

**STRUCTURAL DISREPAIR, COVENANT INDEPENDENCE
AND CONTRACTUAL
TERMINATION IN COMMERCIAL LEASES:
AN ANALYSIS OF THE LANDLORD'S REPAIRING OBLIGATIONS,
TENANT LIABILITY,
AND THE RECOVERY OF PREPAID RENT**

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Abstract

This article examines the legal framework governing the allocation of repairing obligations in commercial leases under the common law and its application in Sierra Leone. It analyses the doctrine of independent covenants as between lessor and lessee, the landlord's liability for structural disrepair, the circumstances in which a commercial tenant may lawfully vacate unsafe premises, the proper characterisation of tenant alterations, and the recoverability of rent paid in advance following a fundamental breach by the landlord. Drawing upon English and Sierra Leonean authority, the article argues that the independence of leasehold covenants, properly applied, affords a tenant a coherent basis for both vacating premises rendered structurally unsafe by the landlord's default and pursuing financial remedies in restitution or damages.

I. INTRODUCTION

Commercial leases occupy a significant position in the law of landlord and tenant, imposing a complex web of obligations upon both parties that, taken together, determine the conditions under which demised premises are occupied, maintained, and ultimately vacated. Where premises deteriorate structurally, the precise allocation of repairing obligations between landlord and tenant becomes a matter of acute legal and practical importance. The tenant who finds itself occupying premises declared structurally unsafe must navigate questions of its own covenant

compliance, the independence of the landlord's obligations, the basis upon which it may lawfully determine the lease, and the prospects of recovering monies already disbursed.

These questions have engaged the courts of England and Wales over many decades and, by reason of Sierra Leone's inherited common law tradition, are equally applicable in that jurisdiction. The fundamental principle that covenants in a lease are generally independent unless expressly made conditional was settled as early as 1777 in *Boone v Eyre* and has been consistently applied to the landlord-tenant relationship ever since. The practical corollary of this principle is that a landlord cannot invoke a tenant's breach as a justification for non-performance of his own repairing obligations, a proposition of obvious significance where the structural condition of premises is in dispute between the parties.

This article proceeds as follows. Section II addresses the nature and scope of repairing obligations in commercial leases, distinguishing between those attaching to the tenant and those borne by the landlord. Section III examines the doctrine of independent covenants and its consequences for a landlord who seeks to rely upon alleged tenant breaches in deflecting his own liability for structural disrepair. Section IV considers the tenant's right to vacate premises rendered unsafe by the landlord's default, addressing both the substantive and procedural requirements for lawful termination. Section V analyses the law governing alterations and unauthorised subletting, being the specific breaches alleged against the tenant in this context. Section VI examines the recoverability of advance rent following a landlord's fundamental breach. Section VII offers concluding observations.

II. REPAIRING OBLIGATIONS IN COMMERCIAL LEASES

A. The Standard of Repair

The starting point in any analysis of repairing obligations is the identification of the applicable standard. The expression "tenantable repair" has a well-established meaning in English law: the premises must be kept in such condition as a reasonably-minded tenant of the class likely to take them would consider adequate, having regard to the age, character, and locality of the property at the commencement of the term. This standard was authoritatively stated in *Proudfoot v Hart* and

has been consistently followed. The obligation is not one of improvement or renewal but of maintenance at a standard commensurate with the nature of the premises.

In Sierra Leone, the same approach has been adopted. In *Jaber v Radar (1950–56) ALR SL 103* Beoku-Betts J articulated the governing principle with admirable clarity, holding that a covenant to repair is satisfied if the tenant keeps the premises substantially in repair and does what he reasonably ought in performance of the covenant. This formulation mirrors the English position and confirms that the tenant's obligation is not absolute: compliance turns on whether the tenant has done what is reasonable in the circumstances, assessed objectively against the standard appropriate to the demised premises.

It is important, however, to distinguish between different categories of repair. A tenant's repairing covenant typically extends to internal elements — windows, locks, non-structural internal walls, plaster, and fixtures — while structural elements are ordinarily the responsibility of the landlord. Where a lease draws this distinction expressly, the courts will give effect to it by reference to the natural and ordinary meaning of the words used. The significance of this distinction is heightened in the context of ageing commercial premises where the structural fabric has deteriorated, because the attribution of a defect to one category or the other determines which party bears the cost of remediation and which party is in breach if remediation is not carried out.

