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Landlord & Tenant

This pull out and keep guide to Landlord & Tenant introduces the key concepts and is written by independent industry practitioners.

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LICENCE FOR ALTERATIONS – THE WHY'S AND WHAT'S?

Yashmin Mistry & **Julian Davies** consider the issues.

WHAT IS LICENCE?

Under most residential leases a tenant is required to obtain consent from the landlord and/or the management company before making any alterations to his/her property. It's a simple process also known as an application for a "Licence for Alterations". The purpose is to record all works that alter the tenant's demise and protect the freeholders interests and those of other leaseholders/tenants.

Whether or not consent (a licence to alter) is required will be determined by (i) the scope of works and (ii) what the lease says.

In most leases, landlords place a restriction on the extent of alteration, extension or other changes and improvements to a property that the tenant can undertake during the term of the lease without landlord's consent. Generally, minor modernisation works, such as internal decoration, will not require consent. The most common alterations which normally require a Licence to Alter include:

- altering the structure
- installing additional sanitary facilities
- installing new heating or alternative service installations

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- cutting through an external wall
- removing any wall, solid or partition wall
- changing any windows

WHEN IS CONSENT REQUIRED?

Typically most leases will contain one of three provisions (or a combination of the three) in relation to alterations:

1. Absolute Covenant: prohibits the alteration absolutely. Only if the landlord is prepared to waive the clause will the tenant be able to make alterations;

2. Qualified Covenant: prohibits alterations except with the landlord's consent;

3. Fully Qualified Covenant: the alteration may only take place with the landlord's consent which must not be unreasonably withheld.

If the lease is silent on alterations then the tenant is free to carry out the alterations as he/she chooses.

In some circumstances, the Landlord and Tenant Acts of 1927 and 1954 provide that where alterations are necessary to comply with statute, consent cannot be withheld. Alterations are also a common source of dilapidations disputes, claims and financial burdens for the parties.

WHY DO YOU NEED A LICENCE TO ALTER?

From a leaseholder's point of view, it is important to establish whether a licence is required prior to commencement of the works as:

- you will almost certainly be in breach of lease terms and will expose yourself to the possibility of enforcement action being taken against you;
- you may experience difficulties in selling your property if you have made unregulated changes to the demise of your property; and
- it may be difficult and more costly to seek to apply retrospectively for consent once the works have been finalised.
- For obvious reasons there are precautions and procedures that need to be followed before a Licence should be granted.

LEASEHOLDER'S RESPONSIBILITIES?

The leaseholder is responsible for setting out the proposed scope of works to the landlord, which will typically require the preparation of design drawings, structural drawings, building services drawings and specifications. The leaseholder must also provide an undertaking that all works will comply with all relevant statutes planning consent, bye-laws, building regulations and good working practices.

Once approved by the landlord then all such information will be recorded in the Licence to Alter. Any change by the tenant will require either an addendum to, or a new Licence to Alter.

Subject to the lease terms, it is normal to have a reinstatement clause, whereby the tenant has an obligation to reinstate their demise to how it was prior to occupation. All works would be at the tenant's own cost.

The complexity of the tenant's proposed scope of works will determine whether the landlord appoints his own professional team to review and approve the designs, calculations or specifications put forward by the tenant. The costs of such advice would normally be chargeable to the tenant under the lease.

The tenant and landlord have a combined interest to ensure the accuracy of the "As Built" drawings and specifications to avoid any dispute at the expiry of the Lease.

LANDLORD'S DUTIES:

The Licence to Alter is normally prepared by the landlord's solicitor and issued to the tenants professional team for approval - and payment.

Legislation requires landlords to act within a reasonable period of time, not to unreasonably withhold consent when licence applications are made, and if withheld to supply reasons why.

The burden of proof will usually be on the landlord to show the duties have been complied with.

Yashmin Mistry is a Partner at JPC Law and Julian Davies is Managing Director of Earl Kendrick Associates

For more on this topic, view the Licences to Alter webinar exclusively at www.PropertyCPD.tv

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