

# HIGH COURT DISPUTES BETWEEN COMMERCIAL PROPERTY LANDLORDS AND TENANTS SOAR 43%

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## REFLECTS COMMERCIAL PROPERTY DISPUTES OVER SUBLETTING, SERVICE CHARGES AND DILAPIDATIONS



REUTERS/Suzanne Plunkett

The number of legal disputes between commercial property landlords and tenants reaching the High Court in London jumped 43% in a year, according to figures obtained by Sweet & Maxwell, the leading legal information provider.

In 2009 there were 40 disputes between landlords and tenants in the High Court in London\*, up from 28 in 2008 (latest data available).

The economic downturn has fuelled these disputes, as companies have desperately tried to slash their property overheads by shedding excess office and retail space.

Litigation may follow if the property landlord feels that the tactic being used by the occupier to cut their property overhead puts them at a disadvantage.

Sweet & Maxwell, a Thomson Reuters company, explains that with property as the second biggest business cost (after staff costs) thousands of legal disputes flare up every year between landlords and tenants. However, most of these get settled by negotiation or arbitration.

One common trigger is when occupiers try to sublet excess office space, created by staff redundancies or, in the case of the retail sector, by tumbling consumer spending.

Landlords might decide to refuse to consent to subletting particularly if they think the tenant has agreed a sub-market rent. Sweet & Maxwell explains that the landlord may fear that subletting the property may have a detrimental effect on future rent reviews on that building and ultimately impact the investment value of a commercial office or retail space.

Service charges also attract much greater scrutiny during periods of economic hardship. Tenants will be very keen to cut costs in a downturn and are likely to review the contractual terms of service charges more thoroughly.

Disputes over service charges can be particularly acrimonious in the retail sector, because these charges, particularly for tenants in shopping centres, are often very high. Even disputes over whether the service charge covers Christmas decorations in large out of town shopping centres have prompted legal action in the past.

Other common causes of disputes are:

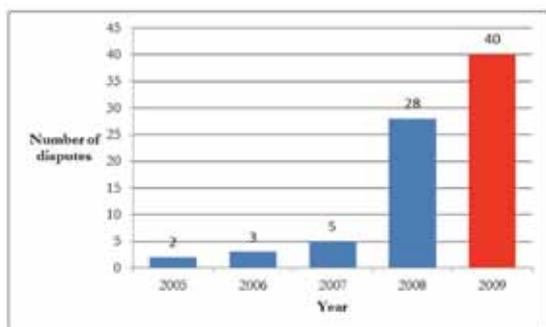
- **Break clauses.** Landlords will be keen to ensure that the tenant has strictly complied with all the contractual terms governing that tenant's right to exit a property early. The landlord might use any error in the execution of that break clause to refuse to allow the tenant to exit the property – litigation may follow.
- **Lease assignment.** Where a tenant wishes to leave the tenancy agreement and assign the lease to someone else. The landlord may have concerns if the new tenant has less financial strength than the occupier vacating the property.
- **Dilapidations.** Tenancy contracts for commercial leases usually contain a dilapidations clause, which specifies that the tenant is responsible for ensuring that the property is returned to its original state at the end of the lease. Retailers, for example, may have spent large sums on shelving, storage and interior design when fitting out a store, and office occupiers often add or remove internal partitioning.

\*Cases will all have a value of over £25,000



Disputes are frequently triggered by tenants' apparent failure to adhere to such dilapidations clauses. Tenants may argue that landlords are simply using dilapidations as way to generate extra income. Landlords may claim that they are simply maintaining the value of their investment.

#### Landlord and tenant disputes in the High Court, London (Chancery Division)



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