

JULY 2021

TECHNICAL UPDATE – LANDLORD & TENANT

Roythornes property litigation (leasehold management) technical update

Service Charges and Reasonableness

- Starting point will be the lease provisions. It will usually specify services which the landlord must provide and others which the landlord may provide without obligation but if the landlord does provide these additional services the tenant must reimburse the landlord through the service charge.
- Section 18 Landlord and Tenant Act 1985 defines services charges and an amount payable (directly or indirectly) by a tenant of a dwelling as part of or in addition to rent:
 - For service repairs, maintenance, improvements, insurance, or landlords' costs of management
 - The whole or part of it may vary according to the relevant costs
- Costs included in the service charge **must** be reasonable. Landlords may only include costs falling within section 18 L&T 1985 in the service charge if they are reasonable s19(1) L&T 1985.

Reasonableness Test

- The costs must have been reasonably incurred, **not** reasonable in amount.
- Any works or services to which the service charge relates **must** be of a reasonable standard.
- Where the lease allows the landlord to demand interim service charge payments the amount of any advance payment must be reasonable s19(2) L&T 1985.

First Tier Tribunal (Property Chamber)

- The First Tier Tribunal (Property Chamber), (FTT) hears applications brought by landlords and tenants on whether service charges are reasonable. Litigation cannot always be avoided when tenants are dissatisfied with the services they receive and the cost of the service charge.
- It is essential that landlords, freeholders, right to manage companies (RTM's) and managing agents are prepared to evidence why the cost of the service charge is reasonable should it ever need to be justified when defending a challenge to reasonableness of service charges.

Checklist

- The following checklist will help avoid a successful application for unreasonableness of service charge from a tenant.
 - Are the costs appropriate and properly effected in accordance with the terms of the lease, the provisions of the Landlord and Tenant Act 1985, and proper practice?
 - Has the RICS Service Charge Residential Management Code been followed?
 - Can you demonstrate that you have adequately attempted to address the issues raised by the tenant(s)?
 - Can you provide a justifiable explanation for the costs of the works compared to the market norm?
 - Could the repairs have been done under the terms of a guarantee and if so, can you justify using evidence, why the guarantee was not used?
 - Could the works have been phased to reduce the financial impact on the tenant?
 - Where costs relate to improvement works (as distinct from repairs) have you considered an alternative or less expensive remedy, and have you taken the tenants financial circumstances into consideration through consultation?

The above will assist in improving your prospect of successfully arguing that a service charge item(s) is reasonable and recoverable but ultimately the FTT judge will determine the application based on its own expertise and the information made available by both parties to the proceedings. By using this checklist there is less likely to be a challenge on the reasonableness of services charges.

Service charge collection remains one of the main disputes between landlords and tenants. If you have any queries relating to services charges. Please contact Bukola Obadun-Craigs who can advise you on some of the principal considerations when dealing with service charge disputes.

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