B. Structural Repair and the Landlord's Covenant

Where a lease imposes upon the landlord an obligation to keep the exterior, load-bearing walls, roof, floor joists, and boundary structures in tenantable repair, that obligation falls entirely outside the tenant's sphere of responsibility. The landlord's covenant in this regard is not merely an ancillary undertaking but goes to the root of the tenant's right to use and enjoy the demised premises for the permitted purpose. In a commercial context, where the permitted use may be stated to be a specific commercial activity such as banking, the inability to carry on that activity by reason of structural disrepair directly impairs the tenant's entitlement under the lease.

Structural defects of the kind revealed by independent engineering assessment, deep cracking in load-bearing elements, corrosion of reinforcement with measurable section loss, widening shear cracks in primary beams, progressive water ingress, and vegetation growth indicative of chronic moisture penetration are paradigmatic examples of the sort of deterioration that falls within a

landlord's structural repairing covenant. Such conditions are not susceptible to characterisation as ordinary interior repair: they involve the fabric of the building itself and engage the landlord's obligation to maintain the structural integrity of the premises. Where a formal structural assessment by a certified engineer confirms that premises are unsafe for occupation and recommends immediate vacation, the evidentiary basis for the landlord's breach is effectively established, subject to the assessment being accepted as reliable evidence before a court.

A landlord whose obligation includes repair upon forty-eight hours' notice of defects is placed in a position where, once notified, time begins to run immediately. The combination of a clear notification from the tenant and an independent professional assessment declaring the premises unsafe creates a compelling evidential picture of default. The landlord who does nothing in response to such notice cannot, as a matter of legal logic, avoid liability by asserting that the deterioration was caused by the tenant's failure to comply with its own interior maintenance obligations, unless there is direct causal evidence linking the tenant's default to the specific structural failure in question.

III. THE DOCTRINE OF INDEPENDENT COVENANTS

A. Origins and Rationale

The doctrine of independent covenants in lease law has its roots in the mid-eighteenth century. Prior to its formulation, the prevailing view was that obligations in a contract could be construed as mutually dependent, so that one party's default might suspend the other's obligation to perform. This approach, if applied to leases, would permit a landlord to cease performing his repairing obligations simply by pointing to a tenant's breach of covenant. The decisive rejection of this approach in the lease context came in *Boone v Eyre (1777) 1 H Bl 273* where Lord Mansfield CJ established the foundational principle that covenants in a lease are independent in the absence of an express provision making one conditional upon another.

The rationale for this rule is sound in both policy and principle. A commercial tenant who enters a long-term lease commits substantial resources to the occupation of premises, often paying rent in advance and investing in fitting out. If the landlord's obligation to maintain the structural integrity of the building could be extinguished whenever the tenant committed a breach of covenant, regardless of the nature or gravity of that breach, the tenant would be exposed to an

unconscionable risk. The rule also reflects the realities of a bilateral arrangement in which the respective obligations of the parties address different subject matters and are not, in any meaningful sense, reciprocal. The tenant's obligation to maintain the interior is not consideration for the landlord's obligation to maintain the structure: both obligations flow from the nature of the lease itself and the respective spheres of control that each party occupies.

B. Application to Structural Disrepair Disputes

The practical significance of covenant independence is most acute in cases where the landlord attempts to deflect his own repairing liability by invoking the tenant's alleged breaches. This strategy fails as a matter of law. Even assuming, for the sake of argument, that a tenant has failed to maintain the interior of the premises, or has carried out alterations without consent, or has sublet without permission, none of these defaults affects the existence or enforceability of the landlord's structural repairing covenant. The two sets of obligations are analytically distinct: they address different parts of the building, arise from different provisions of the lease, and are not expressed as conditions one upon the other.

This position is reinforced by the English Court of Appeal's treatment of quiet enjoyment in *Southwark London Borough Council v Mills* [1999] 4 All ER 449 which affirmed that a landlord's acts or omissions that substantially interfere with the tenant's lawful use of the premises may constitute a breach of the covenant for quiet enjoyment. While that case concerned noise rather than structural disrepair, the principle is of general application: the landlord's covenant for quiet enjoyment and his structural repairing covenant operate in tandem and reinforce the tenant's entitlement to peaceful and uninterrupted occupation of premises that are structurally sound. A landlord who allows the structure to deteriorate to the point of unsafety simultaneously breaches his repairing covenant and impairs the tenant's quiet enjoyment.

