Repairs and Dilapidations in Commercial Leases
Royal Faculty of Procurators

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• FRI – tenant liable for all costs and repairs etc
• Schedule of condition – uninsured risks
• IRI – tenant responsible for interior – landlord retains liability for structure / exterior
Common Law

• Applies to extent not contracted out of

• Landlord warrants premises reasonably fit for purpose

• Landlord must provide premises that are reasonably fit, in good repair and wind and water tight

• Landlord to carry out repairs on request from tenant

• No liability for third party/God

• Destruction – severe damage - insuring
Repairs and Extraordinary Repairs

• Tenant’s obligation to repair
• Latent & inherent defects
• Renewing something worn out by time
Case Law on Repair

- Renewal/rebuilding of part only – Proudfoot v Hart [1890] 25 QBD 42

- Lurcott v Wakely [1911] 1KB 905

- Taylor Woodrow v SRC 1996 GWD 7-397– Satisfaction means “reasonable satisfaction”

- Lowe v Quayle Munro 1997 SLT 1168

- Beatsons Building Supplies v Alex F Noble 2015 GWD 15-271– culvert under the premises

- Thorn EMI v Taylor Woodrow IE Unreported 29\textsuperscript{th} October 1982

- Quick v Taff Ely Borough Council [1896] QB 809

- Napier v Ferrier 1847 SC 1354
Schedule of Condition

• Photos – words or both?
• Annexed to Lease or in a Back Letter of Missives?
• Tenants excusal – permanent??
• Deterioration – spread of problem
• Landlord’s obligation to do works
• Effect on rent review
Uninsured Risks

- Possibly negligent to fail to provide for this?
- Definition – anything that is not insured? / any “insured risk” that is not covered at the time
- explain to client the risk
- Rent etc abatement (uninsured)- when from?
- Time frame to decide if making good
- consequences
Dilapidations

• Remember Common Law Rules

• Westbury Estates v RBS 2006 SLT 1143 - item at end of economic life does not need to be replaced

• West Castle Properties v Scottish Ministers 2004 SCLR 899– Tenant can take account of increasing age of premises

• Pacitti v Manganielo 1995 SCLR 557– Acceptance of premises in good condition bars tenant from claiming otherwise
Remedies for Dilapidations -1

- Usually no right for tenant to carry out works after termination therefore specific implement incompetent – Sinclair v Caithness Flagstone (1898) 25 R 703; 5 SLT 364; PIK Facilities v Shell 2003 SLT 155

- Obligations to be performed only at termination can be enforced by specific implement – Coventry v British Gas (unreported) 15 August 1984 (OH)
Remedies for Dilapidations - 2

• Prudential v James Grant & Co West Ltd 1982 SLT 423

• Grove Inv Ltd v Cape Building products Ltd [2014] CSIH 43

• @SIPP (Pension Trustees) Ltd v Insight Travel Services Ltd [2015] CSIH 91