

DOUG STEVENS SEMINAR

MONDAY 20th March 2017

08.00HRS TO 09.00HRS

VENUE : **CBRE**

`C-BAR`

Henrietta House

Henrietta Place

W1G 0NB

▶ SUBJECT

1. REPAIRING CLAUSES AND DILAPIDATIONS - 50 mins
2. OPEN QUESTIONS - 10 mins

▶ *SEMINAR BY DOUG STEVENS TO 1st & 2nd YEAR GRADUATES*

▶ *DELIVERED AS A POWERPOINT PRESENTATION*

SEMINAR 20th MARCH

To 1st & 2nd year graduates. 50 mins

This is a very large subject which has generated much case law and many text books - so we can only cover the headline points in our 50 mins.

The wording of repair clauses and the state of repair of property and the materials used do have a significant impact on value and saleability and are therefore issues relevant to rent review, valuation, management and investment surveyors. We will consider the following:-

- ▶ GLOSSARY OF TERMS
- ▶ REPAIRING CLAUSES - STANDARD FORMS - FRI - EFFECTIVE FRI - IRT
- ▶ IMPACT ON VALUE OF DIFFERENT REPAIR CLAUSES
- ▶ STATUTES DEALING WITH REPAIRS
- ▶ RIGHT OF INSPECTION - JERVIS v HARRIS -
- ▶ INHERENT / LATENT DEFECTS
- ▶ DELETERIOUS MATERIALS - ASBESTOS, etc
- ▶ DILAPIDATIONS - SCHEDULES - SCOTT SCHEDULES
- ▶ CAVEAT EMPTOR
- ▶ S.18 DIMINUTION IN VALUE
- ▶ S.18 CASE LAW
- ▶ IMPORTANT QUESTIONS TO ASK / ANSWER

INTRODUCTION - GLOSSARY OF TERMS

- ▶ FREEHOLDER / LANDLORD (L/L) IDEALLY REQUIRES TENANT (T) TO BE RESPONSIBLE FOR ALL REPAIRS TO THE PROPERTY - SO THAT IT IS A **FULL REPAIRING (AND INSURING) LEASE - FRI**
- ▶ **FRI** - T RESPONSIBLE FOR ALL REPAIRS TO THE BUILDING. L/L RESPONSIBLE FOR INSURING THE BUILDING BUT T PAYS THE INSURANCE PREMIUM
- ▶ T “ SHALL KEEP THE DEMISED PREMISES IN GOOD AND SUBSTANTIAL REPAIR AND CONDITION “
 - BUT MAY SAY ” **PUT & KEEP**” IN GOOD AND SUBSTANTIAL REPAIR AND CONDITION -
 - MAY SAY **RENEW & REPLACE** ALL FIXTURES & FITTINGS - MAY SAY REPAIR AND “**REBUILD**”
- ▶ T IS HAPPY TO REPAIR THE BUILDING DURING HIS OCCUPATION BUT NOT TO PUT INTO REPAIR (IF IN POOR REPAIR) OR TO ACCEPT ANY DEFECTS IN THE PROPERTY
- ▶ **EFFECTIVE FRI** - WHERE THE BUILDING IS MULTI-LET T MAY BE DIRECTLY RESPONSIBLE FOR INTERNAL REPAIRS BUT L/L RESPONSIBLE FOR EXTERNAL / STRUCTURAL REPAIRS AND RECOVERS COSTS VIA A SERVICE CHARGE
- ▶ **IRT (INTERNAL REPAIRING TERMS)** - IN THIS FORM OF LEASE T IS RESPONSIBLE FOR INTERNAL REPAIRS ONLY AND LANDLORD RESPONSIBLE FOR EXTERNAL AND STRUCTURAL REPAIRS AND CANNOT RECOVER THOSE COSTS FROM THE TENANT - TO REFLECT SAVING TO T OF AN IRT LEASE (A 10% ADDITION TO RENT MAY BE MADE IF IT IS BEING COMPARED TO A FRI LEASE) - BUT NO ADJUSTMENT IF IT IS COMPARED TO ANOTHER IRT LEASE
- ▶ THERE IS NO STANDARD FORM OF REPAIRING CLAUSE - SO NOTE CAREFULLY WHAT THE LEASE SAYS - AND WHAT IT DOESN`T SAY

