re-entry is later held to have been unlawful, the tenant may well have a claim against the landlord in damages. Therefore, in all but the most obvious of cases, it is preferable to err on the side of caution and to issue proceedings.

3.9 In relation to the remedies of forfeiture and damages (considered below), it is necessary to have regard to the Leasehold Property (Repairs) Act 1938. This applies in the following circumstances:

- (1) where the lease was originally granted for a fixed term of not less than seven years (computed from the date when the lease is granted and not, if earlier, the date of the commencement of the term⁸);
- (2) three or more years of the term remain unexpired at the time when notice is given. Where a lease is being continued under Part II of the Landlord and Tenant Act 1954, the view has been expressed that this requirement relates to the contractual term, rather than the continuation under the Act after the expiry of the contractual term, as otherwise, it would never be possible to know whether the term has more than three years to run.⁹
- (3) the tenancy is neither a tenancy of an agricultural holding nor a farm business tenancy.

3.10 The requirements of the Act apply to all tenants' covenants to keep or put the demised premises in repair during the currency of the lease. However, the fact that other obligations share the same clause in a lease does not mean that the Act

⁸ Cadogan v Guinness [1936] Ch. 515

⁹ See Dowding & Reynolds at paragraph 27-31, footnote 30.

will apply to those other obligations. So, in one case¹⁰, the repairing covenant went on to require the tenant to clean the lavatories. It was not necessary for the landlord to obtain the court's leave¹¹ before proceeding against the tenant for allowing the lavatories to become soiled.¹²

3.11 The Act applies only to breaches of covenant by the tenant. It does not, therefore, apply where the landlord is claiming damages from a former tenant.¹³ Similarly, it does not apply where the landlord is seeking to pursue remedies other than forfeiture or damages, such as specific performance or entry to carry out repairs and to recover the cost as a debt.

3.12 The Act operates as follows:

- (1) the landlord's section 146 notice must contain the information prescribed by the Act;
- (2) the tenant has 28 days after service of the section 146 notice to serve a counter-notice claiming the benefit of the Act;
- (3) if the tenant fails to serve counter-notice within that period, the Act ceases to apply in relation to the breaches specified in the notice;
- (4) if the tenant serves a counter-notice, the landlord can only forfeit (or claim damages) with the leave of the court;

¹⁰ Starokate Ltd v Bury [1983] 1 EGLR 56.

¹¹ As to which see below, paragraph 3.12 – 3.16.

¹² Where, however, a tenant's failure to comply with the decorating covenant led to a breach of the repairing covenant (because the failure to treat the walls in accordance with the covenant to paint led to the walls falling into a state of disrepair), the Act would apply: Latimer v Carney [2006] 3 EGLR 13.

¹³ Cusack-Smith v Gold [1958] 1 WLR 611.

- (5) the court will only grant leave if (i) the landlord proves one of the grounds stipulated in the Act and (ii) the court is satisfied in the exercise of its discretion that leave should be granted.

3.13 The section 146 notice must contain the appropriate prescribed warning to tenants in characters no less conspicuous than the remainder of the notice and the warning must inform the tenant of the right to serve a counter-notice claiming the benefit of the Act.

3.14 If the tenant then serves a counter-notice, the landlord must apply to the court¹⁴. It is only if the court is satisfied that one of the following grounds is established:

- (a) That the immediate remedying of the breach is requisite for preventing substantial diminution in the value of the landlord's reversion, or that the value thereof has already been substantially diminished by the breach;
- (b) That the immediate remedying of the breach is required for giving effect in relation to the premises to the purposes of any enactment, or of any byelaw or other provision having effect under an enactment, or for giving effect to any order of the court or requirement of any authority under any enactment or any such byelaw or other provision as aforesaid;
- (c) Where the lessee is not in occupation of the whole of the premises as respects which the covenant or agreement is proposed to be enforced, that the immediate remedying of the breach is required in the interests of the occupier of those premises or of part thereof;

¹⁴ The appropriate court will always be the county court, unless a certificate is filed specifying reasons why the claim should be issued in the High Court: CPR 56.2(1).

