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TECHNICAL UPDATE – LANDLORD & TENANT

Roythornes property litigation (leasehold management) technical update

Services Charges and the 18-month Rule

It is a good time to send out a short reminder on recovery of a service charges under section 20B(1) of the Landlord and Tenant Act 1985 as we await the Court of Appeals decision in No.1 West India Quay (Residential) Ltd v East Tower Apartments Ltd [2020] UKUT 163 (LC).

- In No.1 West India Quay (Residential) Ltd v East Tower Apartments Ltd [2020] UKUT 163 (LC), utility bills had been presented to the tenants referring to a standard surcharge for meter reading. The utility bills were not valid demands made within 18 months of the costs being incurred, resulting in the tenants not having to pay the charges.

- The court held that only the presentation of a contractually valid demand would stop time running against the recovery of a service charge under section 20B(1). There had not been a contractually valid demand for the purposes of s.20B(1) and there had never been a s.20B(2) notice served on the tenant.

Section 20B of the Landlord and Tenant Act 1985

- Landlords must issue the service charge demand within 18 months of incurring the cost. If the demand is provided later than this, the landlord cannot recover the costs at all, unless a notice is served during the 18 months stating that costs have been incurred and that the tenant will be required to contribute to them by payment of a service charge.

- Under section 47 of the Landlord and Tenant Act 1987, any demand for service charges must be in writing and state the name and address of the landlord. If the demand does not contain this information the amount demanded is treated as not being due from the tenant before this information is provided.

- In London Borough of Brent v Shulem B Association Ltd [2011] EWHC 1663 (Ch), the landlord's letter to the tenants for payment of services charges did not constitute a valid demand for the purposes of the lease nor was it a valid demand or relevant notification for the purposes of the Landlord and Tenant Act 1985 s.20B.

The court gave some useful guidance on the requirements for giving notification for the purposes of section 20B(2).

- Section 20B(2) requires the landlord to state the costs it has actually incurred, and not just advise the tenants, in advance of the work, that the landlord expects to incur a particular cost.
- In situations where the landlord has incurred costs but is unable to state the exact amount of those costs it should err on the side of caution and include a higher amount in the section 20B notification
- The notification must also indicate that the tenant will subsequently be required under the terms of the lease to contribute to the costs by the payment of a service charge. The wording of section 20B does not require the landlord to inform the tenant of the sum. Accordingly, the notification does not need to state what proportion of the costs the tenant will be liable for.

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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