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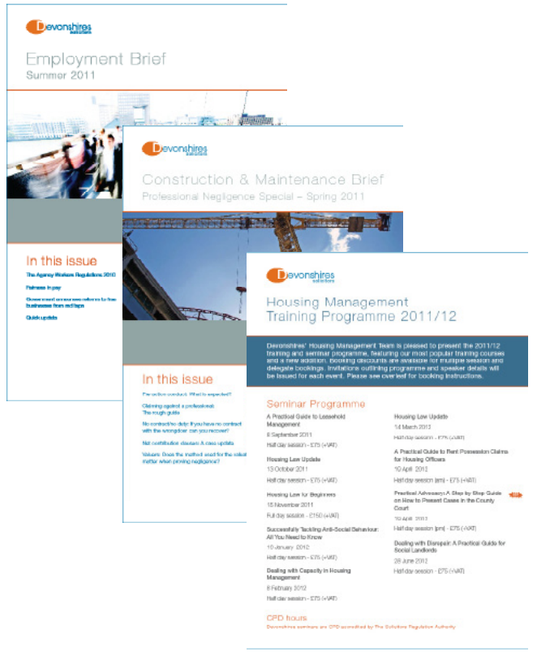

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Devonshires solicitors

Leasehold Management Brief

Winter 2013

In this issue

Welcome

Welcome to this 1st Edition of the Leasehold Management Brief. For many years we have been providing a Housing Management Brief but, with the increase in leasehold and shared ownership, and by popular demand, we are now introducing our first Leasehold Management Brief.

There have been some recent developments, including the change from the Leasehold Valuation Tribunal to the First Tier of the Property Chamber, and we have a word on the ever popular s20 consultation. We also include our newly introduced Leasehold Management training programme.

As well as bringing you recent developments in this area we are keen to hear from you about topics you would like us to cover.

Changing the Leasehold Valuation Tribunal to the First Tier Property Chamber

For years the Leasehold Valuation Tribunal ("LVT") has been the place where leasehold disputes have been dealt with, most commonly where leaseholders challenge the reasonableness of service charges.

The 1st July 2013 brings changes to this system, by abolishing the LVT and bringing into existence the First Tier Tribunal Property Chamber ("FTT"). In some ways this could be viewed as a cosmetic change and a re-branding for the LVT, a tribunal which many landlords would be keen to avoid.

The introduction of the FTT has, however, the potential to be much more than a re-branding. While it is intended to keep a level of informality, as has always been the case for tribunals compared to courts, the FTT has gained some additional teeth which landlords should be both wary of, and take advantage of.

Under the umbrella of the court service there is a clear aim to find efficiencies, while retaining accessibility and a "user friendly environment". With this in mind the FTT now has a new set of tribunal rules, many of which could be particularly useful for landlords in understanding what a leaseholder / tenant's case is and to deal with leaseholder / tenants who don't engage with the tribunal.

Section 3 of the new FTT rules creates a court like overriding objective, for the Tribunal to deal with cases fairly and justly, proportionately to the importance of the case, to avoid unnecessary delays, but also to avoid unnecessary formality and retain flexibility.

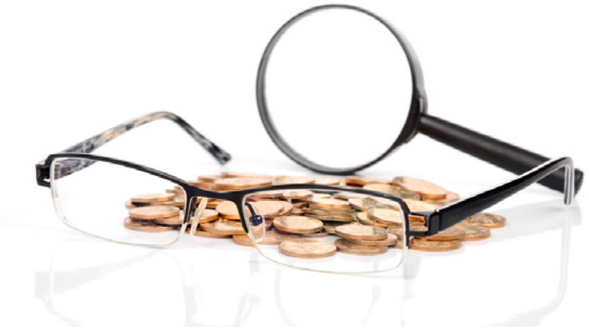
Importantly the parties have a positive duty to help the tribunal meet these objectives and to co-operate with the Tribunal.

Linked to this, section 4 creates a very positive push towards Alternative Dispute Resolution ("ADR") and arbitration. In many cases the parties may well have attempted to resolve their differences before starting the legal action, but particularly in cases where they have not, the FTT may well adjourn or stay proceedings to allow for ADR or mediation.

