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L.E. LAW INFORMATION SHEET NO. 6

GUIDE TO SERVICE CHARGES

We are able to advise on all aspects of residential and commercial service charges from both a landlord's and tenant's perspective.

While the position in commercial service charge cases will be predominantly governed by the terms of the lease, there is a significant amount of regulation in respect of residential service charges, and it on those which this guide is focussed.

Part 1 – Landlords

We can advise on the appropriate procedures in relation to matters such as:

- Demands for payment
- Supply of information to leaseholders
- Provision of accounts
- Ensuring charges are levied in accordance with the lease
- Assessments of reasonableness in the LVT
- Forfeiture

Part 2 - Tenants

We can advise you if you are a tenant and wish to challenge service charges demanded by the freeholder, or if the freeholder has made a claim against you for unpaid charges. There are a variety of issues which can arise in the context of a service charge dispute, some of which are outlined below:

Terms of the lease

The lease contains provision relating to the levying of service charges. These provision may be very detailed or relatively simple but it is important to check whether the charges being demanded are permitted by the terms of the lease. This applies in particular to interim charges made on the basis of anticipated expenditure, which may be restricted by the terms of the

lease. The lease may also require the landlord to take certain steps in relation to service charges which must also be respected.

Delay

Service charge demands must be levied within 18 months of the expenditure being incurred by the landlord, otherwise those costs may not be recovered by the landlord, unless the tenant has been notified, within 18 months, that the costs had been incurred.

Service Charge Information

The landlord is obliged to supply to the tenant a statement of account showing the expenses incurred for each accounting year, within 6 months of the end of that year. Failure to provide such information will not excuse non-payment by the tenant until the entry into force of section 152 of the Commonhold and Leasehold Reform Act 2002, on a date yet to be appointed.

Consultation in respect of major works

The landlord is required to consult the tenant in respect of any item of expenditure where

- i. the tenant's share of the cost will exceed £250; or
- ii. the expenditure will be incurred annually for more than 5 years and the tenant's annual contribution will exceed £100.

Reasonableness

It is a general requirement that sums demanded from leaseholders are for expenses that have been reasonably incurred.

Challenging service charges

Often, by the time a client comes to us, the landlord has already started proceedings to claim unpaid service charges. It is essential not to ignore a claim for unpaid service charges made by a freeholder; if you do, and the freeholder obtains a default judgment against you, it will permit them to begin the process of forfeiting your lease. It will also mean you may have to incur greater expense setting aside the judgment before you can dispute the charges.

Service charge claims can be handled in a number of ways.

County Court

Some claims can be defeated in the county court, for example where the landlord has served a defective demand, or the demand is out of time.

Leasehold Valuation Tribunal

Where the issues centre on the reasonableness of the charges, it will be usual to ask that the matter be transferred to the Leasehold Valuation Tribunal (LVT). The LVT is a specialist body experienced in assessing service charges for reasonableness.

Negotiation

Often freeholders will be keen to avoid protracted court proceedings, especially in the LVT where costs are not usually recoverable. It may therefore be possible to resolve the dispute through negotiation. We can assist you in reviewing the charges levied and negotiating a settlement with your landlord.

There is no need to wait until the landlord starts a claim against you. If you wish to dispute the reasonableness of the charges, you can make an application to the Leasehold Valuation Tribunal to determine whether or not the charges are reasonable.

It is also possible to recover charges you have already paid if you think they were unreasonable.

Group actions

As service charges generally relate to the entire building, objections to the amounts demanded will often be shared by more than one tenant. It is possible, and usually more cost effective, for leaseholders to act together in challenging service charges. We have experience of conducting actions on behalf of groups of leaseholders and can advise on whether such action would be appropriate in particular cases.

Contact Details

For further help please contact:-

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