- (d) That the breach can be immediately remedied at an expense that is relatively small in comparison with the much greater expense that would probably be occasioned by postponement of the necessary work;
- (e) Special circumstances exist which in the opinion of the court render it just an equitable that leave should be given.

3.15 In addition to proving one or more of these grounds, the landlord must satisfy the court that it should exercise its discretion to grant leave.

3.16 Once leave is granted, it is open to the landlord to forfeit, by either issuing proceedings for possession or by peaceable re-entry.

3.17 It is open to the tenant or to a sub-tenant to apply to the court for relief from forfeiture. Relief will usually be granted on condition that the tenant carries out those works required to remedy the breaches for which the lease was forfeited. Where relief is granted on terms that the works be carried out within a certain period of time, the court retains power to extend that time, even where the order granting relief was contained in a consent order. However, the fact that the conditions for relief were contained in a consent order will be a relevant fact for the court to consider in exercising its discretion and the court is less likely to impose an extension of time where the parties have agreed terms for relief.¹⁵

Specific Performance

3.18 There are various older authorities to the effect that equity will not grant specific performance of a tenant's repairing covenant.¹⁶ However, this no longer reflects the law and it is clear that in an appropriate case, the court will make an

¹⁵ Ropac v Intreprenneur Pub Co (CPC) Ltd [2001] L & TR 10; Fivecourts v J.R. Leisure Developments Ltd [2001] L & TR 5.

¹⁶ Hill v Barclay (1810) 16 Ves. Jun. 402; Jeune v Queen's Cross Properties Ltd [1974] Ch. 97.

order for specific performance where a party to a lease fails to comply with his repairing obligations: Rainbow Estates Ltd v Tokenhold Ltd [1999] Ch. 64, in which the Deputy Judge said:

“Subject to the overriding need to avoid injustice or oppression, it will be appropriate for the remedy to be available when damages are not an adequate remedy or, in the more modern formulation, when specific performance is the appropriate remedy. This will be particularly important if there is substantial difficulty in the way of the landlord effecting repairs: the landlord may not have a right of access to the property to effect necessary repairs, since (in the absence of contrary agreement) a landlord has no right to enter the premises, and the condition of the premises may be declining.

...

Not only is there great need for caution in granting the remedy against a tenant, but also that it will be a rare case in which the remedy of specific performance will be the appropriate one: in the case of commercial leases, the landlord will normally have the right to forfeit or to enter and do the repairs at the expense of the tenant; ...”

3.19 So far as damages are concerned, damages during the term are rarely an adequate remedy, as they are subject to the cap imposed by section 18(1) of the Landlord and Tenant Act 1927 and are often difficult to assess. However, in considering whether it is appropriate to order specific performance, the court may well consider, indirectly, the grounds under the 1938 Act. Although the 1938 Act does not apply to a claim for specific performance, the court will not allow the remedy to be used by a landlord to sidestep the need to obtain leave to forfeit or to claim damages.¹⁷ Also, it is considered that the landlord must have a legitimate interest in having the covenant performed and should not use the remedy of specific performance to gain a commercial advantage. A legitimate interest may well exist where the landlord requires the tenant to carry out the works in order to protect the landlord’s reversion or the landlord’s interest in nearby premises. The

¹⁷ Rainbow Estates Ltd v Tokenhold (above).

tenant's position will also be taken into consideration. If the tenant has sub-let the premises and has not reserved the right to enter the premises, the court will not make an order with which the tenant is unable to comply.

Entry by Landlord to Remedy Disrepair

3.20 A well-drawn commercial lease will usually contain a tenant's covenant requiring the tenant to allow the landlord to enter to inspect the premises and if the landlord should find any breaches of the repairing covenant, to allow the landlord to enter to carry out works to remedy the breach. Such covenants usually go on to provide that the landlord is entitled to recover the cost of the works as a debt.