It must be acknowledged that the doctrine of independent covenants does not insulate the tenant from the consequences of its own defaults. A tenant who has breached a repairing, alteration, or assignment covenant remains exposed to the remedies of damages and, in appropriate circumstances, forfeiture. The point is that these liabilities are assessed independently of the landlord's own obligations. The existence of a tenant's breach does not diminish the landlord's liability for structural disrepair, and the existence of the landlord's breach does not provide a

blanket justification for the tenant to disregard its own covenant obligations. Each party's compliance is assessed on its own merits.

IV. THE TENANT'S RIGHT TO VACATE FOR STRUCTURAL UNSAFETY

A. Repudiation and Acceptance

The general law of contract recognises that a fundamental breach by one party may entitle the innocent party to treat the contract as repudiated and to accept that repudiation, thereby bringing the contract to an end and suing for damages. The application of this principle to leases raises conceptual difficulties because a lease is not merely a contract but also a conveyance of a legal estate in land, and it has long been debated whether ordinary contractual principles of repudiation apply to leases in the same manner as to purely contractual arrangements. The prevailing view in English law, following *National Carriers Ltd v Panalpina (Northern) Ltd* [1981] AC 675 is that the doctrine of frustration can in principle apply to leases, and by analogy, the broader doctrines of repudiatory breach and acceptance are also applicable.

The question of when a landlord's breach of a repairing covenant amounts to a repudiatory breach is one of degree. Not every failure to repair will suffice: the breach must go to the root of the contract and deprive the tenant of substantially the whole benefit of the lease. Where, however, the premises have been declared structurally unsafe by an independent engineer, where the landlord has been given proper notice of the defects and of their severity, and where the landlord has failed to take any remedial steps within a reasonable time, the cumulative picture is one of fundamental default. The tenant's right to occupy premises for the permitted use is wholly negated by a structural condition so serious that occupation is unsafe. In those circumstances, a court would be well placed to conclude that the landlord's continuing failure to discharge his structural covenant has repudiated the lease.

The acceptance of repudiation must be communicated clearly to the other party. In the context of a lease, this means that the tenant should serve a formal written notice upon the landlord or his solicitors, stating that, by reason of the landlord's failure to remedy the structural defects notified to him, the tenant elects to treat the lease as repudiated and will vacate the premises. Such a

notice should identify the specific covenant that has been breached, refer to the professional assessment of structural unsafety, and specify the remedial steps that the landlord has failed to take. A notice that complies with these requirements simultaneously discharges the tenant's procedural obligations under any notice provision in the lease and constitutes the necessary communication of acceptance of repudiation at common law.

B. The Tenant's Own Obligations upon Vacating

Even where the tenant is entitled to vacate, it does not follow that all of its own covenant obligations are extinguished. At the moment of vacating, the tenant remains bound by any obligation to leave the premises in the condition required by the interior maintenance covenant, to the extent that performance remains possible. This is an important qualification: the tenant cannot use the structural condition of the premises as a blanket justification for failing to discharge obligations that are within its power to perform. The logical position is that the tenant should, upon vacating, leave the interior in such repair as is consistent with its covenant obligations, making allowance for the fact that, where the structural failure makes certain interior works meaningless or impossible, those specific obligations are correspondingly suspended.

The obligation to vacate in an orderly manner also has implications for any alteration or sub-tenant occupation. Where a tenant has carried out works within the demised premises, the lease may require reinstatement at the landlord's option. Upon vacating, the tenant should offer the landlord the opportunity to elect between accepting the premises in their current condition and requiring reinstatement. This approach preserves the parties' respective rights and reduces the risk of a subsequent damages claim for failure to reinstate.

V. TENANT ALTERATIONS AND UNAUTHORISED SUBLETTING

A. The Law on Alterations

A covenant against alterations without the landlord's consent is a standard feature of commercial leases and serves the legitimate purpose of protecting the landlord's reversionary interest. At common law, an "alteration" encompasses any work that changes the form, structure, or character of the demised premises; it does not extend to purely decorative or reversible minor works that leave the essential character of the premises unchanged. The distinction between alteration and decoration has been explored in a number of authorities, and the courts have

consistently approached the question by considering the permanence of the works, their structural impact, and whether they materially change the functional character of the premises.

