

Dispute Resolution  
Case Law Update  
Rosling King LLP



This decision from the Court of Appeal confirms that it is inappropriate to claim a loss for a rental void period which a landlord may expect to endure as a result of a tenant's breach of covenant where a landlord has already obtained a compensation payment in respect of the breach complained of.

### The Facts

Following determination of a lease of business premises, Laindon Holdings Limited (the "Landlord"), brought a dilapidations claim against South Essex Partnership University NHS Trust (the "Tenant").

At first instance, the Technology and Construction Court (the "TCC") ordered the Tenant to pay the Landlord damages in the sum of £130,492, which included damages for replacement carpets, together with damages for a two month rental void period.

The TCC held that pursuant to the terms of the lease, the carpets were landlord's fixtures and fittings and therefore the replacement of the carpets did not constitute a permitted tenant alteration. Accordingly, it was held that the Tenant was to pay compensation to the Landlord for remedial works for inter alia replacing the carpets. The Tenant appealed.

The TCC also held, in accordance with the decision of *Dodd Properties v Canterbury City Council* [1980] 1 WLR 433, that for the purposes of this claim, quantification of the Landlord's loss should occur at the trial date, rather than at the date of termination of the lease. The Tenant did not challenge this element of the decision, but submitted that since the Landlord had obtained payment in full by way of compensation for the Tenant's breaches of covenant shortly after Judgment at first instance, there was no basis for the Landlord to also claim any rental void period for the Landlord's commercial decision to further delay the carrying out of any remedial works.

### The Decision

The Court of Appeal decided that pursuant to the specific terms of the lease, the Tenant did have the right to replace the carpets and this was therefore a permitted alteration. Accordingly, the Tenant was not in breach of the disrepair covenant in respect of the carpets.

In addition, the Court of Appeal held that that once put in funds by payment of damages, further delay by the Landlord in carrying out the repairs (including those necessary to remedy the Tenant's breach), ought not to be visited as a further recoverable loss from the Tenant. The Court of Appeal agreed with the Tenant's submissions that although it may be a perfectly sensible decision to postpone works so that they may be carried out together and to wait until a new Tenant is found, it was inappropriate for a Landlord to blame a Tenant for a commercial decision to further delay such works when payment of the Judgment sum had already been made. On this basis, the Landlord was not entitled to claim for the two month rental void period.

### Commentary

This potentially useful decision for tenants confirms that a landlord cannot expect to be



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compensated twice for a tenant's breach of covenant. This is particularly so in circumstances where a tenant has agreed to pay damages, but a landlord subsequently makes a commercial decision to delay any repair works. In this situation, a landlord cannot '*have his cake and eat it*'.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.