

Applying to a Leasehold Valuation Tribunal

service charges, insurance, management



housing



Cynulliad Cenedlaethol Cymru
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Contents

Introduction	2
Leasehold Valuation Tribunals	3
Service charges – seeking a determination of reasonableness	4
The procedure	6
Insurance through the landlord’s nominated insurer	6
The procedure	7
The appointment of a manager	8
The grounds for application	8
The procedure	9
Application fees and other costs	10
Calculation of the fee	10
Hearing fees	11
Getting help and advice	12
Useful addresses	13

This booklet has been prepared by the Leasehold Advisory Service (LEASE) for the Department for Transport, Local Government and the Regions and The National Assembly for Wales.

It does not provide an authoritative interpretation of the law; only the courts can do that, nor does it cover all cases. If you are in doubt about your rights, or are considering taking legal action (whether in court or at a Leasehold Valuation Tribunal) you are strongly advised to seek information from LEASE, a Citizens Advice Bureau or to consult a solicitor.



Introduction

There are new procedures for the resolution of disputes in the management of residential property:

- tenants paying variable service charges (usually leaseholders), or landlords in receipt of them, can apply to a Leasehold Valuation Tribunal for a determination of reasonableness of charges for services, repairs, maintenance, insurance or management. This can include costs which have already been incurred, and amounts payable before costs are incurred;
- tenants of flats who are having severe problems with the management of their building can apply to a Leasehold Valuation Tribunal for the removal of the manager and the appointment of a new manager.

This leaflet provides information on these rights, together with the procedures and the costs of application. It is not meant to give a full interpretation of the law nor does it cover every case.

You should always seek competent professional advice before proceeding.



Leasehold Valuation Tribunals (LVTs)

Leasehold Valuation Tribunals are independent and impartial. They normally consist of three members: a lawyer, a valuer and a lay person. Hearings are semi-formal and evidence is not given on oath. The Tribunal provides a quicker and simpler option to court proceedings.

Applicants do not have to be represented by a solicitor or barrister, although professional assistance is recommended. The Tribunal will hear both sides of the argument and then determine the issue. Their determination is issued in writing a little while after the hearing.

Applicants who choose not to be legally represented will be responsible for putting their case in front of the tribunal. This will involve them in presenting arguments and evidence to support their case. As tribunal members are independent, applicants cannot expect them to do this for them. It is important that evidence should be presented clearly and concisely and should be confined to the matters in the dispute.

In some instances, the Tribunal may hold a pre-trial review of the case. This could take place if either party asks, or if the Tribunal itself thinks that it is necessary.

Whether or not a pre-trial review is held, the tribunal may issue directions to the parties relating to the submission of evidence. Directions may well include time limits by which statements and documents have to be filed with the LVT, defining the issues that are in dispute and agreeing any facts that are not. Applicants may well be asked for any legal authorities on which they may rely at the hearing. Failure to comply with the directions may result in prejudice to a party's case, and in the case of the applicant it could result in the dismissal of the application.

The determination is final and enforceable, but you may be able to appeal to the Lands Tribunal, if the LVT or the Lands Tribunal agree. You can only apply for permission to appeal to the Lands Tribunal if it has first been refused by the Leasehold Valuation Tribunal. The Lands Tribunal has the power to award costs.



Service charges – seeking a determination of reasonableness

Service charges are a common area of dispute between landlord and tenant. The Landlord and Tenant Act 1985 (as amended by Section 83 of the Housing Act 1996) provides a procedure for such disputes to be referred to Leasehold Valuation Tribunals who will determine the reasonableness of the charge. Either the tenant or the landlord may apply to the Tribunal for the determination. The application may be in respect of maintenance and repair to the building or services provided, including for example, management, cleaning, portage and building insurance arranged by the landlord.

Where the works have been done or the services are currently being provided, the application can be to determine:

- whether the costs were reasonably incurred; or
- whether the works or services are of a reasonable standard; or
- whether the size of advance payments is reasonable.

Where works or services are proposed in the future, the application can be to determine:

- whether, if the proposed works or services were to be provided, the costs would be reasonable; or
- whether services to be provided or works proposed to a particular specification would be of a reasonable standard; or
- what size of advance payments would be reasonable.

The Tribunal process can resolve disputes on charges already levied for works or services provided, and allow tenants to challenge charges when works are proposed. Landlords will also be able to seek a ruling at proposal stage, if they wish to be certain that their plans are reasonable before they start spending.

In cases where several tenants make separate applications on the same grounds, the Tribunal may propose that the applications should be dealt with together at a single hearing, or that one be heard as a representative application.

Similarly, where the Tribunal has already determined a question of service charges, and subsequently received another application about the same matter from a leaseholder who was not aware of the earlier representative application, the Tribunal may invite the applicant and the respondent to be bound by the previous decision, although if either party objects, the Tribunal would hear the matter.

No application may be made to a Leasehold Valuation Tribunal (LVT) if the matter has already been formally agreed by the tenant or determined by a court, or by arbitration, or has already been referred to arbitration. It may also not be possible for a LVT to determine a matter where either party is subject to an agreement stating that the matter is to be referred to arbitration (for example, a clause in the lease). Consideration should be given to seeking independent legal advice in this case.

In addition, a recent Court of Appeal case ruling (*Daejan Properties Limited v London Leasehold Valuation Tribunal*) determined that LVTs only have the jurisdiction to decide the reasonableness of disputed service charges **that are still unpaid** except under certain circumstances.