

### Residential Service Charges

This newsletter explains what a service charge is, when consultation is required, the penalties for failing to comply with consultation requirements and the time limits for making service charge demands.

#### **What is a service charge?**

A service charge is an amount payable by a tenant as part of, or in addition to, rent. Service charges may vary according to the costs or estimated costs incurred in connection with the matters for which the service charge is payable. Legislation protects residential tenants from excessive service charges.

#### **Service charges must be reasonable**

- Landlords can request that tenants pays a service charge for costs the landlord incurs for:
  - services;
  - repairs;
  - maintenance;
  - insurance; and
  - management.
- The costs must be reasonably incurred and the work or services must be of a reasonable standard.
- There is no restriction on the factors that can be taken into account when determining if service charge costs have been reasonably incurred. This means that the financial impact on tenants, and whether the works should be phased to spread the costs, can be taken into account alongside other relevant considerations. However, tenants cannot insist that service charges are phased in to spread the cost of major works.

#### **Tenants can challenge service charge costs**

- A tenant can challenge service charge costs by asking the Property Chamber of the First-tier Tribunal (FTT) to determine whether:
  - the service charge costs were reasonably incurred;
  - the services or works are of a reasonable standard; and

**If you would like to discuss any of the matters raised in this newsletter please contact:-**

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*The information in this newsletter is not meant as a substitute for advice on particular issues and is written in general terms. You should seek specific advice before taking any action based on the information in this newsletter.*

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*This newsletter outlines the law as it stands at the date of writing in April 2015.*

- an estimated service charge, payable before costs are incurred, is reasonable.
- Tenants cannot avoid liability to pay service charges on the grounds of hardship. If repair work is reasonably required at a particular time and is carried out at a reasonable cost and to a reasonable standard, the tenant must pay the corresponding service charge in accordance with the terms of its lease.

### **When is a consultation required?**

Before entering into contracts to provide services or carry out works relating to residential properties, landlords should consider whether they need to consult with their tenants. If a landlord fails to consult when required, they will only be able to recoup the statutory maximum, unless they receive dispensation from the FTT. A landlord must consult with tenants if either:

- The amount payable by any one tenant for services to be provided under a qualifying long-term agreement (QLTA) will exceed £100 in any one year. A QLTA is an agreement entered into by the landlord or a superior landlord for a term of more than 12 months.
- The total contribution towards qualifying works will exceed £250 for any one tenant.

### **What are the consultation requirements?**

A landlord must:

- Give notice to tenants and to any recognised tenants' association (RTA), explaining why the proposed works are necessary. The landlord must invite written observations on the proposals and take note of any responses.
- Obtain estimates. Tenants and the RTA have a right to nominate alternative contractors and the landlord is obliged to ask for an estimate from the nominated alternative contractors.
- Issue a statement setting out the estimated costs from at least two of the estimates, with a summary of the written observations 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 within 30 days of the date of the notice. Landlords must take note of any written observations provided.
- Give reasons for selecting the successful contractor.

### **Dispensing with the consultation requirements**

The FTT has the power to dispense with the consultation requirements, if it

is satisfied it is reasonable to do so. It will consider whether the tenants suffered any relevant prejudice due to the landlord's failure to comply with the requirements and can decide to grant a dispensation subject to conditions.

#### **Time limits for making service charge demands**

- When service charge demands are issued after completion of the works or provision of the service, a landlord must issue the demand within **18 months**.
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- If the demand is provided later than this, the landlord will be unable to recover the costs, unless they have served a notice during the 18 months stating that:
  - costs have been incurred; and
  - the tenant will be required to contribute to them by payment of a service charge.
- If the landlord does not know the exact amount of the costs incurred, they should specify a figure for costs that they would be happy to accept as the limit on the costs ultimately recoverable (the notification will be valid even if the service charge ultimately claimed is less than that stated in the notice).

#### **What are the penalties for failing to comply with the consultation requirements?**

If a landlord does not comply with the consultation requirements, and the FTT does not decide to dispense with the requirements, the landlord's ability to pass on costs to tenants will be limited. The **maximum** that the landlord will be able to recover is:

- **£100** for each tenant for each year for QLTAs.
- **£250** for each tenant for qualifying works.