


---

---

---

---

---

---

---

---

SUMMARY



- Section 18 – quick revision
- Supersession: working towards a definition
- Classifying supersession
- Causation
- Supersession scenarios

---

---

---

---

---

---

---

---

SECTION 18



“Limb 1”:

*Damages for a breach of a covenant or agreement to keep or put premises in repair during the currency of a lease, or to leave or put premises in repair at the termination of a lease ... shall in no case exceed the amount (if any) by which the value of the reversion ... in the premises is diminished owing to the breach...*

---

---

---

---

---

---

---

---

**BECKETT**  
AND  
**KAY**

LIMB 1:

- Damages for repair breaches cannot exceed diminution in value of landlord's reversion

LIMB 2:

- There will be no damages for repair breaches where the building is to be demolished

---

---

---

---

---

---

---

---



**BECKETT**  
AND  
**KAY**

SUPERSESION: A DEFINITION

*"... a standard definition is not universally adopted"*

*"... there is no universally accepted explanation as to when items can be said to have been superseded. It is beyond the scope of this guidance note to attempt to provide such an explanation."*

(RICS Guidance Note, 7<sup>th</sup> edition, 2017)

---

---

---

---

---

---

---

---



**BECKETT**  
AND  
**KAY**

SUPERSESION: A DEFINITION

*"...term used where the need for an item of work is overtaken by the probable occurrence of another."*

(RICS Guidance Note, 5<sup>th</sup> ed.)

*"The notional buyer may be someone who proposes to refurbish or upgrade the premises in such a way that any repair works which the tenant ought to have carried out would be wholly or partially superseded"*

(Dowding and Reynolds, 30-39, 2018)

---

---

---

---

---

---

---

---



**BECKETT**  
AND  
**KAY**

SUPERSESSION: A DEFINITION

If:

(value of B + cost of the works) ≠ (value of A)

Landlord must do works (even in scenario A) to re-let. There are two consequences:

1. L cannot recover cost of additional work
2. "the additional work may make worthless some of the work ... necessary to put the building into repair... The Landlord has suffered no loss and accordingly cannot recover any damages in respect of that breach. This is known as 'supersession'."

*Sunlife v Tiger* (paragraphs 39-41 and 46)

1 Sunlife Europe Properties Ltd v Tiger Asset Holdings Ltd (2013) EWHC 473

---

---

---

---

---

---

---

---

---

---

**BECKETT**  
AND  
**KAY**

SUPERSESSION AND CAUSATION

- Is there a chain of causation between breach and repair?
- Example: ceiling in disrepair
- See: Tuffin Ferraby Taylor White Paper, *Supersession: Mitigation and Causation*, Jon Rowling FRICS 2017

---

---

---

---

---

---

---

---

---

---

**BECKETT**  
AND  
**KAY**

CLASSIFYING SUPERSESSION: RICS

1. Basic remedial work
2. Grander remedial work
3. Extinguishment




---

---

---

---

---

---

---

---

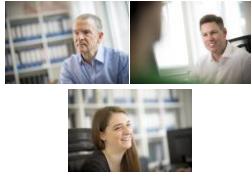
---

---

**BECKETT  
AND  
KAY**

CLASSIFYING SUPERSESSION: BECKETT AND KAY

- 1. Dilution
- 2. Survival
- 3. Supersession




---

---

---

---

---

---

---

---



**BECKETT  
AND  
KAY**

SUGGESTED CLASSIFICATION OF CLAIMS:

- 1. Cost of works
- 2. Straightforward
- 3. Deeper analysis
- 4. Possible futures

---

---

---

---

---

---

---

---



**BECKETT  
AND  
KAY**

A SUPERSESSION SCENARIO (1)

- B1 offices in City of London
- Third floor only
- Repairing obligations exclude air conditioning
- Lease expired 31 March 2018
- Scott schedule: £180,000
  - Ceiling tiles
  - Carpets
  - Windows

---

---

---

---

---

---

---

---



WHAT ARE THE LANDLORD'S INTENTIONS?

BECKETT  
AND  
KAY

- "Basic remedial work"
- Cost of works claim
- No "grander remedial work"




---

---

---

---

---

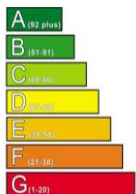
---

---

---

BUT...

