



Residential  
Property  
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT COMMITTEE  
LEASEHOLD VALUATION TRIBUNAL  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002 ('the Act')  
Case Number:CHI/OOML/LIS/2009/0009**

**Decision**

<b><u>Premises</u></b>	Flat 22, Prestonville Court, Dyke Road, Brighton, East Sussex BN1 3UG
<b><u>Applicants</u></b>	Prestonville Court (Brighton) Limited (Landlord)
<b><u>Representation</u></b>	Dean Wilson Laing (solicitors)
<b><u>Respondent</u></b>	Ms Catherine Glendinning (Leaseholder)
<b><u>Representation</u></b>	In person
<b><u>Date of Hearing</u></b>	With the agreement of the parties a determination was made without a hearing on a consideration of the papers on 18 May 2010.
<b><u>Date of Inspection</u></b>	None
<b><u>Date of Decision</u></b>	27 May 2010
<b><u>The Tribunal</u></b>	James Driscoll, solicitor (Lawyer Chair) and Andrew Mackay, FRICS

## **Introduction and the Determination summarised**

1. We determine that the sums claimed by the Applicants from the Respondents are administration charges, that they were not reasonably incurred, and are not recoverable.
2. This is an application for the determination of certain administration charges. It started as a claim in the Brighton County Court seeking the recovery of legal costs (of £299.95). The Applicant is a company which owns the freehold and is the landlord under the leases of flats in the building. The Respondent is the owner of the lease at flat 22 in the building. After she notified the Court that she denied the claim, the Court transferred it to this Tribunal for a determination by an order dated 4 December 2009.

## **The proceedings in this Tribunal**

3. In that order the Court stated that as the claim was for service charges, it should be transferred to the Tribunal for a determination. Directions were given by the Tribunal on 4 March 2010 stating that this would be dealt with as an administration charge under Schedule 11 of the Act. It was also proposed that the matter be dealt by considering written representations and without an oral hearing. Neither party has sought an oral hearing. The parties were directed to produce statements of their cases. We considered the application, their statements and the other papers on 18 May 2010. The papers included a statement from the Respondent's doctor advising that she is suffering from ill health.
4. Our reading of the papers filed we note that this matter relates to a claim for legal charges. These are charges made by the Applicant's solicitors Dean Wilson Laing which are summarised in a note of their costs dated 30 March 2009 which was sent to the Applicants for payment. This was for the sum of £316.95 (inclusive of a disbursement and VAT).
5. In letters dated 9 and 20 October 2009 Dean Wilson Laing informed the Respondent that their bill had been paid by the Applicants (and that after payment they had closed their file) but that they are entitled to recover this outlay under the terms of her lease including interest on the sums owing. The sum of £427.87 (including interest) was claimed.
6. On 5 November 2009 proceedings to recover legal fees of £299.95 and interest for late payment were commenced in the Brighton County Court. In her lengthy defence the Respondent set out her complaints that the Applicants had failed to deal with damage caused by dampness to her flat. She accepted that she withheld service charges at one stage because of her dissatisfaction with the failure, as she saw it, to deal with the disrepair to her flat. She also considers that the legal charges claimed were the responsibility of the Applicants and should not be passed on to her.


## **The reasons for our Determination**

7. We considered the Respondent's lease. Clause 2.4.3 allows the Applicants as landlords to recover their expenses, including solicitor's fees, for any breaches of the lease and for the

costs of proceedings in the Tribunal or the Court. Other clauses require the Respondent, in the usual way, to contribute her share of the costs and expenses incurred by the Applicants in discharge of their covenants, including their covenant to insure the building and to carry out repairs.