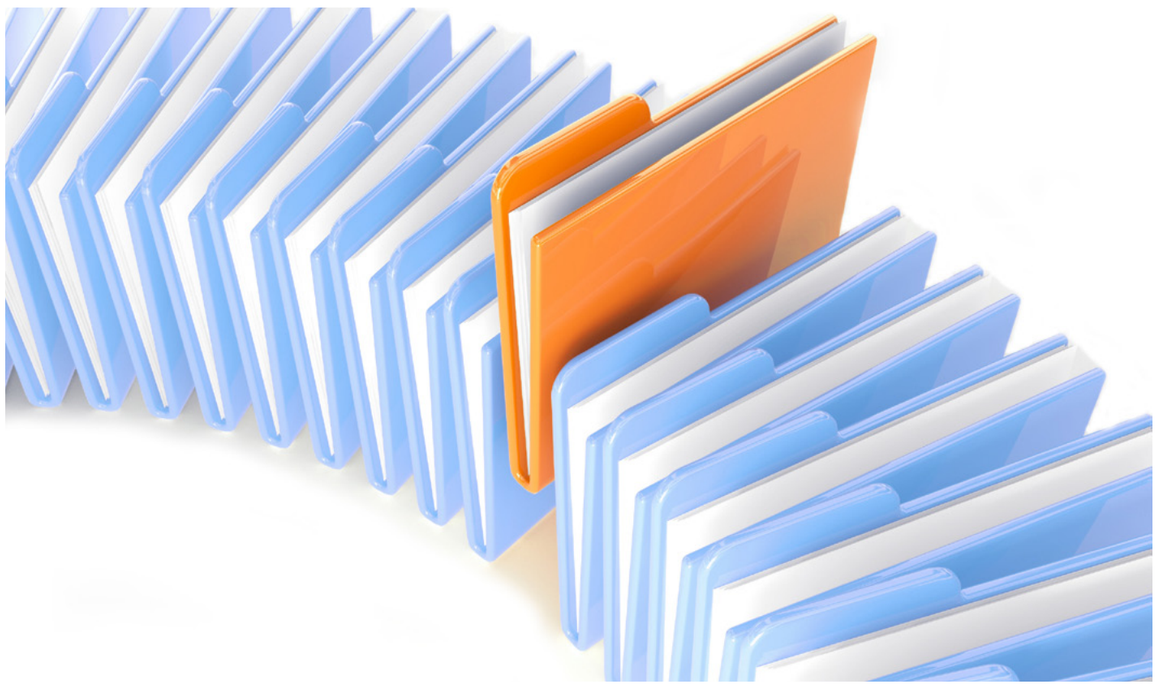
Section 6 of the FTT rules provides the Tribunal with a wide discretion on Case Management, and giving directions as it sees fit in relation to the conduct or disposal of proceedings at any time. This will allow the FTT to give typical directions (witness statements, disclosure of evidence relied upon) but it could also be used to force parties to amend their cases or even to strike out claims or defences if they lack merit.

The fact that the Tribunal may do this at any time is something to be aware of. In particular parties need to be wary that directions or pre-trial review hearings could result in a claim being struck out, if a party is not properly prepared for it. Even if not struck out, a Pre-Trial review can result in the issues in dispute being limited, and as such any hearing is important. For a landlord such a hearing can be seen as an opportunity to clarify or limit a leaseholder's case.

Section 7 allows for directions to be given by the



"The FTT now has a new set of tribunal rules"



FTT, either on its own initiative or on the application of a party. This is a hugely useful tool for landlords. We have probably all dealt with cases where an application is brought by a litigant in person which either has no merits at all, or is simply too confusing to understand what the case is. Section 7 allows for the landlord to make an application, which could require the leaseholder to amend their claim into an understandable format, or potentially strike the claim out totally, if it has no merits.

In conjunction with section 8 such applications can also be used to sanction a party not complying with the FTT's directions. That could be to strike out the party for non-compliance with directions, or for the FTT to grant a very court like "unless order". In other words, unless the leaseholder complies with the direction the application will be struck out.

Landlords should certainly be considering this in frustrating cases that are going nowhere, have no merits or are simply too confusing to understand.

Landlords however should also be wary that they too must comply, to avoid sanctions being imposed following leaseholder applications. This is particularly the case as the FTTs powers to award costs have been extended. It remains the case that the FTT will only award costs where a party has acted unreasonably in bringing or defending a claim, or as a result of their conduct during the proceedings. However, previously those costs were limited to £500. That limit has now been removed. So be warned, particularly about represented leaseholders.

How these changes will be implemented and impact on the effectiveness of the FTT, compared to the LVT, remains to be seen. However, while there is still an aim to retain informality, these new rules create a more structured and court like process. It is an opportunity for landlords to make the most of this by using the directions and strike out provisions to their best advantage, particularly to knock out frivolous or without merit applications.

"Failure to serve these notices [...] can result in the service charges being capped"

We would certainly welcome any feedback you have from your experiences in the new FTT, while we are all getting used to the new processes.

For more information, please contact

Alex Wyatt, Solicitor on 020 7880 4394 or alex.wyatt@devonshires.co.uk

Changes to the Summary of Rights and Obligations

As a result of the changes from the Leasehold Valuation Tribunal to the First Tier Property Tribunal the statutory Summary of Rights and Obligation ("Summary"), which must be sent with service charge demands, has been changed.

This is not a whole sale change, but reflects that the tribunal to which any challenges can be brought has been changed to the First Tier Property Tribunal.

By way of a reminder, the Summary must be sent with service charge demands and if it is not the leaseholder is entitled to withhold payment, until such time as the Summary is properly served. It does not invalidate the service charge demand, but entitles payment to be withheld. Where a leaseholder does withhold, a landlord is then unable to charge interest for late payment.

The new wording of the Summary of Rights and Obligations comes in from the 1st July 2013, but does not impact on any Summaries sent before then.