3.21 In the absence of an express right to enter, the landlord will not be able to exercise this remedy.

3.22 A landlord's right to enter the demised premises to carry out works will usually be subject to various conditions precedent, such as service of a notice on the tenant specifying the defects and requiring those defects to be remedied within a certain period. Such conditions will be construed strictly, against the landlord: Amsprop Trading Ltd v Harris Distribution LLP [1997] 1 WLR 1025. Moreover, the landlord's right to enter will relate only to those defects which are specified in the notice. Once the landlord is on site, there may be more than one way of remedying the defects in question (e.g. by repairing or replacing a roof). Since the covenant is that of the tenant, the choice as to which of the competing schemes of work should be carried out might be said to be that of the tenant, so that the landlord should opt for the least costly to the tenant. Alternatively, by analogy with the position where the landlord is the covenanting party, but with the right to recover from the tenant, the choice will be that of the landlord, providing the landlord selects a method of repairing the premises which is

reasonable in all the circumstances. There is no authority either way, but it is considered that the latter is the more appropriate answer.¹⁸

3.23 Once the landlord has carried out the works and seeks to recover the cost from the tenant, the advantage to the landlord is that the claim for the cost is a claim in debt rather than damages, so it is subject to neither the 1938 Act nor section 18(1) of the 1927 Act: Jervis v Harris [1996] Ch. 195.

3.24 If the tenant refuses the landlord access, the landlord's only option will be to apply to the court for an injunction. Since an injunction is an equitable and therefore a discretionary remedy, the court must consider whether the landlord has a legitimate interest in enforcing the repairing covenant. In Hammersmith & Fulham LBC v Creska [2000] L & TR, the court refused an injunction to a landlord where the works were proposed to repair the heating system in a part of the building used by the tenant to house a computer system which required special air conditioning, so that the tenant would not use the heating, even if repaired. The tenant offered to carry out the works at the end of the term and in the meantime to put the cost of the works into a deposit account. Although the court refused to grant an injunction in those circumstances requiring the tenant to afford access to the landlord, Jacob J. said:

“This is not to say that the court will lightly disregard obligations freely entered into. On the contrary, where a party has entered into an obligation freely (a contractual obligation) then it will normally be just and convenient to enforce that obligation. It requires some very special circumstances for the court to say no, it will not, in the exercise of its discretion, enforce that which was undertaken by contract.”

¹⁸ This view is supported by the authors of Dowding & Reynolds, at paragraph 28-36. See also paragraph 2.26, above.

Damages

3.25 Where a tenant fails to comply with its repairing covenant, the landlord will have a claim in damages. It is necessary to distinguish between claims during the term and claims after the expiry of the term (referred to as a terminal dilapidations claim) where damages will be the only remedy open to a landlord (or tenant).

3.26 Where a landlord claims damages during the term, the claim will be subject to the 1938 Act (see above). Therefore, where the Act applies,¹⁹ the landlord will need to serve a section 146 notice, giving the tenant the right to claim the benefit of the Act. If a counter-notice is given, the landlord will need to bring proceedings for the leave of the court under one of the specified grounds in the Act before damages can be claimed. This, itself, is often an incentive to a landlord to pursue one of the alternative remedies.

3.27 A damages claim will also be subject to section 18(1) of the Landlord and Tenant Act 1927. This provides:

“Damages for breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease, whether such covenant or agreement is express or implied, and whether general or specific, shall in no case exceed the amount (if any) by which the value of the reversion (whether immediate or not) is diminished owing to the breach of such covenant or agreement as aforesaid.”

3.28 The starting point, however, is not the Act but the common law measure of damages. At common law, where the claim is a terminal one, the loss usually equates to the reasonable cost of the works required to remedy the tenant's breaches of covenant. This is so even if this does not reflect the landlord's true

¹⁹ See paragraph 3.9, above.

loss.²⁰ The common law measure will also include loss of rent for the period reasonably required to carry out the works.

3.29 Once the common law measure has been established, it is necessary to carry out the valuation required by section 18(1). This operates as a cap on the damages recoverable, so that if the cap is above the common law measure, then the damages are not capped, but if it falls below the common law measure of loss, the damages recoverable by the landlord are capped at the diminution in value of his reversion. This may be illustrated by an example:

The landlord, after the lease expires, spends the sum of £10,000 repairing the premises. The court finds that the work requires to remedy the tenant's breaches would cost £50,000. The diminution in value, caused by the breaches, is held to be £30,000. The recoverable damages are £30,000.