GLOSSARY OF TERMS CONT'D

- ▶ **YIELDING UP** "AT THE END OR SOONER DETERMINATION OF THE TERM HEREBY GRANTED TO YIELD UP THE DEMISED PREMISES (IE, GIVE VACANT POSSESSION) AND ALL FIXTURES THEREIN (EXCEPT TENANTS OR TRADE FIXTURES) IN GOOD AND SUBSTANTIAL REPAIR AND CONDITION AS SHALL BE IN ACCORDANCE WITH THE TENANT'S COVENANTS HEREINBEFORE CONTAINED..."
- ▶ **RE-INSTATEMENT**
- ▶ **Q.** IF T HAS CARRIED OUT IMPROVEMENTS / ALTERATIONS (UNDER LICENCE) - DOES THE LEASE REQUIRE RE-INSTATEMENT OF THOSE ITEMS, IE, UNDOING THE WORKS ?
- ▶ **A.** ONLY IF THE LEASE (OR LICENCE) SPECIFIES THE RE-INSTATEMENT IS REQUIRED (OR REASONABLY REQUIRED) BY L/L
- ▶ **IMPROVEMENT / ALTERATION** - NB THE CONCEPT OF IMPROVEMENT IS FROM THE T`s PERSPECTIVE (NOT L/L`s) - AN IMPROVEMENT IS AN ALTERATION (IF PERMITTED) AND A LICENCE FOR ALTERATION MAY BE REQUIRED
- ▶ **SCHEDULE OF CONDITION** - IN MANY CASES L/L WILL NOT WANT TO PUT A PROPERTY INTO FULL REPAIR OR T WILL NOT AGREE TO DO SO. THE SOLUTION IS TO LET THE PROPERTY IN A STATE OF DISREPAIR - RECORDING THAT DISREPAIR IN A SCHEDULE OF CONDITION. THE SCHEDULE WILL DESCRIBE THE DEFECTS AND MAY PROVIDE PHOTOGRAPHS AS EVIDENCE
- ▶ T WILL BE REQUIRED TO HAND BACK THE PROPERTY AT THE END OF THE LEASE IN NO WORSE CONDITION THAN AS EVIDENCED BY THE SCHEDULE OF CONDITION
- ▶ **FAIR WEAR & TEAR EXCEPTION** - WHERE A PROPERTY IS TO BE LET ON A SHORT LEASE IT MAY NOT BE APPROPRIATE FOR T TO HAVE ANY SIGNIFICANT REPAIRING OBLIGATIONS. FAIR WEAR & TEAR EXCEPTION MAY APPLY.
- ▶ FAIR WEAR & TEAR IS THE *TYPE OF DISREPAIR WHICH THE TENANT WOULD HAVE OTHERWISE HAD TO MAKE GOOD HAD THE EXCEPTION NOT APPLIED, ie*
 - ▶ CHANGES WHICH HAPPEN DURING THE NORMAL USE OF THE PREMISES OR THEIR FIXTURES AND FITTINGS
 - ▶ CHANGES WHICH HAPPEN DUE TO THE NATURAL AGING OF PREMISES OR THEIR FIXTURES AND FITTINGS

REPAIRING CLAUSES

- ▶ **FRI lease** is worded such that **L/L has rights to inspect** the property to assess any disrepair (breach of repairing clauses)
- ▶ **FRI lease will reserve rights for L/L to require T to carry out any wants of repair** (disrepairs) & **may reserve rights for L/L to enter to carry out the works**
- ▶ **FORFEITURE** - if the disrepair is significant and L/L seeks possession from the T for breach of repairing covenant L/L can take action to forfeit the lease (i.e. get vacant possession)
- ▶ Forfeiture by L/L for breach of repair and relief therefrom for T are governed by statute
- ▶ **DILAPIDATIONS** - this is the general term used for wants of repair or decoration. Schedules used to notify tenants of the works of repair and decoration which the landlord wishes to be carried out under the terms of the lease are referred to as A SCHEDULE OF DILAPIDATIONS.
- ▶ **INTERIM OR TERMINAL SCHEDULE OF DILAPIDATIONS** Lease will normally permit L/L to serve a schedule during the term (**INTERIM SCHEDULE**) or at the end of the lease (**TERMINAL SCHEDULE**)

