

Covid-19 and dilapidations: a change to the working world

A reduction in demand for office space would in turn lead to an increase in dilapidations and repair claims - what is the possible impact?

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As the easing of lockdown restrictions gets closer, we can tentatively start to look forward to getting back to our pre Covid ways of life. For some, the prospect of returning to the office is an exciting one – we will once again be able to have real life interactions, catch up over a coffee and re-instate the boundary between home and work life. Others however have become well accustomed to virtual meetings rooms and do not miss the monotony of the daily commute.

Whichever category you fall into, we anticipate that many businesses will adopt a more flexible way of working and the pandemic will have long lasting effects on how, and where, we carry out business. There is likely to be a reduction in the demand for office space and we anticipate that many tenants will look to vacate or downsize from their current premises. This in turn will lead to an increase of dilapidations and repair claims.

Possible impact of the pandemic on dilapidations and repair claims

- What remains to be seen is how the pandemic will affect the way dilapidations and repair claims are dealt with. We consider some possible changes below:
- A landlord's dilapidations claim is, broadly speaking, based on i) the cost of the repair work required to the building to put it in the condition required by the lease or ii) the loss of value to the landlord's property caused by the tenant's breaches of the repairing obligations (i.e. the diminution in value).

Until landlords are confident that their properties can be re-let, they may be reluctant to incur any expense in carrying out remedial works to the building. This could in turn lead to a shift towards more diminution in value focussed claims.

- Whilst we may see more claims being based upon a diminution in value, this course of action is not without its difficulties. If there is a fall in demand for retail space as we anticipate, its value will undoubtedly be affected. Establishing that a loss of value to a property is caused by the tenant's breaches of the repairing obligations may not be straight forward.
- If the availability of office space outweighs the demand, some landlords may consider altering the use of their premises. If this involves a substantial change to the building (as for example, a change from commercial to residential purposes would), a tenant may be able to argue that the works supersede any works required pursuant to the lease and challenge the landlord's claim (or a significant part of it) on that basis. We expect to see an increase in the use of this defence and, on the face of it, it seems a reasonable stance for a tenant to take.
- Save for urgent matters, issues regarding repair are frequently left until the end of a tenancy, with notices to repair often being underutilised. We anticipate seeing an increase in this interim solution for two key reasons: i) property repairs are likely to fall down a tenant's priority list, thereby forcing a landlord to take more of an active role in ensuring ongoing compliance with repair covenants and ii) with so much uncertainty and many businesses ceasing trading, landlords may be more inclined to bring interim claims whilst a tenant is still solvent, as opposed to running the risk of being left with a property in poor repair and an insolvent tenant.
- Loss of rent is often claimed as part of a dilapidations claim on the basis that the landlord was unable to rent the property during the period the repair works are carried out. If there is less of a demand for office space, it will become increasingly difficult for landlords to

argue that, if it wasn't for the disrepair, the property would have been re-let immediately.

Summary

There is no doubt that we will continue to see a change in the commercial property market as the full effects of the pandemic unfold. In the meantime, we encourage both landlords and tenants to consider the repairing covenants and potential dilapidations issues in good time prior to lease end.

If you would like to discuss any of these points, or how the pandemic may affect your ability to bring or defend a dilapidations claim, please contact [Hannah Carter](mailto:Hannah.Carter@brownejacobson.com).

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