BECKETT  
AND  
KAY




---

---

---

---

---

---

---

---

WHAT WOULD THE PURCHASER DO?

BECKETT  
AND  
KAY

- Consider chain of causation
- "Grander remedial work"
- Beyond scope of CC
- Supersession, dilution, or survival?
  - Ceiling tiles
  - Windows
  - Carpets

---

---

---

---

---

---

---

---

A SUPERSESSION SCENARIO (2A)

BECKETT  
AND  
KAY

- B1 office in City of London
- Single tenant (excluding retail)
- Effective FRI
- Lease expired 31 March 2018. EPC is C.
- Contractual claim assessed at £1.80m
  - Lift
  - Air conditioning
  - Roof
  - Windows

---

---

---

---

---

---

---

---

BUT...

BECKETT  
AND  
KAY



---

---

---

---

---

---

---

---

HERE'S WHAT'S NEXT DOOR:

BECKETT  
AND  
KAY



2016



2018

---

---

---

---

---

---

---

---

BECKETT  
AND  
KAY

WHAT WOULD THE PURCHASER DO?

- Consider chain of causation
- "Grander remedial work"
- Beyond scope of CC
- Supersession, dilution or survival?
  - Lift
  - Air conditioning
  - Roof
  - Windows

---

---

---

---

---

---

---

---

BECKETT  
AND  
KAY

A SUPERSESSION SCENARIO (2B)

- B1 office in City of London
- Single tenant (excluding retail)
- Effective FRI
- Lease expired 31 March 2018. EPC is a low D.
- Contractual claim assessed at £1.50m
  - Lift
  - Air conditioning
  - Roof
  - Windows

---

---

---

---

---

---

---

---

BECKETT  
AND  
KAY

HERE'S WHAT'S NEXT DOOR (ON THE OTHER SIDE):



2016



2018

---

---

---

---

---

---

---

---

**BECKETT**  
— AND —  
**KAY**

WHAT WOULD THE PURCHASER DO?

- “Grander remedial work” / “extinguishment”
- Beyond scope of CC
- Supersession, dilution or survival?
  - Lift
  - Air conditioning
  - Roof
  - Windows

---

---

---

---

---

---

---

---

A SUPERSESSION SCENARIO (3)

**BECKETT**  
— AND —  
**KAY**



AT THE VALUATION DATE

---

---

---

---

---

---

---

---

A SUPERSESSION SCENARIO (3)

**BECKETT**  
— AND —  
**KAY**



BY THE TIME THE CASE CAME TO COURT

---

---

---

---

---

---

---

---



**BECKETT  
AND  
KAY**

*BRUNTWOOD*<sup>2</sup>

- Total supersession / “extinguishment”?
- Not quite...
- Chain of causation
- In compliance, the transformation would not have happened
- “Multiple possible futures” case

*v Bruntwood 2000 First Properties Ltd v British Telecom plc [2000] 1 All ER 929*

---

---

---

---

---

---

---

---

**BECKETT  
AND  
KAY**

CONCLUSIONS

- The transformation might be dramatic, but it doesn’t (necessarily) let the tenant off the hook
- The view of the hypothetical purchaser in A and B *always* matters
- Supersession isn’t black or white
- Dilution and survival is the “grey”
- Need to examine the schedule item by item

---

---

---

---

---

---

---

---

**BECKETT  
AND  
KAY**

SOME FURTHER READING:

- *Ravensgate Estates v Horizon Group* [2007] – damages = “survival”
- *Sunlife v Tiger* [2013] – quantifying survival
- TFT white paper (<http://www.tftconsultants.com/files/White-papers/TFT-Supersession-Mitigation-and-Causation.pdf>)
- [www.beckettandkay.co.uk/valuation-in-dilapidations](http://www.beckettandkay.co.uk/valuation-in-dilapidations)

---

---

---

---

---

---

---

---

**BECKETT  
— AND —  
KAY**  
+ CHARTERED SURVEYORS +

**Supersession: A case study**  
RICS Dilapidations Roadshows 2018

---

BECKETT AND KAY LLP  
15 ABchurch Lane  
London EC4A 3DF     T: +44 (0) 20 7491 6600  
F: +44 (0) 20 7491 6668     Head office: 15 Abchurch Lane  
London EC4A 3DF  
Web: www.beckettandkay.com     RICS  
The Royal Institution of Chartered Surveyors

---

---

---

---

---

---

---

---