STATUTES DEALING WITH REPAIRS / DILAPIDATIONS

- ▶ **LAW OF PROPERTY ACT 1925** L/L seeking **forfeiture** for breach of repair serves a **S.146 Notice**
- ▶ The notice stipulates the 'wants of repair' and gives a reasonable time period for works of repair to be carried out
- ▶ **LEASEHOLD PROPERTY (REPAIRS) ACT 1938** To protect T's from overzealous L/L's T has protection from forfeiture by virtue of this Act
- ▶ L/L in serving S.146 must notify T of rights under LP (R) A 1938 - this applies to leases granted for a term of 7 years or more of which at least 3 years are unexpired
- ▶ Where L/L serves a S.146 T has 28 days to claim the benefit of the 1938 Act by a counter notice
- ▶ The effect of the counter notice is that no proceedings by action or otherwise may be taken by the L/L for forfeiture or for damages without the leave of the Court

LANDLORD & TENANT ACT 1927 SECTION 18 when L/L seeks damages for breach of covenant to put, keep or leave in repair the sum of damages must in no case exceed the amount (if any) by which the value of the reversion in the premises is diminished as a consequence of the breach of covenant

i.e. **L/L cannot obtain a higher sum of damages than the loss he would suffer from a premises being in disrepair**

known as **S.18 DIMINUTION IN VALUE**

- ▶ **Q. DOES THE LEASE ALLOW L/L FULL ACCESS TO ASSESS DILAPIDATIONS AND CARRY OUT THE REPAIRS HIMSELF AND RECOVER COSTS FROM T ?**
- ▶ **A. YES GENERALLY - BUT ONLY IF LEASE PERMITS THIS - BUT SEE CASE LAW BELOW**

JERVIS V HARRIS - Court of Appeal 14 NOV 1995

- ▶ A provision in the lease obliged a tenant to carry out repairs and provided that if he did not do so, the landlord might enter the premises do the repairs himself and recover from the tenant the costs and expenses of doing so.
- ▶ The potential conflict is **L/L's right to inspect** - prepare schedule - serve notice - then do works - **versus** - **T's right to quiet enjoyment**.
- ▶ **Held:** The provision was not a penalty. The money was payable not upon the breach but because the L/L decided to do repairs himself and claimed the costs thereof as a debt.
- ▶ L/L's claim for rent is regarded as a claim in debt. Rule requiring an injured party to mitigate his losses does not apply to a claim in debt.
- ▶ **Advantages to the L/L** of having and implementing a Jervis V Harris type remedy for a T's breach of repairing covenant are that -;
- ▶ It avoids need to forfeit - so no need for a S146 Notice - so the Leasehold Property (Repairs) Act 1938 does not apply;
- ▶ L/L controls the work the work which can be done without having to wait to the end of the term.
- ▶ **Disadvantages are** -;
- ▶ The risk of a claim for trespass if the conditions of entry have not been complied with
- ▶ L/L has to spend the money first,
- ▶ L/L risks dispute about the costs and extent of the work.
- ▶ There may be litigation over enforcement of the right of access

LATENT / INHERENT DEFECTS

- ▶ Q. What is an “inherent or latent defect” ?
- ▶ A. A latent defect is a fault or defect caused by failures in design, materials or construction method which may not become apparent or easily detectable until years after completion of the construction project and after expiry of the defects liability period.
- ▶ It might be thought that if a building was defective that was the L/L’s problem BUT SEE
- ▶ ***(Ravenseft Properties Ltd v Davstone (Holdings) Ltd [1979] 1 EGLR 54; (1978) 249 EG 51).***
- ▶ External stone cladding had started to detach from a concrete frame of a 16-maisonette building, rendering it dangerous. Principal reason for the problem was lack of expansion joints. It was not realised that expansion joints would be necessary.
- ▶ To deal with problem all the stone cladding taken down & replaced it with proper ties, including expansion joints (the absence of which the T`s claimed was the inherent defect).
- ▶ T argued that this repair work fell outside the scope of their repairing covenant because it arose out of an inherent defect.
- ▶ The court not only rejected the existence of a doctrine of inherent defect but also rejected the tenants’ contention that they should not be liable for any work under the covenant that ultimately necessitates remedy of an inherent defect. The court adopted a “fact and degree” approach, concluding that the work was “repair” within the meaning of the tenant’s covenant.
- ▶ **NB Recent example on Cheesegrater building. Faulty batch of bolts to retain cladding. November 2014 two bolts, the size of a human arm broke and fell from the 738ft tower. Claim against steel fabricator - covered by insurance**

