

Residential Service Charges The Protection Afforded to Tenants

Introduction

The Landlord and Tenant Act 1985 (the Act) protects residential tenants from unreasonable service charges. Before the landlord or the managing agent of a property contracts for a business to provide services or carry out works relating to residential properties which will result in each tenant needing to contribute more than a prescribed minimum, they must consult with the tenants.

What is a service charge?

"Service charge" means an amount payable by a tenant of a dwelling as part of, or in addition to, their rent directly or indirectly for services, repairs; maintenance; improvements; insurance; or management costs.

Section 18 of the Act states that for service charges to be recoverable they must be reasonably incurred and the work or services must be of a reasonable standard. The tenant can refer any challenge as to reasonableness to the Leasehold Valuation Tribunal ('LVT').

When do the consultation requirements apply?

The consultation requirements referred to in section 20 of the Act apply to qualifying works, (works on the building), or a qualifying long term agreement (QLTA) (contracts entered into by or on behalf of the landlord in relation to the building which will last for more than 12 months). The landlord must consult where:

- The amount payable by any one tenant in respect of the qualifying works will be more than £250; or
- The amount payable by any one tenant for services to be provided under a QLTA will be

more than £100 in any one year.

What are the consultation requirements?

The landlord must:

- Give notice to the landlord's tenants and to any recognised tenants' association (RTA), explaining what the proposed works involve and why they are necessary. The landlord must invite written observations on the proposals and invite proposals of contractors from whom an estimate should be obtained.
- Obtain estimates (including from any contractors nominated by tenants or the RTA).
- Issue a statement setting out the estimated costs from at least two of the estimates with a summary of the written observations the landlord received and the Landlord's responses to them.
- Provide a notice setting out when and where all the estimates can be inspected and inviting written observations on the estimates, which the landlord must have regard to.

The landlord must give reasons for selecting the successful contractor.

The LVT has the power to dispense with the consultation requirements if it is satisfied it is reasonable to do so.

What are the penalties for failing to comply with the requirements?

If the landlord does not comply with the consultation requirements he can apply to the LVT to dispense with those requirements, but dispensation is not common.

If the consultation requirements are not complied with and dispensation not given, the maximum that the landlord will be able to recover is:

- £100 for each tenant for each year for QLTA's
- £250 for each tenant for qualifying works

Our Litigation Team advises and represents both landlords and tenants. We can provide specialist advice in all residential leasing matters and would be happy to speak with you without commitment to see if we could help you, whatever your problem.

Please call Martin Stevens, Darren Thorneycroft or Marcus Self on 01233 625711 for more information, or email them on ms@hallettandco.co.uk.