

Leaseholder Protections: Landlord's Certificates

We are grateful to **Cassandra Zanelli** of **Property Management Legal Services** for the information provided.

A recent case highlights the consequences for a landlord where they fail to produce the landlord's certificate.

Agents will be well-versed with the so-called “triggers” set down by the Building Safety (Leaseholder Protections) (Information etc) (England) Regulations 2022 which set out when a current landlord is required to produce a landlord's certificate.

The consequences of failing to do so are well known; where a landlord fails to provide a landlord's certificate, the landlord is deemed to have met the contribution condition and/or is deemed responsible for the relevant defect or deemed associated with a person responsible for a relevant defect. Where these deeming provisions are met, the landlord cannot recover any service charge in respect of a relevant measure relating to any relevant defect.

A recent case in the First Tier Tribunal (Property Chamber) considered whether the Tribunal has any power to compel a landlord to produce the landlord's certificate.

Para 16(1) to Schedule 8 to the BSA authorises the making of regulations in relation to a landlord's certificate. Paragraph 16(5) enables regulations to be made for an application to the Tribunal for an order (a) determining whether a relevant landlord has failed to comply with the regulations, and (b) if so, requiring the relevant landlord to provide specified information or documents to a specified person by a specified time.

The regulations made under paragraph 16(1) enable an application to be made to the Tribunal where:

- (a) the applicant believes that a relevant landlord has made a false claim in the landlord's certificate provided under regulation 6, including but not limited to—
 - (i) stating that the relevant landlord is not the developer of the relevant building or is not associated with the developer; or
 - (ii) stating the relevant landlord does not meet the contribution condition;
- (b) the relevant landlord or current landlord has not given the leaseholder sufficient time to provide information to prove they have a qualifying lease.

In the recent case, where the Tribunal was asked to compel the landlord to produce the landlord's certificate, it determined that regulations made did not make provision for leaseholders to seek an order from the tribunal requiring a landlord to produce a landlord's certificate.

Although the Tribunal could not do what the leaseholder was asking, it is perhaps worth emphasising the consequences for a landlord where they fail to produce the landlord's certificate in that they will be deemed to have met the contribution condition and/or deemed responsible for the relevant defect or deemed associated with a person responsible for a relevant defect.

The consequences are that where these deeming provisions are met, the landlord cannot recover any service charge in respect of a relevant measure relating to any relevant defect.