

## **Tenant's Repairs – Don't Despair!**

We find that during the negotiation of a Lease one of the most controversial issues for a tenant is the repair liabilities. A standard commercial lease will be negotiated on a 'full repair' basis. This means that the tenant is required to put and keep the property in good repair and condition as well as hand it back in this condition. This will be the position even if the property is taken on in a poor state of repair. The tenant could therefore face a situation where upon giving up possession of the property at the end of the lease term they are presented with a large bill to put the property into a good state of repair far beyond that when they took up occupation.

Subsequent problems surrounding repair liability may be avoided if solicitors are involved in the early stages of the negotiations. When negotiating the lease you need to carefully consider how the property is defined. The repair obligation will be linked to the definition of the property and a tenant is only liable to repair the extent of the property within that definition. This is especially important with a lease of part as a tenant should only be liable to repair the internal parts of the building which are being leased. The lease must also be clear as to the landlord's responsibility to repair the structure of the building and for all parts not being leased. In our experience problems can arise in relation to liability for windows, glasses, floor, flat roofs, cladding and shop fronts.

We always strongly advise that a tenant limits the repair liability by insisting on a Schedule of Condition. The Schedule is very important as it will form the benchmark of the tenant's ongoing repairing obligations under the Lease. The tenant will have a full repairing obligation in respect of any disrepair not evidenced in it and we would therefore always strongly advise that the Schedule of Condition is drawn up by a surveyor who can easily identify any areas of potential concern.

We find that a full survey of the property to identify any potential problems can be a useful bargaining tool.

When entering into a lease of a new property it is crucial to ensure the repair obligations do not extend to inherent defects. As well as ensuring a tenant is not responsible for these defects, it is important to ensure the Landlord assumes this liability. There are many means of limiting liability for repairs and other onerous obligations under a Lease, which is why legal advice at an early stage can assist negotiations.

We have extensive experience of negotiating leases including advising on repair obligations during the heads of terms stage. If you would like further information, please contact Gemma Baker at Hawkins Hatton, Tel: 01384 216840