

The logo for Anderson Strathern, featuring a stylized 'AS' monogram in red and the company name 'Anderson Strathern' in white serif font.

AS Anderson
Strathern

Repairs and Dilapidations in Commercial Leases

Royal Faculty of Procurators

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FRI/IRI

- 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 29th 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 Shel 12003 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