

The classification of an item as a fixture or a fitting can often prove to be of surprising importance to a commercial tenant. The meaning of the words alone can be confusing.

Practical Difficulties

It is in particular as the end of a tenant's lease approaches that tenants usually turn their minds to how best to try to comply with the lease covenants, in order to limit the risk of being on the receiving end of a large dilapidations claim from its landlord. Whether an item is a fixture or a fitting might cause a tenant difficulties when trying to comply with those lease covenants. For example, if the lease refers to the need for the tenant to keep a landlord's fixtures in good repair, then how does the tenant know whether an item is a "fixture", rather than a fitting and whether it must therefore be repaired?

The classification of items as fixtures or fittings can also pose problems for tenants attempting to comply with break options. Landlord-friendly break clauses commonly require the tenant to give vacant possession in order to successfully break the lease. Leaving a tenant's fittings in the premises on the break date could give the landlord cause to argue that the tenant has failed to give up vacant possession, with the result being that they have not satisfied the break option requirements and therefore the lease must run to the end of its contractual term.

In this article we consider the distinction between fixtures and fittings, and take a look at a recent case highlighting some of the difficulties surrounding the topic.

When Is an Item a Fixture?

It is hard to define in general terms when an item will be a fixture rather than a fitting. It might be helpful to recall that the term "fittings" is frequently used to refer to loose objects/belongings.

Some might say that whether an item is a fixture or a fitting depends on how moveable the item is – e.g. if it is readily transportable, then it is a fitting.

However that distinction is not always as easily determinable as it might seem. Unfortunately, even case law shows discrepancies between the treatment of items as fixtures and fittings. While one judge may have held a greenhouse to be a fitting, another has held it to be a fixture. The reality is that the classification is quite fact-specific – not ideal for the troubled tenant. However, the following are helpful indicators of when an item might be treated as a fixture, rather than a fitting:

- It is difficult to remove, i.e. removing it may cause significant damage.
- It could be said that it is annexed to the land.
- It is immovable.

At the risk of adding yet further uncertainty, one must remember that a fixture might not always be a fixture. If the fixture is removed and detached from position, and once again becomes freely moveable, then it is likely to become a fitting again!

Real Issues in Practice: Are Carpet Tiles a Fixture or a Fitting?

In the recent case of *South Essex Partnership University NHS Foundation Trust vs. Laindon Holdings Ltd*, the Court of Appeal was tasked with considering arguments about whether carpet tiles belonged to the tenant or the landlord. The argument formed part of a larger terminal dilapidations claim.

The tenant had paid for the lifting, cleaning and re-installation of a tiled carpeting system as part of its initial fit-out works. The tiles were paid for by the tenant, and installed by the landlord's contractors at the tenant's expense. The tenant later replaced the carpet tiles with a new tiled carpeting system. The landlord claimed that the tiled carpeting system was a landlord's fixture or fitting. However, the tenant's first line of argument was that the carpet tiles were one of its fixtures, because it had paid for their re-installation as part of the fitting-out works.

The Court of Appeal said that it did not matter that the tenant had paid for the re-installation of the carpet tiles. The carpet tiles had belonged to the landlord before their installation, and belonged to the landlord thereafter.

As an aside, Lord Justice Briggs said that it did not really matter whether the carpet tiles were fixtures. However, since they were probably glued to the floors, he would, if necessary, have regarded them as fixtures.

Our Top Tips

- When negotiating the terms of a lease, where possible expressly state which items are fixtures, and to what standard they should be maintained.
- If in doubt, seek early advice – the consequences of wrong classification can sometimes be severe, for example if it leads to a failure to have exercised the break option.
- If a landlord wants a tenant to remove all of its fixtures at the end of the term of the lease, then it should make sure that the lease expressly says that.

If you would like to discuss any issues relating to fixtures and fittings, or dilapidations and break options generally, please do not hesitate to contact a member of our Real Estate Litigation team.

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