

Landlord and Tenant

Landlord's building works - avoiding payment of compensation for interruption of use

PROPERTY

What can landlords do if they need to carry out essential works to a building which will result in the tenant's use of the premises being briefly interrupted? The following points should be borne in mind in assessing whether the tenant would be entitled to damages:-

- are the works required pursuant to statute, or are they emergency works?
- what provisions does the lease contain on the landlord's rights of entry to carry out works, and is there an express exclusion of the tenant's ability to claim compensation for any interruption as a result?
- what steps can be taken by the landlord to mitigate any claim for compensation by the tenant?

The landlord's covenant for quiet enjoyment can be breached by interrupting the tenant's enjoyment of the premises so any works by the landlord resulting, for example, in closure of the tenant's business or obstruction of access could constitute a breach.

However, a breach can also occur by the *failure* of the landlord to keep the property in good repair. For example in *Gordon v Clico Company* (1985) a failure to keep the exterior of a block in repair was held to be a breach of covenant.

Nature of interference

There have been conflicting judicial statements as to the kind of interference that would constitute a breach of the covenant for quiet enjoyment. It seems to be a question of fact in each case. Past cases suggest that where occupation of premises is made intolerable by noise, dust and dirt caused by building work or, for example, access to a tenant's shop window and doors is obstructed by scaffolding, these interruptions could amount to a breach of covenant.

However, there is not usually a breach if works are carried out to comply with statute and the statute is properly complied with (for example service of notices).

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BRIEFING

Damages

If a Landlord is found to be in breach of its covenant for quiet enjoyment the tenant may bring an action for damages. The following steps should be taken by a landlord to mitigate a claim for damages:-

1. Give the tenant reasonable notice of when the works will be carried out.
2. Advise the tenant of how and what works are being carried out and specify if they are emergency works.
3. Explain the reasons why the premises need to be closed to carry out the works e.g. Health and Safety issues.
4. Serve any notices required under statute.
5. Take steps to cause the minimum disruption possible to the tenant.
6. Ensure as little damage as possible is caused to the premises and the tenant's fixtures and fittings, and that any damage caused is made good promptly.
7. Check that buildings and third party insurance cover is in place and not invalidated by the proposed work, and whether the insurers need to be given notice.
8. Consider if insurance cover is available to the landlord for claims by tenants for business disruption.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.
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