LATENT / INHERENT DEFECTS CONT'D

- ▶ FAULTS AND DEFECTS CAUSED BY FAILURES IN DESIGN, WORKMANSHIP OR MATERIALS, MAY NOT BECOME APPARENT OR READILY DETECTABLE (EVEN WITH THE EXERCISE OF REASONABLE CARE) UNTIL MANY YEARS AFTER COMPLETION OF THE PROJECT, LONG AFTER THE END OF THE DEFECTS LIABILITY PERIOD.
- ▶ **EXAMPLES OF LATENT DEFECTS** INCLUDE:
- ▶ **DEFECTIVE BASEMENT TANKING** ALLOWING WATER PENETRATION.
- ▶ **INADEQUATE WALL TIES** ALLOWING MOVEMENT WHICH DAMAGES WALLS.
- ▶ **UNDER-STRENGTH CONCRETE OR MISPLACED REINFORCEMENT** ALLOWING MOVEMENT TO DAMAGE THE STRUCTURE.
- ▶ INADEQUATE FOUNDATIONS CAUSING SUBSIDENCE OF THE BUILDING.
- ▶ COMPLETED BUILDINGS HAVE A LIFE-CYCLE OF MANY YEARS - OFTEN OWNERSHIP CHANGES- CURRENT OWNER MAY HAVE HAD NO INVOLVEMENT IN ORIGINAL CONSTRUCTION, BUT IS NEVERTHELESS NOW LIABLE
- ▶ DEFECTS LIABILITY PERIOD MAY HAVE ENDED. TOO LATE TO INSIST CONTRACTOR RECTIFIES DEFECTS.
- ▶ OWNER MUST THEREFORE SEEK REDRESS IN AN ACTION FOR DAMAGES, FOR BREACH OF CONTRACT, OR FOR NEGLIGENCE. IN THE CASE OF DWELLINGS THERE IS A STATUTORY REMEDY PROVIDED BY THE DEFECTIVE PREMISES ACT 1972. ACTIONS FOR BREACH OF CONTRACT ARE TIME BARRED AFTER 6 YEARS FROM THE DATE OF BREACH
- ▶ BUT IF IT WAS A CONTRACT UNDER SEAL, THE PERIOD IS 12 YEARS. CLEARLY THEREFORE IT IS IMPORTANT TO THE BUILDING OWNER THAT ALL CONTRACTS ARE MADE UNDER SEAL; NOT SO FOR THE CONTRACTOR, THE PROFESSIONAL CONSULTANT OR THEIR INSURERS. WHERE THE CLAIM IS FOR NEGLIGENCE, THE TIME LIMIT IS 6 YEARS FROM THE DATE ON WHICH THE CAUSE OF ACTION ACCRUED, WHICH WILL BE THE DATE WHEN THE DAMAGE OCCURRED.
- ▶ EXAMPLE OF DEFECTIVE CLADDING ON A STORE - RESULTING IN ABANDONMENT OF PURCHASE DUE TO RISK OF INJURY TO PUBLIC.

DELETERIOUS MATERIALS



- ▶ Q. WHAT ARE DELETERIOUS MATERIALS ?
- ▶ A. Materials or building techniques which are dangerous to health, or which are environmentally unfriendly, or which tend to fail in practice.
- ▶ Q. NAME SOME DELETERIOUS MATERIALS
- ▶ **High Alumina Cement (HAC)**
- ▶ **Wood wool slabs** in permanent formwork to concrete.
- ▶ **Calcium Chloride or Sodium Chloride in concrete.**
- ▶ **Asbestos Products.**
- ▶ **Marine or sea dredged aggregates.**
- ▶ **Lead, or materials containing lead, which may be ingested or absorbed.**
- ▶ **Calcium silicate bricks or tiles.**
- ▶ **Materials composed of mineral fibres with diameter of <3 microns or less or length of < 200 microns**
- ▶ **Decorative finishes containing lead or asbestos.**
- ▶ **Paints and wood preservatives containing Pentachlorophenol.**

