Landlord and Tenant Workshop

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The Five-Stage Analysis

1. What is the physical subject-matter of the covenant?
2. Is the subject-matter in a damaged or deteriorated condition?
3. Is the nature of the damage or deterioration such as to bring the condition of the subject-matter below the standard contemplated by the covenant?
4. What work is required in order to put the subject-matter of the covenant into the contemplated condition?
5. Is that work nonetheless of such a nature that the parties did not contemplate that it would be the liability of the covenantee party?
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Scenario – the Building

• Office block in Central London
• Built in 1960
• 5 floors linked with stairs and lifts
• Original roof still in place

Scenario – the Lease

• 25 years from 25 July 1991
• Expired by effluxion of time
• Full RFI
• No 1991 schedule of condition available
Scenario – the Covenants

• Clause 5: “To repair and keep the Premises in good and substantial repair”
• Clause 6: “To decorate all parts of the Premises which have previously been decorated or are required by the Landlord to be decorated in the third year of the term, in each subsequent third year of the term and in the 12 months leading to the termination of the Lease by effluxion of time or otherwise”
• Clause 7: “To keep in good and substantial repair and condition all plant and other Landlord’s fixtures and fittings”

Windows

• Stage 2 - Being watertight may not be sufficient to be in repair
• Alcatel Australia v Scardella [2001] NSWSC 154 - unsuccessfully argued that because the windows were watertight they were not in disrepair
• Twinmar Holdings v Klarius [2013] EWHC 944 (TCC) – unsuccessfully argued that because roof lights were not leaking they were not in disrepair
Windows

**Stage 3 – Required condition**

- **Alcatel** - the windows had been allowed to deteriorate over a long period (the lease was 30 years). It was held that the required condition was the state that they would have been in had they been properly maintained.

**Stage 4 – required work**

- Question of expert evidence
- **Alcatel** – Court accepted evidence that were the windows to be repaired they would need to be removed and re-anodised offsite. In those circumstances the court accepted that a replacement of all windows was an economic alternative.
Boiler

• **Stage 2 – there must be disrepair**

• **Westbury Estates v The Royal Bank of Scotland [2006] CSOH 177 Court of Session (Outer House)**

• After the tenant left the property the landlord replaced all lifts, fire alarm, wiring, heating system at the cost of £0.5m and tried to recoup this from the tenant

• Held that the tenant was not liable. Although the plant was reaching (or had reached) the end of its anticipated economic life there was no evidence that it was in fact malfunctioning

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Boiler

• **Stage 2 – does it matter that no incoming tenant would accept it?**

• The general test for whether something is in repair is whether it is in “such repair as, having regard to the age, character and locality of the house would make it reasonably fit for the occupation of a reasonably minded tenant of the class who would be likely to take it” (Proudfoot v Hart (1890) 25 QBD 42)

• The tenant is not required to put the premises into the same repair as they were in in 1991

• **Ultraworth Ltd v General Accident Fire & Life Assurance Co Ltd [2000] 2 EGLR 115**

• **TCC**
Boiler

- **Stage 2 – does it matter that the boiler breaks down?**
- **Ultraworth Ltd v General Accident Fire & Life Assurance Co Ltd [2000] 2 EGLR 115** – a similar covenant was satisfied if the system was “in good working order i.e., ... in repair and work[ing] substantially well as the original system did (or should have done) when new”.
- **Westbury Estates** – an obligation to repair “might be triggered if an item of plant was unreliable and prone to breakdowns” because “the standard of ‘good and substantial repair and condition’ can be understood as encompassing, in relation to plan and services, a reasonable degree of reliability.”

Decoration

- **Stage 2/3 – are the premises out of repair?**
- Only if the current state of the decoration is such that the condition would not satisfy a reasonably-minded tenant of the class likely to take the Building.
- **However** there is an express obligation in the Lease to repaint in the final year of the term; this is separate to the repair obligation and has been breached.
Suspended ceiling

• Stage 1 – is the tenant obliged to repair the suspended ceiling?
  • This is a question of fact. The surveyors will need to consider any contemporaneous documents and the age of the ceiling.
  • If the tenant is not required to repair the ceiling, are they required to remove it? This is a question of interpreting the alteration provisions in the Lease. Have any notice requirements been complied with?

Suspended ceiling

• Stage 4 – What work is required to put the ceiling back into repair?
  • What would satisfy the hypothetical incoming tenant?
  • In Sunlife Europe Properties v Tiger Aspect Holdings Ltd [2013] 2 P & CR the court held that a patchwork repair that involved new tiles being used in the same ceiling as existing tiles would be unacceptable. However, it was held that the existing undamaged tiles could be consolidated to cover some ceilings so that only two of the four floors would require entirely new ceilings.
Roof

- **Stage 4 – What work is required to put the roof back into repair?**
- Age, character and location relevant
- **Carmel Southend v Strachan & Henshaw [2007] 3 EGLR 15** – held that the tenant of a 1970s office block would not be required to replace a roof which (if done tidily) would satisfy a hypothetical incoming tenant, “I find that such a tenant would have been concerned with its weatherproofing properties, rather than its appearance.”

Roof

- **However,**
- **Manor House Drive Ltd v Shahbazian (1965) 195 EG 283** – evidence put forward by the landlord stated that patch repairs would only last a few months. Evidence from tenant suggested that whilst patch repairs would not last as long as a new roof the cost over 20 years (the lifetime of a new roof) would be only £300 as against £400 for the new roof. The Court of Appeal held that the landlord was entitled to damages for the new roof. The work was a reasonable and proper way of repairing the roof and patch work was not reasonable.
Roof

• If there are two equally sensible ways of repairing the covenantor is able to choose the most sensible

Roof

• Stage 5 – If the roof is to be replaced, was this in the contemplation of the parties?
• This is a question of fact and degree
• Replacing a roof with a better designed roof is not necessarily going beyond repair (Elite Investments Ltd v T L Bainbridge (Silencers) Ltd [1986] 2 EGLR 43, New England Properties Ltd v Portsmouth New Shops Ltd [1993] 1 EGLR 94)