

Commercial Property Factsheets

Tenants' responsibilities for repairs and maintenance

What are your responsibilities?

The tenant's responsibilities should be clearly set out in the lease. Typically the tenant is required to keep the premises in good repair and condition.

- You may well be required to keep the premises in good condition even if they are not in good condition when you first lease them.
- Exactly what standard is required can depend on several factors, including the age and location of the premises, and the condition that a new tenant could reasonably expect.
- You are unlikely to be required to keep the premises in perfect condition, or to rebuild them (although this may depend upon the insurance obligations contained in the lease).
- Your responsibilities typically require keeping the premises in good condition throughout the lease, not just at the end of the term.
- The lease may specify that you are required to redecorate at regular intervals and/or at the end of the lease.
- You may also be required to remove and reinstate any alterations you have made.

If you fail to meet your responsibilities, the landlord may serve you with a schedule of dilapidations - either during the term of the lease or when the term ends.

- If you fail to put things right during the term of the lease, the landlord may be entitled to have the works done - and to claim the costs from you. The landlord may also be able to start eviction proceedings.
- If at the end of the lease, you fail to leave the premises in good condition, the landlord may claim damages, including the costs of repairs, loss of rent and any other damages.

What should you do when taking on new leased premises?

Before committing yourself to leasing premises, ensure that your responsibilities are absolutely clear, and that your potential liabilities are not excessive.

- For a new lease, negotiate that you are responsible only for keeping the premises in their current condition, rather than improving them in any way.
- Arrange a survey of the premises. Include a written and photographic schedule of condition.
- If you are taking over an existing lease, ensure that you understand what repairs or alterations you would need to make to reinstate the premises to the condition required by the lease. Use this in your negotiations with the existing tenant.
- Take advice on exactly what responsibilities the wording of any lease gives you.

What should you do during the life of the lease?

You cannot assume that you can put everything right when the lease comes to an end, meanwhile ignoring your responsibilities.

- Make sure you are complying with the terms of the lease. If your lease has a break clause, that lets you end the lease at certain points during the tenancy, be aware that you may not be entitled to exercise your break option if you are failing to fulfil your repairing obligations.
- Consider putting in place a proactive programme of maintenance and repairs. This should be more cost-effective than waiting for things to go wrong, or leaving problems such as leaks to cause more damage.
- Respond to any requests or demands from the landlord in a timely and constructive manner. Negotiation is preferable to

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confrontation.

- Take advice, particularly if your landlord starts legal proceedings against you. In some circumstances the law will protect you from eviction.

What should you do at the end of the lease?

Plan ahead before the end of the lease while you still have the opportunity to put any problems right.

- Be prepared. Even if you have kept the premises in good condition, your landlord may well attempt to claim for dilapidations.
- Prepare a schedule showing the condition of the premises.
- Try to find out what the landlord's plans for the premises are.
- Start negotiations in advance.
- Consider offering a payment to the landlord to cover any dilapidations instead of carrying out the repairs yourself.

Before negotiating, you need to understand as much as possible about your potential liability.

- Even if you have failed to fulfil your repairing obligations, the landlord cannot generally recover damages greater than the amount by which the value of his investment has been reduced.
- If you can prove that the landlord plans to demolish or alter the premises in such a way that any dilapidations do not matter, you should be able to limit or even completely avoid any liability.
- Similarly, if the landlord will be letting the premises to a new tenant who wants to substantially alter them, your liability to reinstate alterations might become irrelevant.
- If there is simply no demand for the premises - in any condition - or if they would in any case need substantial upgrading before they could be leased to a new tenant, the landlord is unlikely to be able to claim that you have caused a significant loss.

Your legal adviser can offer specialist knowledge and negotiating skills to help you.

If in doubt, **take legal advice**.