Where permanent structural steps have been erected, or where an internal subdivision of premises into separate units has been carried out, such works plainly qualify as alterations. The construction of permanent steps alters the configuration and access arrangements of the premises in a manner that is not readily reversible. The subdivision of a commercial premises into residential or other units changes its functional character entirely. Both categories of work would fall within the scope of an alteration covenant, and their execution without the landlord's written consent would constitute a breach.

However, the proper response to an alteration breach must be considered carefully. The landlord's remedies are damages — assessed by reference to the diminution in the value of the reversion — and, in certain circumstances, forfeiture. A landlord who seeks forfeiture for an alteration breach must normally serve a notice under section 146 of the Law of Property Act 1925 (or the equivalent provision in the applicable jurisdiction) and give the tenant an opportunity to remedy the breach where it is remediable. In many cases, an alteration breach is remediable by reinstatement, and the landlord cannot proceed to forfeit without first affording that opportunity. In Sierra Leone, the applicable statutory provision and its procedural requirements would govern the precise procedure, but the substance of the approach draws from the same common law tradition.

The tenant who finds itself in this position has a clear strategic interest in ascertaining whether consent was ever granted, whether expressly in writing or impliedly by acquiescence. A landlord who was aware of the works and raised no objection for a substantial period of time may be taken to have acquiesced in the breach, although mere inaction will not ordinarily suffice: there must be conduct that unequivocally demonstrates acceptance of the works as compliant with or exempt from the covenant. Where consent was genuinely obtained, even informally, evidence to that effect would be highly material in any proceedings.

B. Unauthorised Subletting

A prohibition on subletting without the landlord's written consent reflects the landlord's legitimate interest in controlling who occupies the demised premises. In English law, where a lease contains a covenant against subletting without consent and no qualification is added, the

covenant is absolute and the landlord may withhold consent for any or no reason. Where, however, the covenant is qualified, requiring that consent not be unreasonably withheld, section 19(1)(a) of the Landlord and Tenant Act 1927 implies that proviso even in the absence of express wording, and the landlord who unreasonably withholds consent exposes himself to a claim for damages.

Where a commercial tenant has sublet premises without first obtaining the required consent, it is in breach of covenant. The landlord's remedies mirror those available for alteration breaches: damages and potential forfeiture, subject to the section 146 procedure. The existence of this breach is entirely independent of the landlord's own structural obligations, and the principle in *Boone v Eyre* applies with equal force: a subletting without consent does not relieve the landlord of his repairing covenants, and conversely the landlord's structural default does not excuse the tenant from its obligation to sublet only with consent.

In the context of the broader dispute regarding structural safety, the subletting allegation should be assessed on its own merits. If the subletting is established, the tenant's appropriate course is to regularise the position by obtaining retrospective consent if the landlord is willing, or by determining the sub-tenancy, rather than allowing the breach to persist and provide additional ammunition to the landlord in any future proceedings.

VI. RECOVERY OF PREPAID RENT FOLLOWING LANDLORD'S BREACH

A. The General Rule

The general rule at common law is that rent paid in advance is not recoverable merely because the premises subsequently become unsuitable for occupation. This principle was given authoritative expression by the United Kingdom Supreme Court in *Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd* [2015] UKSC 72 which addressed the circumstances in which there will be an implied term entitling a tenant to a refund of advance rent upon early termination of a lease. The Court made clear that such a term will only be implied where the tests for implication are satisfied, specifically, where the term is necessary to give business efficacy to the contract or is so obvious as to go without saying and that the mere fact of early termination does not of itself justify an implied obligation to refund.

The logic of this rule rests on the characterisation of advance rent as a contractual payment for the right to occupy the premises during a specified period. Once paid, that right is conferred and the landlord has no automatic obligation to return the consideration for it, even if events thereafter prevent the tenant from making use of the premises. This reasoning, while commercially rational from the landlord's perspective, produces harsh results in cases where the tenant's inability to occupy is attributable to the landlord's own default.

B. Damages and Restitution as Alternative Remedies

The unavailability of direct recovery of advance rent does not, however, leave the tenant without remedy. Where the landlord has committed a fundamental breach of the structural repairing covenant, and where the tenant has lawfully terminated the lease in response to that breach, the tenant is entitled to claim damages for breach of contract. In the assessment of those damages, the court will identify the loss flowing naturally and directly from the landlord's breach: the cost of vacating and relocating, business disruption, loss of the benefit of the remaining term, and any portion of the advance rent that was paid for a period during which the premises were already unfit for occupation.