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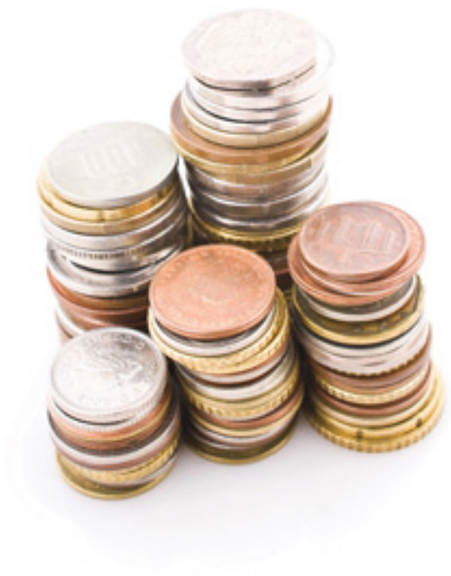
Service Charges – When is Consultation necessary?

The recovery of service charges is an important and necessary task for landlords. In many case the ability to recover the service charges from their residents in full and avoid the statutory cap imposed by the Landlord and Tenant Act 1985 is dependent on the landlord complying with the statutory consultation process and serving s.20 Notices. Therefore, landlords are required to know when it is appropriate and necessary to serve such notices.

Generally, where the landlord intends to enter into a contract for services (for example grounds maintenance) for a which a service charge will be payable by the residents, and that charge is more than £100 and the contract is also for more than 12 months then this will give rise to a Qualifying Long term Agreement ("QLTA"). If that is the case then the landlord will need to serve a s.20 Notice and consult with the residents before entering into the QLTA. Failure to serve these notices and consult with the residents can result in the service charges being capped at £100.

However, landlords are often uncertain what the situation is where contracts have been entered into for the supply of services but the contract was entered into before residents had actually moved in to the properties concerned and whether such contracts are QLTA's and require the landlord to consult. This typically arises with new developments.

This question was considered and answered in the recent case of (1) BDW Trading (2) Comet Square Phase (2) Block Management v South Anglia Housing Ltd clarified the position. In this case the High Court found that agreements entered into before the actual buildings had been constructed or where properties were not actually let at the time of the agreement being entered into were not subject to the consultation requirements under s.20 of the landlord and tenant Act 1985. The Judge held that as no residents occupied the properties at the time of the agreement



being entered into that there was no landlord and tenant relationship. Therefore, s.20 of the Landlord and Tenant Act was not applicable and it was not necessary to have served s.20 notices in respect of the agreement in order to recover service charges in respect of those agreements.

The case provides welcome clarification to landlords and Tribunal's as to when statutory consultation is necessary. Landlords now know that where service charges are being charged in respect of agreements entered into before residents took up occupation that the landlord will not be required to comply with the statutory s.20 consultation process when seeking recovery of those service charges.

For more information, please contact:

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Postscript to Service Charges…when is consultation necessary?

We recently acted for a Registered Provider (RP) in an appeal against a decision of the First Tier Tribunal Property Chamber (FTT) where the FTT found that the RPs ability to recover service charges in respect of an agreement for services was capped at £100 for each resident. This was despite the fact that the agreement in question had been entered into before any residents took up occupation in the block concerned.

The residents originally sought to challenge the reasonableness of the service charges and the RP dealt with this application in person. On considering the residents application the FTT took the view that the agreement was a QLTA and said that because the s.20 consultation process had not be followed before entering into the agreement the statutory cap applied. The FTTs decision was handed down only 12 days after the decision in BDW Trading v South Anglia.

We were then contacted by the RP to advise on the chances of success of appealing the FTT decision in respect of the s.20 consultation and statutory cap. We advised that the FTT had got this part of their decision wrong and that the appeal would be successful. We then applied to the FTT to appeal that aspect of the decision relying on BDW Trading v South Anglia. The FTT was quick to recognise that they had not been aware of the decision on BDW Trading v South Anglia and that they were wrong in finding that the agreement was a QLTA. This was decided on the papers and without any of the parties needing to attend the tribunal to make representations.

This shows that the decisions of the FTT are far from infallible. Where RP's have concerns about a decision handed down by the FTT then they should seek legal advice and consider appealing those decisions.

For more information, please contact:

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Leasehold Management Training Programme

2013/14

Devonshires' Leasehold Management Team is pleased to present the 2013/14 Leasehold Management training programme.

Booking discounts are available for multiple session and delegate bookings. Invitations outlining programme and speaker details will be issued for each event. Please see overleaf for booking instructions.

Seminar Programme

Leasehold Management for Beginners
1 October 2013
Half day session - £75 (+VAT)

Leases: Dealing with Breaches
19 November 2013
Half day session - £75 (+VAT)

Leases: Dealing with Dilapidations
21 January 2014
Half day session - £75 (+VAT)

Commercial Lease Management for Beginners
25 March 2014
Half day session - £75 (+VAT)

Service Charges and Consultation
6 May 2014
Half day session - £75 (+VAT)

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To sign up to our mailing list please email seminars@devonshires.co.uk

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