Complications in the leasehold system

Ray Goodman discusses disagreements over property conditions

It is common in the UK for commercial premises to be held by tenants on a leasehold basis, and many dental practitioners will be familiar with some of the practical aspects of that through their own experience.

Most leases contain provision that the tenant should keep the property in a good state of repair, maintaining the building to an acceptable standard and generally looking after it, on behalf of the landlord or owner of the freehold.

Unless a schedule of condition is agreed with the landlord at the outset, the covenant to repair usually applies regardless of whether the property was in a poor state of repair when the leaseholder takes over. This means those who are unprepared could be faced with immediate repair bills for a property they have just taken over. It is no defence for a tenant to plead that “the property was like that when I took over, so why should I improve it”. This is why it is crucial to take proper advice before entering into a new lease so that such issues can be negotiated and, where possible, onerous repair obligations can be avoided.

Naturally, disagreements can occur when freeholders believe that their tenants are not keeping the property in the condition agreed upon. Leases often feature provision for the landlord to inspect the property on request to ensure they can keep an eye on the condition of their investment.

**Timetable**

Landlords who feel the repair covenant has been breached can, depending on the terms of the lease, be entitled to serve a schedule of dilapidations, which obliges tenants to rectify the breach of the covenant by carrying out the necessary repairs. A timetable for the repairs will be drawn up as part of this process, and if it is breached the landlord may carry out the repairs on the tenant’s behalf and charge them for it.

Depending on the lease in question the landlord would usually have a right to serve

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a schedule of dilapidations at any time. However, in practice the issues usually arise when the tenant is seeking to make alterations or sell the property on. At this point, a disagreement over the condition of the property can be time-consuming and costly for the existing leaseholder.

It is not uncommon for a lease to contain provisions stating that it cannot be assigned to a new leaseholder if there are any existing breaches of the lease. Landlords sometimes choose to serve a schedule of dilapidations when there is the opportunity of an assignment, in a bid to force the existing leaseholder to carry out repairs before they are able to sell their interest in the property.

Impact
The impact can be dramatic for the leaseholder. They will be unable to sell their property until the repairs have been carried out. The tenant may be unable to sell their property to a new tenant, who will be aware that the property features items of disrepair. This can be the case even if the issues with the property are relatively minor ones.

Even if a lease does not feature a covenant that allows refusal of an assignment before dilapidations are addressed, landlords may still try to exercise that power. I recently came across a case where the landlord still refused to allow an assignment until repairs were made, despite having no right within the lease to place such a condition on his consent. He did this, in effect, by moving extremely slowly until the issues with the building were resolved.

The enormous pressure on the selling leaseholder also served to discourage the buyer. The landlord was acting unlawfully in this case by witholding his consent to the assignment, but in practice the tenant was left with the choice of either taking the landlord to court for a possibly lengthy battle, or simply settling the dilapidations claim.

Recession can make landlords very keen to maintain their properties in a good condition, in case tenants go out of business and they end up with a vacant property that needs to appeal to a new user. As a result, a difficult economy can mean landlords are more likely to serve a schedule of dilapidations. More unscrupulous freeholders can also over-value repair works with the view to making a profit, thought whether this is possible will depend on the drafting of the lease.

Solution
The complexities of the UK leasehold system, and the differences in the drafting of leasehold documents mean there is no ‘one size fits all’ solution to these issues. The common terms involved are by no means universal. This makes it all the more important that your lease is well-drafted and that you are fully aware of any obligations and conditions it entails. As always, expert advice from a dental lawyer is an essential safeguard.

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