

DBULLETIN

Recovering Service Charges

Landlords are becoming increasingly aware of the importance of recovering service charges - below we tackle some of the main issues for landlords to consider.

Q. What can a landlord do to recover unpaid service charges from a residential leaseholder?

A. The landlord can pursue the leaseholder for the debt in the County Court and seek a money judgement. Once judgement is obtained, payment will normally be due within 14 days. If the leaseholder still refuses to pay, the landlord can use the usual County Court enforcement methods such as obtaining payments direct from the leaseholder's employer (attachment of earnings) or securing the debt against the leaseholders property (charging order). Ultimately, the landlord can terminate the lease by way of forfeiture.

Q. Can leaseholders dispute demands?

A. A landlord cannot recover the costs of services it is providing if those services are not stipulated in the lease. Therefore, landlords should always check the lease to make sure that the services provided and charged for are actually referred to in the lease.

Variable service charge demands are also regulated by the Landlord and Tenant Act 1985. Under this legislation landlords need to comply with a number of provisions when making demands for service charges. In particular the Act gives residents can challenge the reasonableness of the service charge both in terms of cost and the standard of service provided. A leaseholder can defend a claim for recovery on this basis or bring their own challenge. Any such defence or challenge will be heard by the Leasehold Valuation Tribunal.

Q. What should a landlord be aware of when making demands?

A. Landlords should make sure demands are accompanied by the necessary prescribed information (the Service Charges Summary of Rights and Obligations). If they are not the leaseholder is entitled to withhold payment. A landlord should make sure the service charges are reasonable to avoid a challenge in the Leasehold Valuation Tribunal. Landlords should also be aware that they are also required to carry out a consultation process with their leaseholders where works are due to be carried out and the cost of those works will result in each leaseholder paying more than £250 by way of service charge. Consultation is also required if the landlord is intending to enter into a contract with a service provider lasting more than 12 months and where the cost to each leaseholder will be more than £100. Failure to comply with the consultation requirements can result in the landlord being unable to recover the full costs incurred.

Therefore, Landlords should check the terms of the lease to make sure the services they are providing are ones they are entitled to provide and charge for. They should also make sure that the charges are reasonable and that any required consultation process has been complied with, and ensure that all demands are in the prescribed form.

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