3.30 Diminution in value is to be assessed as at the date of termination of the lease, whatever the means of termination. Two valuations are required. First, the appropriate value of the landlord's interest on the assumption that the premises were in the condition required by the covenants and secondly, the value in their actual state. This is a matter for a valuer, who will have to consider the most likely purchaser of the landlord's interest at the relevant date, what plans the purchaser might have had, e.g. would he have relet them, or developed them for another purpose (in which case the difference might be minimal if the development would supersede the works to remedy the breaches of covenant).

3.31 Nevertheless, where the landlord has done or intends to carry out the works, the reasonable cost of the works will, *prima facie*, represent the

²⁰ Joyner v Weeks [1891] 2 QB 31. In some cases, however, it will be necessary to consider whether there should be a discount for betterment.

diminution in value of the landlord's reversion.²¹ In Latimer v Carney [2006] 3 EGLR 13, Arden LJ (with whom Wilson LJ agreed), said:

“Although courts are not normally concerned with what a claimant does with its damages, a landlord's conduct in taking steps or not taking steps to remedy a breach of the covenant to repair may throw light on the question of whether the repairs are reasonably necessary and, thus, on the question of whether there was any diminution in value of the reversion as a result of the disrepair.”

3.32 In these circumstances, it is not always necessary for the landlord to obtain valuation evidence. As Arden LJ said in Latimer v Carney, the failure to produce expert evidence does not preclude a finding as to the values by alternative means, because in many cases, it will be obvious that the disrepair must have caused some damage to the reversion and the cost of doing the repairs will be a reliable guide to the amount of that damages.

3.33 It is also important to have in mind the second limb of section 18(1), which provides as follows:

“... in particular no damages shall be recovered for a breach of any such covenant or agreement to leave or put premises in repair at the termination of a lease, if it is shown that the premises, in whatever state of repair they might be, 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 repairs covered by the covenant or agreement.”

3.34 Therefore, if the tenant is able to show an intention on the part of the landlord to either demolish the premises or carry out structural alterations which fall within this exception, the effect will be to extinguish the damages payable by the tenant. Moreover, the intention is that which exists on the termination of the lease. If, at that time, the landlord intended to carry out various structural alterations to the premises, but later changed his mind, he would not be able to

²¹ Jones v Herxheimer [1950] 2 KB 106.

recover damages on the basis of the change of heart. Section 18(1) would rule out any damages.

4. Tenant's Remedies

4.1 Where a landlord covenants to keep part or all of the premises in repair and fails to do so, the remedies open to the tenants are:

- (1) specific performance;
- (2) damages; and
- (3) to carry out the work himself and seek to recover the cost.

Specific Performance

4.2 Where the tenant has a legitimate interest in having the landlord's repairing covenant performed, the court will ordinarily order specific performance. The tenant's interest may well depend on the length of the unexpired term and the nature of the works which the landlord is to be compelled to carry out. Often, also, the landlord's repairing covenants will be subject to an obligation on the part of the tenant to contribute towards the cost of the works by way of service charges and this may be of relevance in considering whether specific performance should be ordered.

4.3 Where the part of the building in disrepair is retained by the landlord, the order may well be straightforward. However, before the court can make the order, it might be necessary for the tenant to have access to the retained parts of the building in order for the tenant's expert to compile a schedule of the landlord's breaches of covenant and the works required to remedy them. The court has power to order a landlord to permit access for this purpose under CPR 25.1 and 25.5.

4.4 At one time, it was doubted whether specific performance could be ordered against a landlord where the landlord covenants to keep the demised

premises (or some part of the demised premises) in repair.²² However, as suggested in Dowding & Reynolds²³, the law has moved on since then and it is now generally considered that where the landlord covenants to repair the demised premises, the landlord will have an implied right to enter for this purpose, so this should be no bar to the court ordering specific performance against a landlord.

