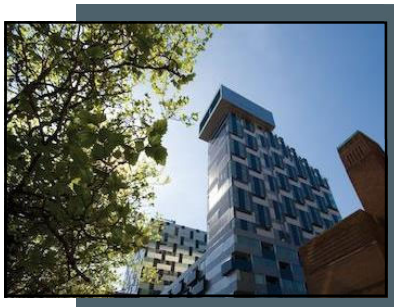


Orme Associates
Property Advisers

RESIDENTIAL SERVICE CHARGES

- Orme Associates can advise on residential service charges disputes between Landlord and Tenant.
- Residential service charges can be charged only when permitted by the terms of the lease.
- Service charges are regulated by statute with numerous provisions govering landlord/tenant relations, for instance, service charges must be reasonable.
- Landlords/Agents are expected to follow the RICS Code of Practice for Service Charges, which provides guidelines for best management practice.
- We are happy to provide a free initial consultation on residential service charges.

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What We Do
Orme Associates Property Advisors can provide advice on service charge queries or disputes.

Definition of Service Charge
The Landlord/Tenant relationship exists because of the lease between the parties which defines the rights and obligations of the parties, and in particular it will set out the requirement for a Tenant to pay service charges to cover their portion of the upkeep and insurance of the building.

The Landlord/Managing Agent must ensure that service charges properly relate to the Services defined in the lease. If not services will not be chargeable. Some items may be covered, such as repairs and maintenance, but not always, and other items such as improvements, legal fees or charges for debt collection may often be outside the scope of the lease, and not chargeable.

Where a lease contains a "sweeper clause" such as "[any other services that are] in the interests of good estate management" or "[that are] for the benefit of the tenants as a whole", they can be interpreted narrowly by the courts or a tribunal and will not extend to anything not considered a service.

Statutory Provisions
Residential leases are regulated by statute. Some of the most common provisions are mentioned below.

Reasonableness
Whilst any services charged, must be permitted by the lease, it is implied into leases that charges must be reasonable and not extravagant (a reasonableness test). This test is also present at s.18 of the Landlord and Tenant Act 1985 (LTA 1985) which requires that services provided are of a reasonable standard.

Consultation with Tenants
A Landlord/Managing Agent proposing to either undertake works costing more that £250 per flat or enter into an agreement for the supply of services which exceeds 12 months costing more than £100 per flat, must send out consultation notices to tenants, describing the proposals, inviting observations and names and addresses of contractors a tenant may wish to use. Notices must give 30 days for any tenant to reply (Commonhold Act s.20). The Landlord must have regard to any observations he receives and he must obtain alternative quotes from any contractors suggested. The Landlord must by notice give reasons for any choice of contractor and invite further observations within a further 30 days.

Where a Landlord fails to comply with the consultation requirements service charges above £100 per flat for any long terms service contracts, or £250 per flat for works are not recoverable.

Service Charge Demands
Any service charge demand must be accompanied by a s.21B notice which sets out certain rights of tenants. If a s.21B notice does not accompany the service charge demand the tenant can withhold service charge payments until a s.21B notice is served.

Where service charge demands include cost items that have been incurred more than 18 months earlier, then such costs are not payable where no previous written notice was given (s.20B LTA 1985).

Rights to Information
A tenant has a right to request a "summary of account" for the previous accounting period (usually the previous 12 months up to the end of the last day of the accounting period) (s.21 LTA 1885). The summary must include all costs incurred whether or not in the service charge bill, and must show money received, and which costs are yet to be settled. The summary must be certified by an accountant where there are more than 4 flats, and must be supplied within 1 month.

Within a period of 6 months from receipt of the summary a tenant may request to inspect accounts, receipts and other documents relating to the service charge information in the summary (s.22 LTA 1985).

A demand for service charges must contain the name and address of the Landlord or agent. If it does not then service charges are not due until that information is supplied (s.47 LTA 1985).

Where there is a change of Landlord the new landlord must give written notification to each tenant of this and the new Landlords name and address (s.3 LTA 1985). Until such notice is received the old Landlord will remain liable in respect of covenants in the lease.

Management Audit
An in depth investigation of the Landlords management and accounting practices can be requisitioned by two-thirds of tenants in a block (s. 76 LRHUDA 1993 Act).

A surveyor or accountant will be appointed and is given legal powers of access to the Landlords management accounts and supporting documentation. This provides a means to investigate matters over and above those provided by the statutory rights.

RICS Code of Practice
The Royal Institute of Chartered Surveyors produce a code of practice for service charges, and provides guidelines for good residential estate management. The code is non-statutory, but a court or tribunal will have regard to it in respect of deciding a dispute for instance in respect of the reasonableness of service charges.

Right to Manage
Where more than 50% of flat owners in a block wish to manage the block in place of the Landlord this is made possible by the Commonhold Act 2002. Please see our other leaflet on our web site.

Collective Enfranchisement
Owners of flats can collectively elect to buy their freehold from the Landlord under the Leasehold Reform Housing and Urban Development Act 1993. Please see our other leaflet on our web site.

Further Information / Appraisal
For further information and advice on Service Charges contact:-

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