

7774

H.M. COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Schedule 11 to the Commonhold and Leasehold Reform Act 2002
("the Act")

Case Number:	CHI/21UG/LAC/2011/0018
Property:	9,10 & 11 Georgian Close, Hastings Road, Bexhill-on-Sea, East Sussex TN40 2NN
Applicants:	Mr CH Kaye (Flat 10) Mr K Bellamy (Flat 11) Mrs H Wright (Flat 9)
Respondent:	Ground Rent Investment Corporation Ltd
Tribunal:	Ms E Morrison LLB JD (Lawyer Chairman) Mr A Mackay FRICS (Valuer Member)
Date of the Tribunal's Decision:	18 April 2012

The Application

1. The Applicants leaseholders applied under Schedule 11 of the Act for a determination of their liability to pay an administration charge of £70.00 plus £12.25 VAT invoiced to each of them by the managing agents, Geoffrey John & Partners, on 2 September 2008. The Respondent is the freeholder of the block.
2. Further to directions given by the Tribunal on 15 December 2011, the application was determined on the basis of written submissions, immediately following an oral hearing on a related application in Case No. CHI/21UG/LIS/2011/0067.

The Lease

3. The Tribunal had before it a copy of the lease for Flat 10 and had been told at the hearing of the related matter that the leases of the other flats were in similar form. The lease is for a term of 999 years from 29 September 1960 with a yearly ground rent of

£15.75. There is also provision for the payment of service charges, which are specifically reserved as 'additional rent'.

Preliminary Matter

4. The Respondent to the application had been erroneously named as Mr R T Caine, who is a director of the freeholder Ground Rent Investment Corporation Ltd. The name of the Respondent is amended accordingly.

The Law

5. An administration charge is defined in paragraph 1 of Schedule 11 and includes an amount payable by a tenant of a dwelling in respect of a failure by the tenant to make a payment by the due date to the landlord, or in connection with a breach of covenant in the lease. If the amount of the charge is not specified in the lease, the Tribunal may determine whether it is reasonable and should be paid. However these statutory provisions only come into play if the lease provides or permits a charge to be made in the first place.

Evidence and Submissions

6. In this case each invoice was a charge for time spent by the managing agents preparing papers to be sent to solicitors to enable a solicitors letter to be sent to each leaseholder. Such a letter was sent by the solicitors on 12 September 2008, demanding payment of overdue service charges and referring to possible court proceedings under section 81 Housing Act 1996.
7. Mr Kaye and Mr Bellamy submitted that the action taken was vexatious, as there had been no follow-up by the solicitors, and that they could find nothing in the lease permitting such a charge to be made.
8. Mr G John of Godfrey John & Partners, the managing agents, submitted on behalf of the Respondent that the charge was in a reasonable amount for the work done by his firm, and was required only because the leaseholders had not paid their service charges. Mr John accepted that the lease did not permit recovery of the solicitors' fees.

Decision

9. A careful perusal of the lease by the Tribunal reveals that there is no provision in the lease which permits a charge to be levied by the managing agents for their work on this matter. It is not within the ambit of the service charge and although there is a covenant by the leaseholder (clause 2(13)) to pay all costs and charges incurred in contemplation of proceedings under section 146 of the Law of Property Act 1925, section 146 does not apply here because the lease reserves the service charges as rent. Section 146 has no application to rent arrears.
10. Accordingly, there being no provision in the lease, the charges are irrecoverable from the leaseholders.

Reimbursement of Fee

11. At the hearing of the related matter, Mr Kaye requested reimbursement of the fee paid on this application. An order to this effect may be made under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. The Tribunal makes such an order. It should have been clear to the managing agents that such a charge was outwith the lease. Furthermore once the Tribunal had identified at the pre trial review hearing in the related matter that a separate application would be required solely in respect of this charge, it was unreasonable of the managing agents not to withdraw the charge at that point.

Signed

E Morrison

Chairman

Dated: 18 April 2012