Real estate: 3 differences between renovation and maintenance in lease

Buildings may be timeless but every now and then work will have to be carried out in order to prevent decay. Lessees and lessors have different rights and duties, depending on whether the work can be considered as renovation or (urgent) maintenance.

**

About the author:

Ynze Kliphuis is a lawyer at Russell Advocaten. He specializes in civil and administrative real estate law.

What’s the difference between renovation and maintenance?

Renovation is popularly referred to as major maintenance (groot onderhoud). However, legally speaking renovation and maintenance are not the same and this difference may have major consequences for lessees and lessors of all kinds of real estate. The term renovation is only applicable if work is carried out to improve the enjoyment under a lease, for instance, by insulating or double glazing a house. This will improve living comfort. Renovation also takes place when old store premises are demolished and replaced by new ones. However, if the lessor replaces a defective single pane with double glazing, this will be considered as maintenance. The work is (primarily) carried out to correct a defect and not to improve the living comfort of the lessee.

What are the consequences of the difference between renovation and maintenance?

1) In the event of a renovation, a lessor can request an increase in rent. In order to do so, the lessor has to present a reasonable proposal to the lessee. The lessee can request a court to check the reasonableness of the proposal. Maintenance cannot be offset against the rent. Maintenance costs are considered to be included in the rent. However, the lessee is responsible for part of the maintenance.
2) In the event of a renovation, the lessee can claim a contribution to removal and refurbishment expenses. The lessee is entitled to a contribution to these costs, thus not to a reimbursement of all removal and refurbishment expenses. In the event of maintenance, the lessor does not have to make any payments to the lessee. The lessee has to offer the lessor the opportunity to perform the maintenance work.

3) Renovation can also be a reason for the termination of the lease, especially if the renovation is so drastic that renovation is not reasonably possible with a continuation of the lease. This may be the case, for instance, if store premises disappear after a renovation because a shopping centre will be reorganized or the premises will be used for different purposes. Even if a renovation can take place with a continuation of a lease but the lessee does not accept the reasonable proposal referred to above, this may be a reason for the lessor to terminate the lease.

Conclusion
The three juridical differences consist of:
- increase in rent possible (renovation) or not (maintenance)
- entitlement to a contribution to removal and refurbishment expenses (renovation) or not (maintenance)
- a possible ground for lease termination (renovation) or not (maintenance).

Action
- Check whether it is maintenance or renovation:
  - For maintenance, you, as a lessee, don’t have to accept an increase in rent.
  - For renovation, as a lessor you may increase the rent. As a lessee, you may be eligible for a contribution to your costs.
- In the event of maintenance, make sure who has to meet the costs. If necessary, contact a lawyer.
More information

Do you have any questions regarding maintenance or renovation? Or do you have any other questions concerning your real estate? The specialists at Russell Advocaten will gladly provide legal advice. Please contact:
Ynze Kliphuis, LL.M. (ynze.kliphuis@russell.nl).