

Dilapidations & Fixtures: In A Fix

James McAllister, Director of The Dilapidations Consultancy, explores the legal implications for commercial business tenants who fail to remove their fixtures and fittings before their lease expires.

[Abstract]

The term 'fixtures and fittings' permeates everyday language, even outside the world of commercial business leases. However, the definition of these seemingly innocuous words, and the wider implications they may have for tenants, deserves careful consideration.

Few tenants will occupy their leased premises without making some form of alteration. This may be a basic necessity to allow the business to function, and may only take the form of additional power sockets and data trunking. It may encompass partitioning, suspended ceilings and air conditioning, or in extreme cases, structural alterations. Most retail tenants will have their own corporate fit-out requirements; image-conscious office tenants may even snub the landlord's perfectly adequate decor in favour of plush carpets, vinyl wall linings and opulent reception areas. All of which, to a greater or lesser degree, fall squarely under the 'not to alter' clause prevalent in nearly all commercial leases. In some cases, this may be a strict prohibition on anything more than inserting a picture hook; in others, demountable and semi-permanent partitioning may be permitted without express authorisation from the landlord, subject, of course, to reinstatement at lease termination. Even where a licence to alter is required, and subsequently obtained by the attentive tenant, rarely will permission be granted without some sort of reinstatement provision.

Thus, it is unlikely any commercial tenant will survive the term without having to make good their modifications regardless of how extensive they might be. For the diligent few, this will be done in advance of their vacation and the termination date. Others may see no value in taking their fixtures with them, perhaps even believing that they help to 'enhance' the demise for the fortunate landlord or their next tenant. However, the way in which the law interprets what the landlord can and can't recover within the ambit of a dilapidations claim gives a stark warning for all tenants who naively believe walking away from the property at the end of the term is the end of the matter.

(Continued...)

For the full article, please email: info@dilapidationsconsultancy.com.