SERVICE CHARGE ACCOUNTS: LEASEHOLD VALUATION TRIBUNAL CASES

There have been two recent cases in the Upper Tribunal (Lands Chamber) which should be of particular interest to those who advise upon and prepare service charge accounts on a regular basis.

In “Redrow Homes (Midlands) Ltd. v.Hothi and others [2011] UKUT 268 (LC)” the leases provided for two on account payments with a balancing charge at the end of the financial year following the supply of audited service charge accounts with a certificate signed by the auditors. The accounts for 2007 and 2008 had not been calculated by June 2009.

The Tribunal was asked to decide whether a landlord was under an implied obligation to calculate the final adjusted service charges within a reasonable time and, if so, what were the implications for a tenant in respect of such an obligation being breached.

The Tribunal decided that the tenants lease did include an implied term that service charge balances must be calculated within a reasonable time and that the landlord was in breach of this obligation. However the breach did not mean that the tenant was relieved from paying. The potential remedies available to the tenant included seeking a court order for the accounts to be produced and an application to the Leasehold Valuation Tribunal for a determination of the service charge payable if they consider that the adjustment calculation has been unreasonably delayed.

Following on from this decision it is important for those managing buildings and their accountants therefore to ensure the excess or deficit to the service charge account is calculated within a reasonable time after the end of the financial year.

The decision of “Rettke-Grover v. Needleman and another” [2010] UKUT 283 (LC) turned on the specific provisions of the lease but it has wider implications. Here the landlord was required to produce service charge accounts to the tenant In addition a certificate confirming the amount of the service charge was to be produced with a copy available to the tenant on request and without charge.

The tenant was to pay towards the landlord’s costs of complying with their obligations in the lease which included a sweeping up provision: “To provide any other services and to carry out any other works of whatever nature as the landlord may from time to time deem necessary or expedient for the efficient management of the Building and the garden areas forecourt and footpaths belonging thereto.”

The landlord claimed that the sweeping up provision embraced the costs of employing a chartered accountant to prepare the service charge accounts and the certificate on the basis that they were a “necessary or expedient step in the efficient management of the Building”.

The Tribunal decided otherwise and took the view that the sweeping up provision was directed towards services which are actually enjoyed by the tenants as the fruits of the efficient management of the Building such as the sweeping up of fallen leaves in the

garden. However the lessees could not reasonably be expected to accept that the dealing with accounting problems lying on the lessor's desk was such a service.

The Tribunal considered that it was apparent from the lease that the landlord had certain obligations which they were to perform at their own expense and in return be able to charge the 15% management fee. One of these obligations is the preparation of the accounts and the appropriate certificate. The lease made no provision for the engagement of an accountant to do this. Therefore the costs of engaging an accountant should be absorbed in the management fee.

Managers of buildings and their advisers should therefore check the lease to ensure that there is specific provision to recover the costs of engaging an accountant through the service charges.

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The full text of both decisions can be found at:
http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/lands/decisions.htm