Damages

4.5 A tenant's claim for damages against his landlord is not subject to any cap on damages, as under section 18(1) for a landlord's claim. Nor does the tenant require the leave of the court under the 1938 Act.

4.6 The prima-facie measure of damages to which a tenant is entitled is the difference in value to the tenant between the premises in its actual condition and the premises in the condition in which they ought to have been kept by the landlord. In Calabar Properties Ltd v Stitcher [1984] 1 WLR 287, Griffiths LJ said:

“The object of awarding damages against a landlord for a breach of his covenant to repair is not to punish the landlord but, so far as money can, to restore the tenant to the position he would have been in had there been no breach. This object will not be achieved by applying one set of rules to all cases regardless of the particular circumstances of the case. The facts of each must be looked at carefully to see what damage the tenant has suffered and how he may be fairly compensated by a monetary award.”

4.7 The damages are assessed as from the date where the landlord is in breach. Where the defect is within the demised premises, the landlord will not be in breach of covenant until (a) he has been put on notice by the tenant of the defect and (b) a reasonable time for remedying it has elapsed. However, where the

²² Granada Theatres Ltd v Freehold Investment (Leytonstone) Ltd [1959] 1 Ch. 592.

²³ Paragraph 32-09.

defect is to those parts of the building retained by the landlord, damages will be payable from the date when the defect occurs.

4.8 In claims by residential tenants, a significant element of the claim might relate to discomfort and inconvenience suffered by the tenant who remains in occupation.²⁴ Whilst such claims are more apt where the tenant occupies the demised premises as a home, they are not foreign to a claim in the commercial context. In Credit Suisse v Beegas Nominees Ltd [1994] 1 EGLR 76, Lindsay awarded the limited company general damages for inconvenience, saying:

“I am unconvinced that one can evaluate inconvenience to a tenant in occupation by reference simply to the diminution in prospective letting value to some hypothetical other tenant. General damages are notoriously at large, but doing the best I can to have regard to the inconvenience suffered by staff and customers in these expensive and prestigious premises over the period I have described, I fix general damages at £40,000.”

4.9 Accordingly, the court is entitled to take into account the effect of the disrepair on the tenant’s staff and customers.²⁵

4.10 Where the disrepair is sufficiently serious to require the tenant to vacate, or the works required by the landlord are sufficiently substantial to prevent the tenant from remaining in occupation during the works themselves, the damages will include the reasonable cost of alternative accommodation.²⁶

4.11 If the disrepair causes an increased service charge to be payable, the tenant may recover, by way of counter-claim and/or set off (unless it is excluded by the

²⁴ See Wallace v Manchester City Council [1998] 3 EGLR 38; English Churches Housing Group v Shine [2004] EWCA Civ 434.

²⁵ Larksworth Investments Ltd v Temple House Ltd [1999] BLR 297. Clarke v Lloyds TSB Bank Ltd [2002] 3 EGLR 93.

²⁶ Earle v Charalambous [2007] HLR 8.

lease) the increased costs otherwise payable to the landlord. In Princes House v Distinctive Clubs [2007] EWCA Civ 374, the Deputy Judge awarded the excess service charge payable by a tenant where the landlord delayed repairing the roof of the building, with the result that the tenant no longer had the benefit of a service charge cap by the time the costs were recoverable. In that case, had the landlord complied with its covenant, it was found that the work would have been completed during the period of the service charge cap. Alternatively, the landlord's breach might cause other defects for which the tenant is liable under the service charge, which would not have arisen had the landlord complied with its covenant. For example, a defective roof might cause water to percolate down the side of a building, causing damage to the flank wall which would not have occurred had the roof been kept in repair.

4.12 Conversely, however, where the tenant assigns the lease before the disrepair has been remedied, the measure of damages will be the difference in the price received for the premises in the damaged condition and the price which would have been received had they been kept in repair.²⁷ If the disrepair prevents the tenant from assigning, the damages will include outgoings payable by the tenant for the period after an assignment could have been completed, but for the disrepair.²⁸ Similarly, in principle, the tenant will be entitled to damages for the inability to sublet, either at all, or at the market rate otherwise receivable for the premises.²⁹

²⁷ Calabar Properties Ltd v Stitcher [1984] 1 WLR 287.

