

RICS DILAPIDATIONS FORUM CONFERENCE

Case Study

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30 September 2009

Case Study

- Lease of office building for 25 years
- Tenant can break the Lease on 15 September 2009, being the 10th anniversary of the commencement of the term
- Subject to giving not less than 6 months notice to terminate

Case Study

- Lease provides that the break notice will be of no effect if:-
 - it is not served in accordance with the requirements of the Lease
 - any rent or any other sums due under the Lease are outstanding at the break date
 - vacant possession was not delivered on the break date
 - there is a material breach of any of the tenant's covenants under the Lease at the break date

Case Study

- Break notice was served on the landlord on 15 March 2009
- Tenant served on the landlord with the break notice a Schedule of Works
- It asked the landlord to notify it within 2 months if it disagreed with any of the works proposed or considered that any additional works were required

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- Landlord did not respond at all to the Schedule of Works
- Tenant proceeded to undertake all of the works specified by the end of August 2009
- Tenant paid all rent due up to 15 September 2009 and has vacated the property
- Tenant overlooked removing some demountable partitioning and builder's materials and equipment
- Tenant did not return keys

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- Pursuant to a Licence for Alterations, tenant had installed air conditioning in the building
- A requirement of the Licence was that, if so requested, the tenant would remove air conditioning on the determination of the term and reinstate the building
- A week before break date landlord served a Schedule claiming repair of the roof was inadequate requiring complete replacement and removal of the air conditioning and reinstatement of the building

Case Study

- Building value: £15million
- Rent: £1million p.a.
- If roof replaced cost: £100,000
- Air conditioning had improved the building and it is in full repair
- Roof is watertight but will need continual maintenance
- New tenant will almost certainly require the roof to be replaced
- Is the break notice likely to be effective? If not, can the tenant hold its professional advisers liable?

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