Excello Law

Service charge costs “incurred” when invoice served

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In an important decision for residential landlords, the Upper Tribunal has ruled that the freeholder of a block of flats will not have to bear the financial consequences of a mix-up that led to more than £9,000 worth of electricity bills going missing.

The Tribunal’s ruling in *Wenghold v Egleton* (2013) put beyond doubt the correct answer to the thorny issue of exactly when relevant costs are to be taken to have been ‘incurred’ for the purposes of the 18-month time limit on the recovery of service charges from tenants imposed by Section 20B of the Landlord and Tenant Act 1985.

One of the tenants of a block of flats had disputed the landlord’s entitlement to recover £9,362 in electricity charges for the provision of lighting in the building’s common parts over a five-year period. Due to an oversight, the landlord’s managing agents had not received invoices from the electricity supplier for almost all of that period.

The Leasehold Valuation Tribunal had ruled that the tenant was only liable to pay for the electricity supplied in the 18 months prior to him being issued with the relevant service charge demand. However, in allowing the landlord’s appeal against that decision, the Tribunal ruled that, for the purposes of Section 20B, the relevant costs were incurred by the landlord on receipt of the electricity bills and that the 18-month time limit therefore only began running at that point.

Noting that it was driven to its decision by previous legal authority on the point, principally *OM Property Management v Burr* (2013), the Tribunal found that the tenant was liable to pay a 6.62% proportion of the entire electricity bill in accordance with the terms of his lease.

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