



- Independent Landlord & Tenant Specialists.
- Commercial & Retail Property.
- S18(1) Dilapidation Valuations
- CUBS Accredited Expert Witness.

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DILAPIDATIONS VALUATIONS – 2 LIMBS (NOT AN ARM AND A LEG!)

Despite what many dilapidation schedules would suggest, a tenant will not automatically be liable to either do all works of repair to a premises at lease end or to pay the landlord the cost of him doing so.

S18(1) Landlord & Tenant Act 1927 puts a cap on the liability of a tenant with a 2 limb limit:-

- *Damages may not exceed the amount by which the disrepair diminishes the value of the landlord's reversion, and*
- *Damages are not recoverable where repairs would be rendered valueless by the premises being pulled down or structurally altered.*

Whilst this may sound straightforward, the resulting valuation exercise can be both detailed and protracted. A valuation as if in repair is relatively simple but the valuation in disrepair, to provide a figure for the diminution, will involve an assessment of what the tenant is actually liable to do at common law, what works would be superseded by a landlord's proposed works, what works would be superseded by a replacement tenant's fit out, what works the landlord can claim cost for, what works would be taken on by an ingoing tenant in return for a rent free period and what works do not actually affect the landlord's value. These then need to be factored into a valuation that takes account of the cost of works, delays in the income stream, void costs and the impact on yield of the disrepair situation.

Many landlords rely on a S18(1) report which is little more than an agent's marketing report with a wholly subjective adjustment to the rental value, but this will not stand up to scrutiny when compared to a wholly objective, detailed valuation that reflects how landlords and replacement tenants actually approach these situations in the open market. Whilst a shorter report may be significantly cheaper, in the long run its very nature will wholly undermine the entirety of a claim, making it by far the more expensive option.

Nor is a S18(1) Valuation simply a tenant's counter to a landlord's excessive schedule anymore. The pre-action protocol on dilapidations requires a valuation to be undertaken as a realistic assessment of the landlord's loss and if a landlord does not intend to undertake the works himself, if the tenant leaves in default, there is a compelling obligation on him to provide a S18(1) valuation as part of his claim. The emphasis is now on both parties to undertake this exercise and the standing of the valuation in the court proceedings makes it extremely advisable to produce this as a Part 35 Compliant Expert Witness Report.

Doing this as a Single Joint Expert Witness Report can be beneficial to all parties. Whilst highly persuasive, such a report is not binding on either party and it can break a negotiating deadlock by introducing a fully reasoned impartial opinion into the proceedings, opening the door to a settlement by either negotiation or mediation. It enables the respective Building Surveyors' rationales to be considered from an impartial stand point and a detailed exercise to be carried out at considerably lower cost than if each party engages their own Expert Witness and then argues over the different results. At the very worst it will remove a great deal of uncertainty at trial, something that can only be to all parties' benefit.

Maple Leaf has considerable experience in carrying out such valuations and produces a fully reasoned S18(1) Valuation in a Part 35 Compliant Expert Witness Report. Our detailed valuation approach, which fully mirrors how parties in the open market actually act, provides a sound foundation for any claim that can be fully explained and supported in any Dispute Resolution forum. However, where smaller claims may not justify the full cost of an Expert Report, an abridged report can be provided in the first instance and be updated for Court purposes later if required.

John Williams is a Member of the RICS, an Associate of the CI Arb and a CUBS Accredited Expert Witness.