DELETERIOUS MATERIALS Cont'd

- ▶ **Q.** WHY IS IMPORTANT TO IDENTIFY PRESENCE OF DELETERIOUS MATERIALS ?
- ▶ **A.** IT WILL IMPACT ON VALUE
 - directly if the rental or capital value is adjusted
 - indirectly if repair - removal works are required as direct cost or via service charge
- ▶ **ASBESTOS** Use was banned in 1999 but past exposure still kills 4,500 annually in UK.
- ▶ Present in air & water BUT in non-harmful quantities and 2/3rds of all rocks.
- ▶ 3 types of Asbestos - White (most common) Brown Blue
- ▶ Was product of choice 1950's - 1980's for insulation, ceiling tiles, roof tiles, etc
- ▶ Rife in Woolworths & BHS but also in some M & S, Primark stores, etc.
- ▶ NB Buildings with asbestos in must maintain a REGISTER with locations marked on.
- ▶ Control of Asbestos Regulations 2006 governs Landlords duties to tenants,
- ▶ If it's in good condition and not damaged or disturbed then it shouldn't present a risk.
- ▶ BUT it is dangerous if disturbed - so shop / store cannot be re-fitted without removal which would require vacant possession

DELETERIOUS MATERIALS Cont`d

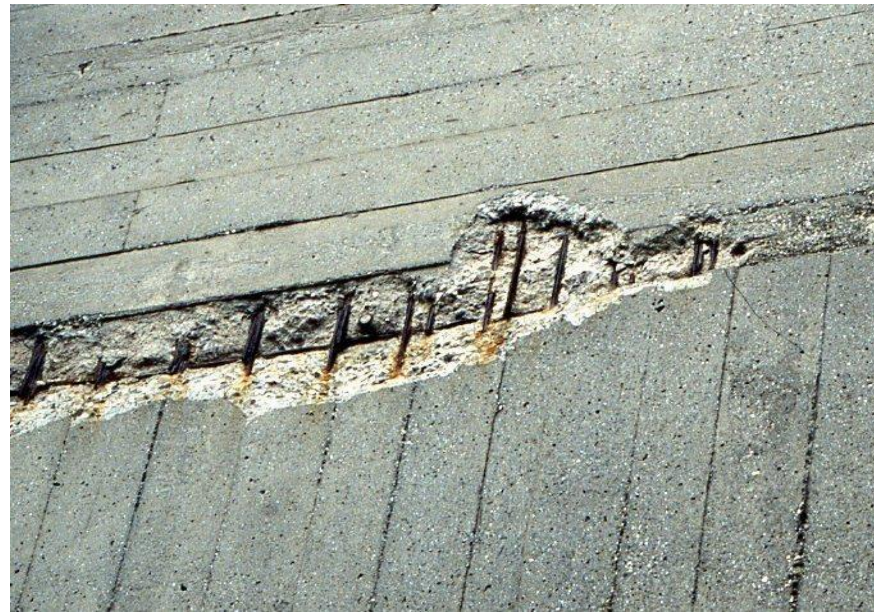
CONCRETE CANCER is caused when the steel reinforcing within a concrete slab begins to rust. As steel rusts it expands up to 7 times its original size causing the surrounding concrete to be displaced and become flakey. As the steel pushes the concrete away, more water gets to the steel accelerating the process. The process is often referred to as concrete spalling.

HIGH ALUMINA CEMENT HAC popular from 1950's to 1970. It used calcium aluminates rather than calcium silicates. Sometimes caused reductions in concrete strength and increased vulnerability to chemical attack. HAC is also known as Calcium Aluminate Cement (CAC). HAC concrete was effectively banned for use in new structural concrete in the UK following a few well publicised collapses in the 1970s. Most HAC concrete in the UK went into precast beams. Up to 50,000 buildings with similar beams continue to remain successfully in service today in the UK.