²⁸ In Credit Suisse v Beegas Nominees (above), the court awarded damages equating to the lost premium from the inability to complete an assignment of the lease, outgoings payable by the tenant for the period after the assignment should have completed and rent, insurance and service charges payable by the tenant after the date on which the lease could have been assigned.

²⁹ Calabar Properties v Stitcher (above).

Entry to Carry out the Works

4.13 In the absence of a right to enter the landlord's retained premises, the tenant will commit a trespass if he enters and carries out works which the landlord ought to have carried out. In Metropolitan Properties Ltd v Wilson [2003] L & TR 15, the tenants of a block of flats began to undertake works to the common parts and exterior of the building, arguing that the landlord was in breach of covenant and the court granted an injunction restraining the tenants from proceeding.

4.14 In Loria v Hammer [1989] 2 EGLR 249, the tenant carried out works to the roof of a block of flats which should have been carried out by the landlord, and claimed the cost of those works from the landlord. The Deputy Judge found that the tenant had an implied right to enter where the landlord was in default, and awarded the damages to the tenant. The correctness of this decision has, however, been doubted.³⁰ The more appropriate analysis might be that the tenant has a right to enter the landlord's retained premises to abate a nuisance caused by the landlord's failure to repair.

5. Dilapidations Claims in Practice

5.1 The Property Litigation Association has produced a terminal dilapidations pre-action protocol which is parallel to the CPR pre-action protocol. The format and principles are broadly similar, but it is more detailed. It also provides templates for forms and schedules which potential litigants are encouraged to use in their pre-action correspondence.

5.2 The landlord is directed to serve a pro-forma schedule within a reasonable time frame after the expiry of the tenancy, endorsed by a surveyor. The form

³⁰ See Dowding & Reynolds at paragraph 2-13, where it is pointed out the earlier decision of Regional Properties Co Ltd v City of London Real Property Co Ltd [1981] 1 EGLR 33, was not cited and the decision was, in any event, strictly, *obiter*.

should set out the breaches, the work required and the landlord's costings. The landlord will also prepare a separate claim document which will set the items claimed in the schedule in more detail.

5.3 The tenant responds by using the schedule provided, explaining whether and why it disputes liability and/or quantum in respect of each item. If it is suggested that any works are likely to be superseded by works which will be done by the landlord that argument should be made in this response, if possible. It assists if a surveyor is involved on behalf of the tenant at this early stage.

5.4 The parties are then encouraged to give voluntary pre-action disclosure, and to meet in order to negotiate shortly after the service of the tenant's response. Joint site visits and inspections may be appropriate.

5.5 The parties are also enjoined to consider ADR as an alternative to litigation in a variety of forms – negotiation, neutral evaluation by a third party or mediation.

5.6 Finally, in advance of resorting to the court the PLA advises that the parties prepare any technical evidence, especially valuation evidence as to diminution in value under s.18 Law of Property Act 1927. That valuation should be properly prepared by a valuer. Nevertheless, the points made in Latimer v Carney (above, paragraphs 3.31 – 3.32) about the absence of valuation evidence in a straightforward damages claim where the landlord intends to carry out the works or has done so, should be borne in mind and it should not be thought that section 18 valuations are necessarily a pre-requisite in every landlord's damages claim. That said, in a high value claim, it is sensible to obtain such evidence at an early stage nonetheless.

5.7 It will be apparent from the text, above, that expert evidence will be key at almost every stage of a dilapidations claim. Ordinarily, the expertise required will

be that of a surveyor (but consider whether a building and/or a quantity surveyor are required in relation to proving the breaches and remedial work required, or a valuer, for section 18 issues or other diminution in value questions which might arise). Sometimes, however, especially where the claim relates to mechanical and electrical elements of a building, experts in that field will also be required, or where the claim relates to structural issues, it might be necessary to engage a structural engineer. Whatever discipline of expert is required, it is imperative that the evidence obtained is sufficient to prove the case relied upon in court.