

LEASE CONFERENCES



Audio for the webinar will be through your computer speakers

Audio also available by telephone:

Free phone 0800 051 3810
Phone +44 20 3478 5289

Access code: 958 141 549 #

For technical assistance please call Webex:

- 0800 389 9772
- Option 3
- Quote site reference:
lease-advice.webex.com

Submit questions via the chat box

Disclaimer

Whilst we make reasonable efforts to ensure it is accurate and up-to-date, information and guidance in this webinar does not and is not intended to amount to legal advice in any particular case.

No responsibility for any consequence of relying upon the webinar material or presentations of the webinar is assumed by LEASE or any of our advisers.

The law as stated during this webinar is up to date as of **14 MAY 2013**.

Service charges – from demand to payment

Naomi Raymond

Nicholas Kissen

14 May 2013

Statutory authority

- Landlord and Tenant Acts 1985 and 1987
- Housing Act 1996
- Commonhold and Leasehold Reform Act 2002
- Numerous Statutory Instruments
 - Note differences between England and Wales

Who is the landlord/manager?

- Individual/company
 - Portfolio of properties
 - Off-shore landlord
 - Resident landlord
 - Residents' management company
 - Management company as party to a tripartite lease
 - Right to Manage Company
 - Local housing authority
 - ALMOs
 - Registered provider
-

What is a service charge?

- An amount payable by a tenant of a building as part of or in addition to rent
- payable directly or indirectly for
 - Repairs, maintenance, improvements, services and costs of management
- The whole or part of which varies according to the relevant costs

Section 18(1) of the Landlord and Tenant Act 1985

Importance of the lease

- The lease should be centre-stage in considering service charges
 - If it cannot be seen in the lease then it cannot be recovered
 - Machinery in the lease for recovering service charges should be followed
 - There is no typical lease
-

The lease – what costs can be recovered?



Depends on the lease but expect to pay for

- Repairs/maintenance
 - Building insurance
 - Decoration
 - Exterior/interior
 - Cleaning
 - Gardening
 - Professional fees
 - Lawyers
 - Accountants
 - Managing agents
-

Machinery in the lease

- Advance payment allowed?
 - Balancing charge
 - Certificated or audited accounts
 - When demanded?
 - Credit on account
 - Carried forward//returned to leaseholder
 - Proportions payable
 - Fixed proportions
 - Rateable value
 - Floor space
 - 'Fair and reasonable proportion' or words to that effect
-



Demand for service charges

- Section 47 Landlord and Tenant Act 1987
 - Landlord's name and address on the demand
 - Service charges not payable until Section 47 information provided.
 - What if landlord outside England and Wales?
 - NB *Beitov Properties Limited v Elliston Bentley Martin [2012] UKUT 133 (LC)*
 - Check lease to see if the demand must have specific information
-



Demand for service charges

- Summary of rights and obligations
 - Section 21B Landlord and Tenant Act 1985
 - Statutory Instrument 2007/1257(England)
 - Accompanying the demand
 - No smaller than 10 point printed/typewritten
 - Prescribed wording
 - *Tingdene Holiday Parks Limited v Cox LRX/81/2010*
 - Cannot be a copy of the SI
 - Summary must be with the demand and not given as separate document later
 - Right to withhold payment and enforcement terms in lease eg interest not applying until compliance
-



The limits on service charges

- Reasonableness
 - Section 19 Landlord and Tenant Act 1985
 - Reasonably incurred
 - Reasonable standard
 - Not necessarily the cheapest but within the market range
 - *NB Garside and another v RFYC and another LRX/54/2010*



Time limits for demands

- Section 20B of the Landlord and Tenant Act 1985
 - Demand to be sent within 18 months of being incurred
 - Unless leaseholder notified in writing that costs have been incurred and will be required to contribute to them
 - Failure to comply – leaseholder not liable to pay
 - *OM Property Management Limited v Thomas Burr [2013] EWCA Civ 479*
 - *Brent Council v Shulem B Association Limited [2011] EWHC 1663 (Ch)*
 - NB Check lease – time of the essence?
-