ASBESTOS REMOVAL



CONCRETE CANCER - Calcium Chloride



Scott Schedule

- ▶ Scott schedules originally devised by George Alexander Scott, a surveyor and official referee, for use in building disputes.
- ▶ Commonly used for complex arbitration cases in property cases where there are numerous claims also for family law, employment tribunals
- ▶ A Scott schedule is essentially a table with inputs from both the Claimant and Respondent.
- ▶ Claimant sets out their argument first - then Respondent responds. If case reaches Court judge gives decision in the final column on each item
- ▶ A Scott schedule may be prepared by agreement by the parties (for example in a terminal dilapidations claim) or may be ordered by the court, in which case the judge may give directions for the relevant column headings. This is likely to include; the claim, the cost, the response, an alternative figure and the judge's decision (see RICS, Example of a Scott schedule).
- ▶ Scott schedules should only be used where they will lead to a saving in cost or time and where they are appropriate and proportionate.
- ▶ In the case of a dilapidations claim, a Scott schedule may be an extended version of a schedule of dilapidations prepared by the landlord, enabling the tenant to respond to the quantified demand

CAVEAT EMPTOR - BUYER BEWARE

- ▶ Sale of Goods Act and the Unfair Contract Terms Act provides some protection to consumers, allowing them to return goods that are not of an acceptable standard, it does not apply to the sale of property (although it may apply to new goods in a property).
- ▶ Purchaser of property must take care to satisfy themselves that there are no unacceptable defects in the quality, fitness, or title of that property, as they may have no remedy against the seller if it turns out that there are defects. As a result, buyers will tend to investigate the title to a property they are considering purchasing, commission surveys and carry out searches to satisfy themselves that the property is acceptable.
- ▶ Whilst the seller of property cannot make untrue statements or representations, they are under no obligation to disclose material facts to the purchaser. The only exception to this is if the seller is aware of latent defects in title or issues relating to the property, which the purchaser could not reasonably discover by inspection, then the seller must disclose those defects to the purchaser. Failure to do so can entitle the buyer to claim damages or to rescind the contract.
- ▶ As it can be difficult to determine whether a defect is 'obvious' and so does not need to be disclosed, sellers may adopt a cautionary approach, however this can affect the price or the progress of the sale.
- ▶ It is also important that the seller does not make statements or sign contracts that confirm they are not aware of any defects.
- ▶ This combination of failure to disclose and misrepresentation can produce complicated situations. For example, a seller may not be obliged to disclose the extent of the title of a property, as this should be reasonably discoverable by the purchaser. However, if the property details falsely indicate the extent of the title then this may amount to misrepresentation.

S.18(1) L & T ACT 1927 - DIMINUTION IN VALUE

- ▶ **At the end of the lease if T is vacating L/L wishes to be able to let the property at a market rent – and cannot do so if it is in poor repair or decoration or if there are items to be reinstated.**
- ▶ **A terminal schedule of dilapidations is served – BUT there are limitations on what the L/L can demand / claim in the schedule.**
- ▶ **The works in the schedule have to be costed and the impact on rental & capital value calculated.- ie, what is the diminution in value of L/L`s property due to T`s disrepair?**
- ▶ **THE DILAPIDATIONS PROTOCOL – The Property Litigation Association (May 2008)**
- ▶ A protocol for claims for damages in relation to the physical state of commercial property at the termination of a tenancy.
- ▶ Damages for a breach of a covenant or agreement to keep or put the premises in repair shall not exceed the amount by which the value of the reversion in the premises is diminished owing to the suggested breach.
- ▶ L/L is required to demonstrate it is mitigating any loss - this puts a cap on the claim for repairs but does not limit claim / requirement for reinstatement
- ▶ No damage shall be recovered for a breach of covenant to leave or put premises in repair at the end of the lease, if T can establish that the property will be demolished or substantially altered - which works would mean that the repairs were unnecessary

S.18 DIMINUTION IN VALUE cont`d

- ▶ It should be noted that it is the intentions of the hypothetical landlord acting reasonably not those of the actual L/L which should be considered
- ▶ ie, the approach of an owner occupier, developer or investor bidding for the property
- ▶ ie, what would reasonably happen in the open market for the subject property given its character and the state of the local market at the relevant date.
- ▶ ie, the potential to let the property if in good repair in the current occupational market .
- ▶ L/L`s CLAIM will include -;
- ▶ Cost of remedying breach of covenant to repair
- ▶ Cost of remedying breach of covenant for internal/external redecoration
- ▶ Reinstatement costs which may apply either under the terms of the lease or within any specific subsequent licences
- ▶ Loss of rent during the period which may be required to actually undertake any required works
- ▶ Professional fees associated with above costs

