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Insights

GROUND RENTS AND THE COSTS OF PROTECTING TENANTS - WHO PAYS?

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The problem

You are the landlord of a residential block in England. The flats in the block were sold on long leases. Each lease reserves a ground rent of £250 a year payable in two instalments every six months. In order to claim the ground rents, you have to give each tenant a notice to pay. You want to charge £30 plus VAT for each notice to each tenant, so that you cover your costs of sending these notices. Can you recover these charges from each tenant through the service charge?

The issue

The service charge provisions in each lease allow you to make a reasonable charge for "the collection of rents" from the block. Therefore, the issue is whether giving these notices is part of "the collection of rents".

Discussion

The notices that you have to give to your tenants are required by section 166 of the Commonhold and Leasehold Reform Act 2002. The effect of section 166 is that if you do not give the tenant a notice specifying a date for payment of the ground rent, the tenant is not liable to make a payment of that rent. The specified date for payment must be not less than 30 days nor more than 60 days after the date of the notice and cannot be earlier than the date for payment specified in the lease. It is vital to give the notices neither too soon nor too late.

Section 166 was enacted to protect tenants from having their leases forfeited for the non-payment of trivial amounts. But consumer protection costs, and the issue you raise is who has to pay for this protection for the tenants?

The answer is found in the true meaning of the service charges provisions.

Some leases allow the landlord to recover from the tenant the cost of serving notices, for example a pre-forfeiture section 146 warning notice. Although your leases allow you to recover your

reasonable charges for the "collection of rents", they do not refer to the section 166 requirement to serve notice or expressly provide for the recovery of a charge for each section 166 notice.

Therefore, the question is whether the landlord, in serving section 166 notices which are a prerequisite to the ground rent becoming payable, is "attend[ing] to … the collection of rents"; or, more simply, whether the service of section166 notices is part of the process of collecting the rent, the reasonable cost of which would be recoverable through the service charge.

The answer

The answer is no. Section 166 provides that there is no liability to pay the ground rent until the notice is given. So giving the notice is not collection of rent; it is a necessary preliminary without which no rent is due. Therefore the cost of giving the notice is not a cost of collecting the rent.

It might be different if the lease expressly allowed the recovery of the cost of section 166 notices. However, even if that were so, £30 plus VAT might not be considered a "reasonable charge" if a landlord, especially a professional like you, could simply hit the button on a mail merge to generate the notices block by block when required.

Sources

Section 166 Commonhold and Leasehold Reform Act 2002

Stampfer v Avon Ground Rents Limited [2022] EWCA Civ 1375

This insight was originally authored by Roger Cohen.

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