Rights to information – for leaseholders



- Section 21 Landlord and Tenant Act 1985
 - Request for summary of costs incurred
 - During last twelve months/last financial year
 - Summary must be provided within one month of the date of the request or six months from the end of the accounting year whichever is later
 - Summary must be certified by a qualified accountant if service charges payable by more than four dwellings
-

Rights to information – for leaseholders



- Section 21 Landlord and Tenant Act 1985
 - Contents of summary
 - Costs in respect of which no demand for payment was received within the accounting period
 - Costs in respect of which a demand for payment was received and payment was made by the landlord within that period
 - Amounts received credited to tenants
 - Any relevant grant received
-

Inspection – for leaseholders

- Section 22 Landlord and Tenant Act 1985
 - Within six months of receiving Section 21 summary
 - Written request for facilities to inspect
 - Accounts receipts and other documents supporting the summary
 - Facilities provided free of charge
 - Reasonable copying costs payable
 - Available for two month period starting no later than one month after request
-

Rights to information – leaseholders

- Non-compliance with Sections 21 and 22
 - Prosecution in Magistrates Court
 - Local authorities discretionary power
 - Defence of reasonable excuse
 - Submit papers within six months of commission of offence
 - Maximum level 4 fine £2500

Consultation – with leaseholders



- £250 limit
 - Three stage process
 - 30 day periods for response
 - Seeking dispensation order from the Leasehold Valuation Tribunal
-



Consultation – with leaseholders

- Section 20 LTA 1985
 - As amended by Section 151 of the 2002 Act
 - Provision of information and costs to tenants
 - Requirement to seek views and nomination of contractors before proceeding
 - No right to recovery beyond costs limit if works started before completion of process
-

Consultation for major works

- Works and stating why considered necessary
 - 30 days for observations/nomination of a contractor
 - Landlord must invite nominated contractor to estimate
 - Where more than one nominee then contractor who received most nominations
-

Consultation for major works

- Provision of at least two estimates
 - Includes one from a nominated contractor
 - Includes one from a contractor unconnected with landlord
 - All estimates available for inspection
 - Provide summary of observations received and landlord's response to them
 - Invite observations on estimates
 - 30 days
-

Consultation for major works

- Upon entering into contract and landlord must serve notice
 - Reasons for awarding the contract
 - Summary of observations received and response to them
 - Not required where
 - No observations received
 - Contract awarded to nominated contractor or lowest estimate
-

Consents for dispensations (Section 20ZA(i) LTA 1985)



- Jurisdiction of the Leasehold Valuation Tribunal
 - Urgent works
 - Advance applications
 - Impracticality of obtaining more than one estimate etc
 - *Daejan Investments Limited v Benson and others – Supreme Court [2013] UKSC 14*
 - *Consultation not an end in itself*
 - *Relevant prejudice*
 - *Dispensation on terms*
-



RICS Code of Practice

- Service Charge Residential Management Code
 - Second edition
 - 6th April 2009
 - Approved under Section 87 of the Leasehold Reform Housing and Urban Development Act 1993
 - Receivable in evidence at courts and tribunals
 - Applies to leasehold properties where
 - Service charge is variable and
 - Landlord not a public sector authority or registered provider
-



RICS Code of Practice

- Part 21 – arrears of service charges
 - “You should ensure that you have an efficient system to monitor service charges and other levies when due, and if not paid you should communicate promptly with the tenant and in accordance with the law”
 - “You should keep the landlord informed of any situation involving significant arrears as soon as practicable”
 - “If a solicitor needs to be appointed it should be with the landlord’s authority”
 - To try to avoid incurring legal costs you should make direct contact with the tenant in cases where arrears continue to accumulate and advise them to seek independent advice eg from a housing advice centre, citizens’ advice bureau, LEASE or a solicitor.
-

Southall Court (Residents) Limited v Tiwari & Others [2011] UKUT 218 (LC)



- “It is strongly to be hoped that any future disagreements about service charges payable will be resolved by negotiation rather than litigation, if necessary with the assistance of mediation. For all landlords and tenants, recourse to courts or tribunals should be a last resort and certainly not an inevitability.”
-