S.18 DIMINUTION IN VALUE cont`d

- ▶ **L/L's CLAIM** will be judged by 3 tests
- ▶ To what standard does the repair clause require the building to be repaired and yielded up at the end of the term?
- ▶ To what standard has the building actually been left in repair/disrepair by the tenant at the end of the term?
- ▶ Having established the difference between the required and the actual has the L/L actually suffered a loss in reversionary value as a consequence of the disrepair?
- ▶ **T's DEFENCE TO CLAIM**
- ▶ L/L should only be compensated for the disrepair - not profit from it.
- ▶ If L/L is to alter or demolish the premises T's breach of repair is not relevant
- ▶ To assess potential diminution in value T will consider the level of demand and supply for similar property in that location - rental growth or decline
- ▶ The L/L's potential for development or changes of use with higher alternative use value
- ▶ The potential for refurbishment or alterations which would enhance re-letting prospects and value
- ▶ The extent to which any proposed works could be deemed to be an enhancement or even an improvement.

Sunlife Europe Properties Ltd v Tiger Aspect Holdings Ltd (2013)

- ▶ 35 year lease. Premises fitted out with state-of-the-art fittings in early 1970s.
- ▶ T failed to comply with repairing obligations - premises were in a poor state.
- ▶ When lease expired L/L claimed £2.172m plus interest for remedial work he carried out.
- ▶ T argued that the cost of repairs was £700,000 - subject to S.18 (1) L & T Act 1927 cap.
- ▶ **Q.** Should T have complied with repairing covenants by returning to premises with 1970s equipment - replaced them with modern equipment.
- ▶ **A.** Court held that
- ▶ T obliged to return premises in good and tenantable condition and with installation systems in satisfactory working order. T is NOT required to deliver up the premises with new equipment.
- ▶ Standard of repairs judged by reference to the condition of the equipment at the start of the lease, not the condition that would be expected of an equivalent building at the expiry of the lease.
- ▶ T only obliged to replace broken equipment on a like-for-like basis.
- ▶ T not required to upgrade equipment in line with current standards.
- ▶ ie, T is entitled to perform covenants in the manner least onerous to the T.
- ▶ Judge carried out own valuation. Awarded £1,353,254 + interest.

IMPORTANT POINTS - QUESTIONS TO ASK / ANSWER

- ▶ ESTABLISH IF LEASE IS FRI - EFFECTIVE FRI or IRT ?
- ▶ IS IT ONEROUS ie, “PUT & KEEP” - “RENEW / REPLACE” - “REBUILD” ?
- ▶ DOES IT INCLUDE OR EXCLUDE PROVISION FOR LATENT / INHERENT DEFECTS
- ▶ DOES IT PERMIT FULL INSPECTION RIGHTS & RIGHTS FOR L/L TO CARRY OUT WORKS ?
- ▶ IS THERE A SCHEDULE OF CONDITION or FAIR WEAR & TEAR EXCEPTION ?
- ▶ ARE ALTERATIONS PERMITTED WITH L/L CONSENT - IS REINSTATEMENT REQUIRED ?
- ▶ ARE THERE ANY ITEMS, ie a safe WHICH L/L MAY WISH REMOVED AT END OF LEASE ?
- ▶ WHAT AGE IS THE BUILDING - WILL DELETERIOUS MATERIALS LIKELY BE PRESENT ?
- ▶ IF AN OLDER LARGE STORE IS THERE AN ASBESTOS REGISTER ?
- ▶ IS THERE EXTERNAL CLADDING - WHAT AGE - HOW FIXED ?
- ▶ IF THERE ARE CONCRETE SECTIONS ARE THERE ANY RUST STAINS OR SPALLING VISIBLE ?

- ▶ NEXT SEMINAR 24TH APRIL @ CBRE @ 08;00hrs
- ▶ NOTES FOR THIS AND ALL PREVIOUS SEMINARS POSTED ON
- ▶ www.douglasstevens.co.uk SEMINARS