The claim in restitution offers an alternative analytical route. Where money has been paid under a contract and the consideration for that payment has wholly failed, because the landlord has been unable to provide the premises for occupation for the period in respect of which the payment was made, the payer may seek recovery on the ground of total failure of consideration. The doctrine of total failure of consideration was applied in *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32 to permit recovery of a prepayment where the contract was frustrated before any part of the consideration was rendered. Applied to a lease, the argument would be that rent paid in advance for a period during which the premises have been structurally unsafe and unoccupiable represents consideration that has wholly failed.

The difficulty with this argument is that the failure of consideration must, at common law, be total. Where the premises were structurally sound for part of the advance period and only later became unsafe, the consideration has not wholly failed for the entire period, and the restitutionary remedy is unavailable for that earlier portion. The tenant's restitutionary claim is therefore strongest in relation to rent attributable to future periods — periods that have not yet

elapsed at the time of termination, for which the landlord is in a position to give nothing in return.

The decision in *BP Refinery (Westernport) Pty Ltd v Shire of Hastings (1977) 180 CLR 266* restated the requirements for the implication of a contractual term, which in the context of a lease would be required to support a direct claim for apportioned rent. The five criteria :reasonableness and equitability, business necessity, obviousness, capable of clear expression, and consistency with the express terms ; set a high threshold that will not easily be met. Absent a specific restitutionary or implied contractual basis, the tenant's best remedy remains a claim in damages, in which the court may order compensation for all loss flowing from the landlord's breach, assessed in accordance with the principles in *Hadley v Baxendale (1854) 9 Exch 341*.

VII. PROCEDURAL CONSIDERATIONS AND NOTICE REQUIREMENTS

The legal rights available to a tenant in the circumstances described are not self-executing: their availability depends critically upon compliance with the applicable procedural requirements, both under the lease and at common law. Chief among these is the obligation to give proper notice to the landlord of the structural defects, to specify the remedial action required, and to afford the landlord a reasonable opportunity to comply before the tenant treats the lease as repudiated. The failure to give adequate notice will undermine the tenant's legal position at every level: it will weaken a claim that the landlord was in breach, remove the evidential basis for asserting that the landlord had a reasonable opportunity to remedy the defect, and potentially expose the tenant to a counter-claim for wrongful termination.

The adequacy of the notice is assessed by reference to the terms of the lease and the circumstances of the case. A notice that identifies the defects by reference to a professional assessment, specifies the timescale for compliance imposed by the lease, and makes clear the tenant's intention to vacate if compliance is not forthcoming, will ordinarily be regarded as adequate. Where the lease imposes a forty-eight-hour response obligation upon the landlord, a notice that is served and not responded to for a significant period provides compelling evidence of default. The combined effect of a structural assessment declaring the premises unsafe and a notice served in accordance with the lease that is met with silence or obstruction is, in most circumstances, sufficient to ground a finding of fundamental breach.

Beyond the repairing covenant, the question of forfeiture must also be addressed. Where the landlord seeks to forfeit the lease by reason of alleged tenant breaches of the alteration covenant or the subletting covenant, the landlord is required by law to comply with the notice procedure applicable in the jurisdiction. In England and Wales, that procedure is governed by section 146 of the Law of Property Act 1925, which requires service of a notice specifying the breach, requiring remediation where the breach is capable of remedy, and providing a reasonable time for compliance. Forfeiture without compliance with this procedure is void. The same principle, drawn from equity's abhorrence of forfeiture, applies in Sierra Leone, which has inherited the equitable jurisdiction in this regard. A purported forfeiture that does not comply with the applicable procedure will expose the landlord to a successful application for relief against forfeiture.

The significance of the procedural dimension cannot be overstated. In practice, many disputes between landlord and tenant that are sound in substantive law are resolved adversely to one party because of procedural non-compliance. A tenant that wishes to maintain the full range of their legal rights to vacate, to claim damages, and to resist forfeiture must ensure that every step taken is properly documented, properly notified, and procedurally regular. The engagement of specialist legal advisers at an early stage is, from both a practical and a risk management perspective, indispensable.