Service charges demand

- Failure to pay a valid service charge demand amounts to a breach of the terms of the lease
 - Reminders
 - Investigate
 - Complaints raised
 - Financial difficulties?
 - Investor-landlord v owner-occupier
 - Writing to the lender?
 - Notice of registration of mortgage
 - Land Registry search
 - Likely response?
-

LVT v County Court

- Concurrent jurisdiction of both to deal with non-payment of service charges and look at reasonableness
 - Pros of court
 - Costs?
 - Generalist forum
 - Ability to seek transfer
 - NB Limitation Act 1980
 - Pros of LVT
 - Costs?
 - Specialist forum
-

LVT jurisdiction

- Section 27A of the Landlord and Tenant Act 1985
 - No jurisdiction if service charge agreed/admitted by leaseholder or been subject of court/arbitration order
 - Is the service charge payable?
 - The person by whom it is payable
 - The person to whom it is payable
 - The amount which is payable
 - The date at, or by, which it is payable, and
 - The manner in which it is payable
-

Application

- County court
 - Part 7 Application
 - Debt claim under CPR Part 7
- LVT
 - Form LVT4 – Sections 27A (and 19) of the Landlord & Tenant Act 1985

Application Form

Sections 27A (and 19) of the Landlord and Tenant Act 1985

Application for a determination of liability to pay and reasonableness of service charges

It is important that you read the notes below very carefully before you complete this form.

This is the correct form to use if you want to ask the Leasehold Valuation Tribunal ("The Tribunal") to determine whether a variable service charge is payable. If so the Tribunal can also determine:

- the person by whom it is payable
- the person to whom it is payable
- the amount which is payable (this is limited to what is reasonable)
- the date at or by which it is payable

Please send your completed application form together with a copy of the lease and any application fee payable, to the appropriate Rent Assessment Panel. (See the Annex to this form for Panel addresses). Please do not send any other documents. If and when further evidence is needed you will be asked to send it in separately.

If you have any questions about how to fill in this form, the fee payable, or the procedures the Tribunal will use please call the Residential Property Tribunal Service on 0845 600 3178.

1. DETAILS OF APPLICANT (S) (if there are multiple applicants please continue on a separate sheet)

Name: _____

Address (including postcode): _____

Address for correspondence (if different): _____

Telephone: Day: _____ Evening: _____ Mobile: _____

Email address: _____ Fax: _____

Capacity (e.g. landlord/tenant/management company): _____

Representative details: _____

Guidance Note

The Tribunal may copy the application form to other appropriate persons (e.g. other service charge paying leaseholders in the building or development). If you are a leaseholder and do not want your telephone/fax number or email address to be disclosed to other such persons please omit those details from Box 1 and attach them on a separate sheet.

Where details of a representative have been given, all correspondence and communications will be with them until the Tribunal is notified that they are no longer acting.

Decision

- County court
 - Court order
 - 21 days to appeal
- LVT
 - Decision final within 21 days of receipt of reasons for the decision
 - Appeal to the Upper Tribunal (Lands Chamber)
 - Leave filter

LVT – Completing the application form



- Enough but not too much
 - Reg 3(8)
 - Failure to comply may be dispensed with or relaxed if particulars and documents are enough to enable the application to be determined and no prejudice will, or is likely to, be caused to any party to the application
-

“A clear outline”

- Why?
 - Too little information
 - Pounds and pence
 - Reasons
-



Pre trial review

- LVT is under an obligation to
 - Give any direction that appears necessary or desirable for securing the just, expeditious and economical disposal of proceedings
 - Endeavour to secure that the parties make all such admissions and agreements as ought reasonably to be made by them in relation to the proceedings, and
 - Record in any order made at the PTR any such admission or agreement or any refusal to make such admission or agreement
-

Experts

Necessity and choice

- Content of report
 - CPR 35
 - Practice direction
- Expert as advocate
- LVT as expert tribunal



Bundle contents

Include

- Application
- Statement of case
 - all parties
- Leases
 - or typical specimens
- Accounts concerned and any supporting documentation
- Expert reports
- Other evidence on which either party might seek to rely

INDEX and PAGINATE!

