

# DILAPIDATIONS CASE STUDIES

## CASE STUDY

**Tenant Make-good Offer:** Complete Rejection Of Lessor's Claim

**Negotiated Settlement:** \$500,000

**Property:** Office premises (circa 4,000m<sup>2</sup>)

**Location:** Canberra, ACT

**Lease:** Dated 1993 for 10 year term. Internal repairing covenants only, excluding fair wear & tear.

**Instruction date:** November 2003 (3 months before expiry of holding over period)



### Dilapidations Report

SGA Property Consultancy – Chartered Building Consultants, was instructed by the Building Owner's to review a Dilapidation's schedule previously prepared and served on the Tenants which had been wholly rejected. The Tenants response to the Lessor had literally been "see you in court".

Following review of the premises, the lease and the previous schedule served, SGA determined that the claim had been prepared without the correct interpretation of the lease or the Lessee's repairing obligations. For example the schedule had incorrectly stated that the Tenant is to replace the ceiling completely whereas the obligation was make-good the tiles and grid only. Other repair works and reinstatement had been completely missed or underestimated. This inaccuracy had resulted in a breakdown of relationship and trust between the Lessor & Lessee. The original schedule, including the inaccuracies had totalled \$420,000+ GST.

### SGA Reporting

SGA prepared a new comprehensive assessment with a detailed schedule which, cross-referenced to the lease repairing covenants and a photographic record formed a complete document which was easy to interpret and understand by the Tenant.

SGA detailed the Landlords claim to be \$500,000 plus Professional Fees & GST – significantly more than the original claim that had been so strongly rejected.

### Negotiation

The Tenant considered the revised claim with their Legal Counsel. Following a structured negotiation, a process of explanation / interpretation of lease – agreement of scope – agreement of repair – agreement of cost, SGA were able to successfully raise the Lessee to a settlement at \$500,000 inclusive of GST & Fees.

### Result

As SGA had correctly identified the Lessee's repairing obligations and presented this in an accurate, well structured and understandable document the Tenant was open to justification and negotiation.

The Landlord was literally amazed with the outcome achieved by SGA – the situation had been turned around from a dispute heading to litigation, to a position of renewed trust with a settlement payment well above the originally flawed claim. SGA services were undertaken on a two-stage fee basis, a lump sum fee for the initial report and a performance percentage basis fee (RICS guidelines) for the negotiation to settlement.



## CASE STUDY

**Tenant Make-good Offer:** Not Applicable – claim \$100,000 + GST

**Negotiated Settlement:** Not Applicable

**Property:** Office premises (circa 800m<sup>2</sup> total GFA)

**Location:** North Sydney, NSW

**Lease:** Dated 1999 for 5 year term. Internal repairing covenants only, excluding fair wear & tear.

**Instruction date:** November 2003 (6 months before lease expiry)

### Dilapidations Report

SGA Property Consultancy – Chartered Building Consultants, was instructed by the Building Owner's Managing Agent to prepare a schedule detailing the end of lease repairs (Dilapidations), as the lease was nearing expiry.

Following review of the premises and the lease, SGA determined that due to the lease repairing covenants the Tenant was primarily responsible for removal of their fit-out and any damage caused during such removal. Although there was no expressed obligations to repair carpet, decorations or ceilings SGA assessed such repairs would be warranted following the removal of the Tenants fit-out & equipment. Where the Tenant had altered the position of base building services including sprinkler heads and light fittings these were required to be reinstated back to the open plan arrangement.

SGA calculated the Landlords claim to be circa \$100,000 plus Professional Fees & GST.

### Negotiation

The make good obligations came as a complete surprise to the Lessee organisation who had not

previously known or understood the extent of their liability. As the SGA report was clear and justifiable from lease interpretation to the works required and the extent of rectification cost, the Lessee soon confirmed their acceptance of the claim.

### Result

Astute property management by the Building Agents meant that the schedule and claim were prepared and presented well in advance of the Lease expiry. The presentation of a comprehensive report within a reasonable timeframe allowed the Tenant to understand all issues relating to their future property / rental strategy.

In this case the previously unknown make good liability increased the Tenants relocation cost. Therefore the Tenant opted to renew their lease as opposed to relocating.

The Managing Agent confirmed that the SGA Dilapidation's report had been instrumental in the Tenant deciding to renew their lease. The need and benefit for such accurate, justifiable reports prepared well in advance of lease expiry can't be understated – especially in a market where office vacancy rates are at such high levels.

## WHAT TYPE OF SCHEDULE?

### Interim Schedule – during the term of the lease

**Schedule:** Prepared at anytime during the lease to primarily identify Tenant maintenance issues including general disrepair, security works, painting, decoration, cleaning of property / rainwater goods / drains, servicing of plant, motors and systems. Fees and other costs may be attributable.

**Outcome:** Repairs undertaken by Tenant or potentially by the Landlord through the outgoings.

**Value:** Maintenance of Asset (at Tenant's cost).

### Terminal Schedule – prior to lease expiry

**Schedule:** Prepared prior to lease expiry, detailed schedule considering repair and yield up works required. Schedule will generally include removal of partitions, fit out, fixings and property. Repairs will generally extend to make good of floor coverings, carpets, ceilings, painting, general maintenance and cleaning. Fees and other costs may be attributable.

**Outcome:** Cash settlement for the Landlord or Tenant makes-good property.

**Value:** Property repaired / Settlement contribution towards refurbishment / repair / upgrade works.



If you wish to receive a complimentary SGA Make Good Guide please send an email to: [makegood@sgaproperty.com](mailto:makegood@sgaproperty.com)



#### SYDNEY

Level 2  
120 Clarence Street  
Sydney NSW 2000  
Australia

P: +61 2 9299 2988  
F: +61 2 9299 5288  
E: [syd@sgaproperty.com](mailto:syd@sgaproperty.com)

#### MELBOURNE

Suite 301 North, Level 3  
350 Collins Street  
Melbourne VIC 3000  
Australia

P: +61 3 9670 6737  
F: +61 3 9670 2357  
E: [melb@sgaproperty.com](mailto:melb@sgaproperty.com)

#### AUCKLAND

Suite 2, Level 4  
99 Queen Street  
Auckland  
New Zealand

P: +64 9 368 4888  
F: +64 9 368 4988  
E: [nz@sgaproperty.com](mailto:nz@sgaproperty.com)

#### BRISBANE

Level 30 AMP Place  
10 Eagle Street  
Brisbane QLD 4000  
Australia

P: +61 7 3303 8691  
F: +61 7 3303 8445  
E: [bris@sgaproperty.com](mailto:bris@sgaproperty.com)

#### PERTH

Level 28  
140 St Georges Terrace  
Perth WA 6000  
Australia

P: +61 8 9278 2793  
F: +61 8 9278 2525  
E: [perth@sgaproperty.com](mailto:perth@sgaproperty.com)

#### HONG KONG

Level 39, One Exchange Square  
8 Connaught Place  
Central  
Hong Kong

P: +85 2 3101 7352  
F: +85 2 3101 7353  
E: [hk@sgaproperty.com](mailto:hk@sgaproperty.com)