VIII. QUIET ENJOYMENT AND ITS RELATIONSHIP WITH STRUCTURAL SAFETY

The covenant for quiet enjoyment is implied into every lease by operation of law, notwithstanding the absence of an express provision. Its content is that the tenant shall have quiet and peaceful possession of the demised premises throughout the term, free from substantial and direct interference by the landlord. The breadth of this covenant has been the subject of extensive judicial analysis. In *Southwark London Borough Council v Mills* [1999] 4 All ER 449 Lord Millett affirmed that the covenant protects the tenant from acts and omissions of the landlord that substantially interfere with the ordinary and lawful enjoyment of the premises, and that the interference need not be physical in the traditional sense but may take the form of systematic and serious impairment of the quality of occupation.

The interface between the covenant for quiet enjoyment and the landlord's structural repairing obligation is a fruitful area of legal analysis. Where the structural condition of premises has deteriorated to the point of unsafety, the tenant's ability to use the premises for its permitted purpose is entirely negated. Banking operations, or indeed any commercial activity, cannot lawfully be carried on in premises that have been declared structurally unsafe by an independent engineer. The regulatory and health and safety consequences of permitting employees and members of the public to enter structurally unsafe premises compound the landlord's liability: the tenant that continues to occupy may face regulatory sanction, and the tenant that vacates without lawful justification faces a damages claim for wrongful abandonment.

The resolution of this dilemma lies in the proper application of the landlord's covenant for quiet enjoyment. A landlord who allows premises to deteriorate to structural unsafety is in breach of the implied covenant, and that breach, when it reaches the level of preventing the tenant from using the premises at all for its permitted purpose, constitutes a fundamental breach that entitles the tenant to treat the lease as repudiated. The covenant for quiet enjoyment thus operates as a residual protection for the tenant, catching cases of landlord default that might otherwise fall between the express provisions of the lease.

The relationship between quiet enjoyment and structural repair has also been considered in the context of claims for damages. In *Halsall v Brizell* [1957] Ch 169 and subsequent authorities, the courts have recognised that damages for breach of quiet enjoyment are assessed on a broad basis, including compensation for losses attributable to the interference with occupation. In a case of structural disrepair, the damages flowing from the breach of quiet enjoyment would include not only the costs of finding alternative premises but also any business losses attributable to the period of disruption and the diminution in the value of the unexpired term.

IX. AMICABLE RESOLUTION, MITIGATION, AND STRATEGIC CONSIDERATIONS

The foregoing analysis identifies a range of legal remedies available to a tenant confronted with structural disrepair attributable to the landlord's default. However, the pursuit of litigation is not always the optimal strategy, even where the legal position is strong. Commercial litigation is expensive, time-consuming, and carries inherent uncertainty of outcome. In many cases, a well-structured negotiation or mediation will achieve a faster and more cost-effective resolution than

protracted court proceedings, while preserving the commercial relationship — if that is desirable — and avoiding the reputational risks associated with public litigation.

The doctrine of mitigation requires a party who has suffered loss by reason of another's breach to take reasonable steps to reduce that loss. A tenant who vacates structurally unsafe premises must take reasonable steps to secure alternative accommodation, to minimise business disruption, and to avoid unnecessary expenditure. Failure to mitigate will reduce the damages recoverable in any subsequent claim. Conversely, a tenant who takes prompt and reasonable steps to find alternative premises and to document its losses creates a strong evidential record for the purpose of the damages claim.

The without-prejudice rule, which protects communications made in the course of genuine settlement negotiations from disclosure in subsequent litigation, provides a mechanism for parties to explore compromise without prejudicing their legal positions. A tenant that is willing to regularise its own alleged breaches of covenant — offering to obtain retrospective consent for alterations or sub-tenancies, or to reinstate altered premises — while simultaneously pressing the landlord to remedy the structural defects, demonstrates a constructive approach that will be viewed favourably by a court if proceedings ultimately become necessary. The principle of proportionality, which pervades modern procedural law, favours parties who have made genuine efforts to resolve disputes before resorting to litigation.

From a strategic standpoint, the tenant holding independent structural assessment evidence is in a position of relative strength. The engineering assessment creates an objective factual foundation that is difficult for the landlord to dispute without commissioning a rival assessment. Where the rival assessment either corroborates or fails to rebut the original findings, the evidential position solidifies further. The tenant that ensures its notice is properly served, its evidence of structural unsafety is comprehensive, and its own covenant obligations are so far as possible regularised, is well placed both to negotiate an advantageous settlement and to succeed in any litigation.