8. The latter charges, which are not directly in issue in this application, are clearly service charges as defined in section 18 of the Landlord and Tenant Act 1985. However, the right to recover costs under clause 2.4.3. is not a service charge. They are administration charges as they are defined in paragraph 1, schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Tribunal first expressed this conclusion when it gave Directions on 4 March 2010. The Applicants have not challenged this conclusion.
9. It follows that those advising the Applicants acted incorrectly in claiming legal costs as service charges and in bringing proceedings for the recovery of sums as service charges. There is a right to recover legal costs under clause 2.4.3. of the lease but these charges must be reasonable (under paragraph 2, Schedule 11 to the 2002 Act). Under paragraph 3(1) either party may apply to this Tribunal for a determination whether the administration charge is payable.
10. A demand for an administration charge must be accompanied by notice summarising the rights and obligations of the leaseholder and the leaseholder can withhold the charge if such a notice is not given (paragraph 4(1), (3) Schedule 11 to the 2002 Act). The information to be supplied is set out in regulations made under that schedule (see SI 2007/1258). Where the leaseholder withholds the charges under these provisions any provisions in the lease relating to non-payment or late payment do not apply (ibid at paragraph 4(4)).
11. We note from the papers that those advising the Applicants gave a notice relating to recovery of service charges as required under section 21B of the Landlord and Tenant Act 1985. However, this notice was served in error since the charges claimed are administration charges, not service charges. Such a notice under the 2002 Act should have been given to the Respondent. In consequence she is entitled to withhold the charges and any charges for non-payment do not apply.
12. We are also concerned at the disparity of the claims for legal costs and the difference between what was originally demanded and the charges claimed in the County Court. We are equally concerned to read the claim made in the statement provided by those advising the Applicants in the proceedings before this Tribunal dated 6 April 2010. This claim includes the original charges (which have been paid by the Applicants) for £299.95; charges relating to seeking recovery of those charges (£59.80); costs in respect of the County Court proceedings (£249.45) and legal fees from 23 November 2009 to 10 March 2010 of £405.96. This means that the Applicants have incurred solicitor's costs totalling £715.21 to recover a debt claimed of less than £300. The total legal charges amount to £1,015.16.
13. These are all administration charges for which the Respondent has not been given a summary of her rights under the 2002 Act. We have reached the conclusion that these administration charges were not reasonably incurred for the following reasons.

14. First, the original charges were paid by the Applicants in full and those advising them closed their file. The Applicants then decided to seek recovery of those charges from the Respondent. She questioned the charges. She was not given notice of rights. Although she apparently reserved her right to refer this matter to the tribunal, those advising the Applicants brought County Court proceedings 9 (see Dean Wilson Laing's letter of 9 October 2009).
15. Earlier in this decision we noted that this claim was misconceived. We not, therefore, consider that the Court costs were reasonably incurred. We consider that the later charges were not reasonably incurred either as they appear to have been incurred in the transfer of the claim to this Tribunal where the application should have originally been made. Further, in the statement filed by the Applicants following our pre-trial review they have claimed sums greater than those that were transferred from the Court to this Tribunal for a determination.
16. Overall, we conclude that all of these costs are quite disproportionate and appear to have little, or nothing, to do with the proper management of the building. The threats and use of legal proceedings in this matter appears to us to have been a very heavy-handed way of responding to the Respondents concerns (all the more so, when the Applicants are aware of the Respondent's medical condition).
17. We determine that none of the legal costs claimed are recoverable as administration charges. In light of this determination (a copy of which will be sent to the Chief Clerk at the Brighton County Court as well as the parties) we would respectfully suggest that the Applicants discontinue those proceedings. Finally, we note that the Respondent continues to claim that the damage to her flat has not been remedied, which no doubt will receive an early response from the Applicants and their managing agents.

  
**James Driscoll (Lawyer Chair)**

**Dated: 27 May 2010**



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**Case Number: CHI/OOML/LIS/2009/0009**

**Application for permission to appeal**

<b><u>Premises</u></b>	Flat 22, Prestonville Court, Dyke Road, Brighton, East Sussex BN1 3UG
<b><u>Applicants</u></b>	Prestonville Court (Brighton) Limited (Landlord)
<b><u>Representation</u></b>	Dean Wilson Laing (solicitors)
<b><u>Respondent</u></b>	Ms Catherine Glendinning (Leaseholder)
<b><u>Representation</u></b>	In person

**Date of application** 22 June 2010

**for permission to appeal**

**Summary of decision** This application for permission to appeal the decision of this tribunal dated 27 May 2010 is refused

**Date of Decision** 12 July 2010

**The Tribunal** James Driscoll, solicitor (Lawyer Chair)

## Reasons

1. We have considered an application for permission to appeal our decision dated 27 May 2010. In summary we decided that the claims against the respondent leaseholder were administration charges, that the applicants had failed to follow the statutory procedures required and that the charges were unreasonable and not recoverable. The application is refused.
2. In pursuing this application for permission, the applicants set out their grounds in a four page document containing nine paragraphs. Paragraph 2 of the grounds accepts that the claim made was for administration charges. They accept that no statutory notice was given when making the original charge before commencing County Court Proceedings. The law relating to administration charges is set out in schedule 11 of the Commonhold and Leasehold Reform Act 2002. Under paragraph 5 application can be made for a determination of administration charges. No such application was made. Instead the applicants started the Court proceedings on the mistaken assumption that they were pursuing unpaid service charges. In other words, had the applicants realised that they were claiming an administration charge they would have made an application directly to this tribunal. On that claim being transferred to this tribunal we considered all the relevant issues and we consider that our conclusions (including our conclusion that the administration charges were unreasonable) were correct.
3. In accordance with Section 175 of the Commonhold and Leasehold Reform Act 2002, the respondents may make further application for permission to appeal to the Upper Tribunal.

*James Driscoll*

**James Driscoll (Lawyer Chair)**

**Dated: 12 July 2010**