

## Service Charge Disputes

### Claiming and disputing Service Charges

Service charges and their recovery are a common reason for disputes. This leaflet is a brief overview of the landlord and leaseholder's rights and obligations.

Most long leases of flats provide that the landlord, or a management company, will maintain the structure of the building and common areas subject to the contribution by the leaseholders of the shared expenses by way of service charge.

As set out below, there are a number of restrictions on what can be recovered as service charge and the process for collection.

**Leaseholder, Flat owner, Lessee, Tenant** interchangeably used to describe the person who owns the long interest in the flat

**Freeholder, Landlord, Lessor** interchangeably used to describe the person or company who owns the freehold land

#### ① The Lease

The starting point for determining whether service charges are payable is the Lease. This is the contract between Landlord and Leaseholder and should set out:

- 1 What the Landlord and Lessee covenant (promise) to do
- 2 What sums the Landlord may recover
- 3 The process for levying the service charge
- 4 Provision for sinking funds and payments on account

Whenever a new lessee buys his flat (or new Landlord buys the freehold), they are bound by the covenants within the lease.

If the lease does not contain a provision for the Landlord to charge for a specific item, he is precluded from doing so. For example many leases only permit the cost of repairing, rather than improving the building.

#### ② Statutory Demand

Service Charge is only payable if the Landlord sends a written demand accompanied by a prescribed notice entitled "Service Charges – Summary of Tenant's Rights and Obligations". The demand must contain the landlord's name and address for service.

A similar notice is required if the demand contains any administration charges (such as charges for late payment or grant of an approval).

If no demand and accompanying notice has been sent, the Tenant has no obligation to pay the service charge.

#### ③ Reasonableness

Service charge is only payable in so far as it has been reasonably incurred by the Landlord and if the services or works are of reasonable standard. This means that if any element of service charge is not reasonable the Landlord cannot recover it. The court / tribunal will look at a range of factors in determining what is reasonable.

# Service Charge Disputes

Continued Page 2

## ④ Consultation on Major Works

The Landlord must serve a series of notices ('section 20 notices') consulting with the lessees in relation to:

- 1 Works costing more than £250 per flat
- 2 Service agreements for a period of more than 12 months and costing more than £100 per flat

Should these provisions not be followed, the Landlord may only be able to recover £250 for major works or £100 for long term contracts in respect of each flat.

## ⑤ Timing

The Landlord must demand the service charge within 18 months of incurring the cost. If this is not done he cannot recover this sum.

## ⑥ Other Provisions

**Insurance** Where the Landlord has an obligation to insure the building, the lessee can demand a written summary of the insurance policy or an opportunity to inspect and take copies of the policy.

**Notice of Ground Rent** Ground rent demands must amongst other requirements detail the sum payable, include the Landlord's name and address for service and give the tenant a date to pay between 30 to 60 days of the date of the notice.

**Summary and Inspection** The Lessee can demand the Landlord provides a summary of the service charge for the last 12 months or accounting period and then inspect the accounts, receipts and other documents relating to this. Failure to comply is a criminal offence.

## Resolving Disputes

### Negotiation

Due to the complexity of Landlord and Tenant law, service charge disputes can be long winded and expensive affairs if not dealt with carefully. Most disputes can be resolved by correspondence and negotiation.

### Application to the Tribunal

Either the Landlord or Leaseholder may make an application to a Tribunal (the First Tier Tribunal Property Chamber, formerly known as the Leasehold Valuation Tribunal) to determine whether service charge is reasonable.

The Tribunal is more informal than the court. Hearings can be dealt with on the papers alone and the costs are usually lower.

Service charge and ground rent is often paid quarterly in advance on the historic quarter days:

25 March	Lady Day
24 June	Midsummer Day
29 September	Michaelmas
25 December	Christmas

### County Court

The Landlord may sue the Leaseholder in the County Court for unpaid service charge.

Where questions of reasonableness are raised in defence the matter may be transferred to the Tribunal.

# Service Charge Disputes

Continued Page 3

## Forfeiture of the Lease

Most leases include a clause permitting the Landlord to forfeit the lease – that is re-enter the property and bring the lease to an end. This historic right has been greatly limited in recent years:

- 1 A landlord cannot commence forfeiture proceedings or serve a forfeiture notice ('a section 146 notice') unless the lessee has admitted the breach or this has been determined by the Court, an arbitrator or the Leasehold Valuation Tribunal.
- 2 The Landlord cannot forfeit a lease for non payment of rent, service or administration charges unless the sum exceeds £500 or has been outstanding for more than 3 years
- 3 The Landlord is not allowed to physically re-enter residential property unless he has first obtained a court order.

The Landlord can waive his right to forfeit by treating the lease as continuing, for example by acceptance of further service charge or ground rent.

## Mortgage Lender

Many leaseholders will have bought their flat with the benefit of a mortgage. It is a standard term in mortgage agreements that the leaseholder must abide by the terms of the lease.

If a leaseholders fails to pay their service charge, the Landlord may ask their mortgage lender to pay this and add it to the mortgage.

## Costs

→ If the matter never proceeds to court or tribunal, the lessee rarely recovers his legal costs.

→ At the Tribunal both sides usually bear their own costs save where a party has acted unreasonably.

→ At Court hearings where the service charge is less than £10,000 both sides must usually bear their own costs - apart from fixed fees ordered by the court. If the claim is for a larger sum and the matter proceeds to trial, the winning party will usually recover a proportion of their costs from the losing party.

→ The lease may provide that the Landlord recovers his costs from the defaulting leaseholder or through the service charge. The court or tribunal can order that the Landlord bears these himself and will often do so where the Landlord loses their case.

## Other Options

Where leaseholders are unhappy with the way the Landlord or management company are running the block there are other options which we can advise you about.

### Right to Manage

The lessees collectively have the right to set up a Right to Manage company which can take over the Landlord's management functions at the flats.

There are a number of restrictions on the Right to Manage and 50% of the lessees must participate, but the lessees need not prove mismanagement or obtain the Landlord's consent.

### Enfranchisement - Buying the Freehold

The lessees may also collectively have the right to force the Landlord to sell them the freehold of the property. The price, if not agreed, will be determined by the Tribunal.

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