



Dilapidations in tied pubs

- learn the
essentials

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Dilapidations

What are they?

As a pub tenant it is your responsibility to keep the property in good condition. When the lease on the pub expires or you wish to end the lease, you will be provided with a dilapidations bill from your landlord (pub company). This will include a list of repairs needed to be undertaken and the cost for this.

Dilapidations are the most widely misunderstood areas of property law and therefore are the most easily manipulated. However, unlike much of the pub industry, dilapidations are covered by the *Landlord and Tenant Act 1927* and then subsequently referred to in guidance set out by the Royal Institution of Chartered Surveyors.

Landlord and Tenant Act 1927

Section 18 of the *Landlord and Tenant Act 1927* refers specifically to repairs that have to be undertaken under either a lease or tenancy.

Despite what the legal agreement may say between landlord and tenant, the fact remains that dilapidations are covered by law and therefore you must know and understand your legal right.

The Act refers to two limbs

The first limb states:

“Damages for a 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 expressed 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) in the premises is diminished owing to the breach of such covenant or agreement as aforesaid;”

What this means is that the owner/landlord of the building can only claim for their “loss” which is classed as the reduction of the value of the property if the dilapidations are not completed.

The second limb states:

“And in particular no damage 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.’

This limb means that the law does not allow the landlord of the pub to charge for any work that may be deemed necessary, if the landlord has a requirement for the pub to be refurbished or even demolished.

What can landlords claim through dilapidations?

The landlord/pub companies can only claim back from you their "loss" and this loss is restricted by law to the reduction in the capital value of the property if the dilapidations are not done. This is known as "The diminution of the capital value of the property" or "reversion of the value of the property"

A pub's reduction in the value of the property, is extremely unlikely to be anything at all, unless very severe damage has been allowed to occur, such as damage to the roof or structure.

The pub-owning business is supposed to mitigate any "loss" by undertaking regular inspections, more normally known as "schedules of want and repair". However, such a schedule of want and repair should focus on items of work that will mitigate the reduction of the capital value of the property.

As an example, the failure to decorate would not be an issue that is likely to cause the landlords business any "loss". However, the failure to replace a roof slate could, as this would allow water damage and potential damp at a later point.

What does a survey involve?

A dilapidations survey is carried out by a surveyor at the request of the landlord but at a cost to the tenant. This is around £800. In the report they will detail all areas of the property they feel need work or repairs to be undertaken. This will result in a bill payable to the landlord in order to carry out the repairs.

You do have the option to carry out the repairs yourself, this could work out cheaper than paying the dilapidations bill.

It is important to review the survey in detail as the report should only include work or repairs needed in order for the pub to not be reduced in value.

If the tenant does not agree with the report they can appoint their own independent surveyor, this would mean paying another fee. Once completed all parties would need to try and reach an agreement for a fair dilapidations bill... easier said than done.

Dealing with claims

To avoid a large dilapidations bill, there are measures tenants can put in place.

1. Do your homework

Before the lease is taken on, try to understand if there are any fundamental problems with the building by carrying out full due diligence (a pre lease building survey) What condition is the roof, floors, windows and any unseen areas of the property? If a lease is taken on and there are any major issues such as dry rot or water damage, it is the tenant's responsibility to fix this. At their cost and it also could mean the pub has to stop trading for a number of weeks.

2. Get a survey

Undertake a written schedule of condition of the property when taking on the lease and tenancy. This can be done with the support of a chartered surveyor or just as effectively it can be done through taking photographs of the property throughout.

3. Negotiate

Negotiate obligations of the lease you are not happy to undertake at lease end. Doing this at the start can save time and money at the end of the lease.

4. Stay active

Insisting on yearly schedules of "Want and Repair" will make sure that any potential issues are clearly documented during the terms of the agreement and future disagreements can be challenged.

5. Look after the pub

This will serve two purposes. It will look after the dilapidations liability and also keep the customers happy.

At the end of an agreement, a “Terminal Dilapidations Schedule” should only focus on areas that may cause the pub-owning business, potential loss and also should adhere to the emphasis on, what is likely to happen to the property after the tenant has left.

6. Plan ahead

It is important to start the dilapidations negotiations well before the end of the lease, the tenant will not have the opportunity to negotiate at the end of the lease.

Request confirmation of landlords intentions for the property. As many pub-owning businesses are taking properties back for their own use, this use will often result in work being done to “re brand” or redesign the property or even demolish. In this instance, any attempts to demand repairs in areas to be refurbished should be challenged.

7. Get a Regulation 18 Survey

If a pub-owning business attempts to demand large dilapidations bills, then the tied tenant can pay for a **Regulation 18 Survey**, who will do a ‘diminution valuation’.

This means the property would be valued ‘in compliance’ and ‘out of compliance’—i.e.—with the work being done and not being done. To assess market value, valuers should identify the likely purchaser of the property in each condition. This may include the landlord. For example, potential purchasers could be: an owner-occupier, an investor, a developer or a speculator.



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