Supreme Court imposes restrictions on service charges

6Last year you could read a blog on our website about a judgment in which the Court of Appeal of Amsterdam ruled that a landlord of a dwelling in the free sector was almost completely free to determine the level of service costs, as long as there was an agreement with the tenant. In cassation, however, the Supreme Court decided differently.

What was the case?

Tenant and landlord have agreed a rent of €740,- per month. In addition to the bare rent it has been agreed that €450,- per month will be charged for the rent of the furniture and €200,- per month in VvE contributions. The tenant will pay €1.500,- per month Including an advance payment for the energy costs. During the rental period the tenant will not receive a specification of the costs.

After termination of the tenancy agreement, the tenant will reclaim the fully paid furniture costs (€11,055.28) and VvE contributions (€5,500.-) because the landlord did not comply with the obligation to disclose the actual costs incurred. The tenant argues that the VvE contributions should not be charged anyway.

Progress of the procedure

The court rules in favor of the tenant. The court ruled that no more than €48,- per month should have been charged for the furniture. With regard to the VvE contributions, the court ruled that no costs may be charged that are not directly related to the use of the property.

On the other hand, in the appeal, the court of appeal made a U-turn with respect to the prevailing doctrine and ruled that, in view of the history of the law, the freedom of contract in the case of liberalized rent should also apply with respect to the agreed service costs. In other words: if the parties have agreed on a certain fee for the service costs, this agreement does apply. In fact, it does not matter whether the charged costs have actually incurred. An agreement is an agreement. According to the Court of Appeal, only if no agreements have been made in this respect, it is necessary to fall back on what has been laid down by law or what is considered reasonable.

Supreme Court

In the meantime, the highest court in the Netherlands, the Supreme Court, has ruled on the matter. The Supreme Court refers to the first sentence of Section 7:259 (1) of the Dutch Civil Code:

"The tenant's payment obligation in respect of costs for the utilities with an individual meter and the service costs shall be the amount agreed between the tenant and the landlord".

In the opinion of the Supreme Court, this phrase should be understood to mean the agreement between the tenant and the landlord on the charged costs as a result of the (annual) specification to be provided to the tenant. In that case, the tenant has the opportunity to check whether the costs that were charged are correct, after which 'agreement' can be reached.

According to the Supreme Court, this phrase does not mean that a landlord and a tenant can agree on a service charge without any relation to the actual costs. After all, this would render the annual specification which is imposed useless. Section 7:259 of the Dutch Civil Code also applies to deregulated dwellings.

Conclusion

The service costs should be calculated as a reasonable fee in relation to the actual costs. The amount of the service costs can be assessed on the basis of this criterion, even if it concerns a liberalised dwelling.

For tenants of a liberalised dwelling, it is (again) important after this ruling to obtain a good insight into the costs that are stated. It is therefore quite possible to challenge these costs at a later stage, if they are disproportionate to the actual costs. However, it is also important for landlords to actually provide a clear overview of the extra costs that are incurred annually. This prevents them from being suddenly confronted at a later stage with a large claim from a tenant comparable to this case.

Do you have any questions about this blog or would you like to know more about service costs? Please feel free to contact M2 lawyers.

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