Hearing panel

- Three person panel
 - Surveyor
 - Lawyer
 - Lay person

Appeals – appeal to the UT(LC) by way of LVT



Appeal under Lands Tribunal Practice Direction 5.7 where

- LVT wrongly interpreted or applied the law, or
 - LVT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or professional practice, or
 - LVT took account of irrelevant, or has failed to take into account relevant, considerations or evidence, or there was a substantial procedural defect, or
 - The point at issue is of potentially wide implication
-

Review or rehearing

- Application must make clear
 - Appeal by way of review, or
 - Appeal by way of review which, if successful, will require a consequential rehearing, or
 - Appeal by way of rehearing



Timing of LVT appeal

- Apply to LVT within 21 days
- LVT may extend
 - But only within initial 21-day period
- If granted
 - Notice of appeal and all supporting documentation filed within 28 days

Timing of UT(LC) appeal

- Apply within 14 days of date of LVT refusal
- Can extend time
 - But only within initial 14-day period
- UT(LC) will send copies to other parties



Forthcoming changes

- First-tier Tribunal (Property Chamber)
- Coming into force on 1st July 2013
- Changes to rules eg
 - Costs
 - Remit to Upper Tribunal (Lands Chamber)

Payment options

- *Southend on Sea Borough Council v Skiggs and others*
 - LRX 110 2005
 - LVT has no discretion to set down a timetable
 - Importance of customer-friendly approach
 - Profiling debtor
 - Alternative dispute resolution
 - Debt counselling and benefits advice
 - Sign posting and linking up with other organisations eg CAB
 - Financial considerations
 - Explore payment options
 - Write-off the debt?
-

Options for Right to Buy leaseholders



- Sections 450A, 450B, 450C and 450D of the Housing Act 1985
 - Powers of Secretary of State to provide by regulations for mandatory and discretionary loans to flat owners whose landlords are housing authorities
 - Mandatory loans (Section 450A)
 - The Housing (Service Charge) Regulations 1992
 - During first 10 years of the lease
 - Apply within six weeks of date of invoice
 - Discretionary loans (Section 450B)
 - All other cases
-

Options for Right to Buy leaseholders



- Local authority buys an equitable interest in the flat (share of value) (Section 450D)
 - The Housing (Purchase of Equitable Interests) (England) Regulations 2009
 - Sections 219 and 220 of the Housing Act 1996
 - Social Landlords Mandatory Reduction of Service Charges (England) Directions 1997
 - Social Landlords Discretionary Reduction of Service Charges (England) Directions 1997
 - Repairs, maintenance, improvements
 - Reduction of charges to £10,000 in any five year period
 - Costs of reduction/waiver borne by landlord
-

Options for Right to Buy leaseholders



- Social Landlords Mandatory Reduction of Service Charges (England) Directions 1997
 - New Deal for Communities
 - Private Finance Initiative
 - Social Landlords Discretionary Reduction of Service Charges (England) Directions 1997
 - Social landlord required to have regard to certain matters including “exceptional hardship”
 - Case by case basis
 - Past, current and future charges
-



Good practice for social landlords

- “Service charges: Value for money”
 - Issued by the then Housing Corporation in March 2007
 - Landlords expected to offer help with debt
 - Examples of good practice given such as
 - Payment in full attracting 5% discount
 - Payment by instalments
 - Payment by credit card
 - Home visits
 - Close involvement of leaseholders with major works
-

Southall Court (Residents) Limited v Tiwari & Others [2011] UKUT 218 (LC)



- “It is strongly to be hoped that any future disagreements about service charges payable will be resolved by negotiation rather than litigation, if necessary with the assistance of mediation. For all landlords and tenants, recourse to courts or tribunals should be a last resort and certainly not an inevitability.”
-



Questions?

Leasehold Advisory Service (LEASE)

020 7383 9800

info@lease-advice.org

www.lease-advice.org

Maple House, 149 Tottenham Court Road

London W1T 7BN





Next webinar

Learning the rules of the new first-tier tribunal (Property Chamber)

11 June 2013 at 13:00

This webinar will provide a thorough grounding in the new rules including

- The over-riding objective
- Seeking directions
- Case management powers including striking out a party's case and sanctions for non-compliance with directions
- Role of the Upper Tribunal (Lands Chamber)
- Costs

To book shop.lease-advice.org