X. CONCLUSION

The legal issues arising in the context of structural disrepair of commercial premises engage some of the most fundamental principles of landlord and tenant law: the allocation of repairing obligations as between landlord and tenant, the independence of covenants in a lease, the

circumstances in which a tenant may lawfully terminate in response to the landlord's fundamental breach, and the extent to which financial losses arising from that breach can be recovered. The analysis in this article demonstrates that the law provides a coherent and, in most respects, adequate framework for the resolution of disputes of this nature, provided that the parties comply with the procedural requirements applicable to their respective positions.

The doctrine of independent covenants, established in *Boone v Eyre* and consistently applied since, ensures that a landlord cannot escape the consequences of his structural default by invoking the tenant's alleged breaches of the interior maintenance, alteration, or subletting covenants. Each party's performance is assessed on its own merits, and the landlord's duty to maintain the structural integrity of the building is not suspended by the tenant's default in other respects. This principle is of fundamental importance: it prevents the landlord from using the complexity of the lease's covenant structure as a shield against his own liability.

The tenant's right to vacate and treat the lease as repudiated in response to the landlord's fundamental breach is well-established in principle, but its exercise requires careful attention to procedure. The tenant must give proper notice, afford the landlord a reasonable opportunity to remedy, and communicate clearly its election to accept the repudiation. Failure to observe these requirements risks converting a lawful vacation into a wrongful abandonment, with potentially serious financial consequences.

On the question of advance rent, the general rule that prepaid rent is not directly recoverable upon termination does not preclude the tenant from pursuing damages and, in appropriate circumstances, restitutionary remedies that encompass the financial loss attributable to the landlord's breach. The decision in *Marks and Spencer plc v BNP Paribas [2015] UKSC 72* forecloses a direct claim for refund of advance rent in the absence of an express or implied contractual term, but the damages claim that flows from a lawful termination for fundamental breach provides an alternative avenue of recovery that may, on appropriate facts, yield an equivalent or greater financial remedy.

Finally, the importance of procedural regularity and strategic conduct cannot be overstated. The tenant that documents the structural defects comprehensively, serves notice correctly, regularises its own breaches wherever possible, and pursues amicable resolution before resorting to litigation, places itself in the strongest possible legal and practical position. The principles

examined in this article, drawn from the common law tradition shared by England and Sierra Leone, provide the substantive foundation upon which that position is built.

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Cases

Boone v Eyre (1777) 1 H Bl 273

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Jaber v Radar (1950–56) ALR SL 103

Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd [2015] UKSC 72

National Carriers Ltd v Panalpina (Northern) Ltd [1981] AC 675

Proudfoot v Hart (1890) 25 QBD 42

Southwark London Borough Council v Mills [1999] 4 All ER 449

Legislation

Landlord and Tenant Act 1927, s 19(1)(a)

Law of Property Act 1925, s 146

FOOTNOTES

¹ *Boone v Eyre* (1777) 1 H Bl 273, per Lord Mansfield CJ.

² *Proudfoot v Hart* (1890) 25 QBD 42 (CA) 52–53, per Lopes LJ.

³ *Jaber v Radar* (1950–56) ALR SL 103, per Beoku-Betts J.

⁴ *Boone v Eyre* (1777) 1 H Bl 273.

⁵ *Southwark London Borough Council v Mills* [1999] 4 All ER 449 (HL), per Lord Millett.

⁶ *National Carriers Ltd v Panalpina (Northern) Ltd* [1981] AC 675 (HL).

⁷ Law of Property Act 1925, s 146.

⁸ Landlord and Tenant Act 1927, s 19(1)(a).

⁹ *Boone v Eyre* (1777) 1 H Bl 273.

¹⁰ *Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd* [2015] UKSC 72, [2016] AC 742, per Lord Neuberger PSC.

¹¹ *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32 (HL), per Lord Simon LC.

¹² *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266, 283 (PC).

¹³ *Hadley v Baxendale* (1854) 9 Exch 341, 354, per Alderson B.

¹⁴ *Southwark London Borough Council v Mills* [1999] 4 All ER 449 (HL).

¹⁵ *Halsall v Brizell* [1957] Ch 169 (Ch D).

¹⁶ *Boone v Eyre* (1777) 1 H Bl 273.

¹⁷ *Marks and Spencer plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd* [2015] UKSC 72.