

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE****LEASEHOLD VALUATION TRIBUNAL  
of the  
NORTHERN RENT ASSESSMENT PANEL****COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SCHEDULE 11**

**Property:** 8 Bankfield Close, Ainsworth, Bolton,  
Lancashire BL2 5QZ

**Applicant:** Mr Martin Stuart Scholes

**Respondent:** Kirphil Properties Ltd

**The Tribunal:** Chairman: Laurence Bennett  
Martin Davey

**Date of Determination:** 27 August 2010

**Application**

1. Mr Scholes applies under Paragraph 5 of Schedule 11 to the Commonhold Leasehold Reform Act 2002 for determination of an administration charge relating to 8 Bankfield Close, Ainsworth, Bolton, Lancashire BL2 5QZ (the "Property") requested by Management Investments Ltd on behalf of Kirphil Properties Ltd.

**Hearing**

2. On 22 July 2010 Mrs E Thornton Firkin, a Vice President of the Tribunal, made directions which facilitated submissions by the parties and stated that "It is considered that this matter is one that can be resolved by way of submission of documentary and other written evidence leading to an early determination." The directions provided an opportunity for either party to request an oral hearing.
3. Both parties made written submissions which were copied to the other. Neither party requested an oral hearing.
4. The Tribunal convened on 27 August 2010 without the parties to make its determination.

**The Law**

5. Paragraph 1 of Schedule 11 to the Commonhold Leasehold Reform Act 2002 provides that:-

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly -

- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(3) In this part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither -

- (a) Specified in his lease, nor
- (b) Calculated in accordance with a formula specified in his lease.

Paragraph 2 provides that:-

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 provides that:-

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to:-

- (a) the person by whom it is payable
- (b) the person to whom it is payable.
- (c) the amount which is payable.
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable

6. The operation of the Act was brought into effect by SI 2003 No 1986. Paragraph 8 of Schedule 2 of that instrument states:

Paragraphs 2-5 of Schedule 11 shall not apply to an administration charge that was payable before the first commencement date.

7. The first commencement date was 30 September 2003

## **Facts**

8. The Applicant holds the leasehold interest in the Property created by a lease dated 9 October 1972 and made between Tanway Properties Ltd of the one part and Victor Samuel Gaffin and Linda Hall of the other part (the Lease). The Respondent holds the Lessor's interest.

9. Paragraph 2(12) of the Lease contains the Lessee's covenant "Not to make or suffer to be made any substantial alterations or addition affecting ..... to the demised premises nor to erect or set up or permit to be erected ..... any new building or structure without the previous consent in writing of the Lessor."

10. In February 2009 the Applicant made enquiries with the Landlord's agent about consent for the erection of a conservatory upon the Property. Communications took place relating to payments that would be required by or on behalf of the Lessor for consent. Details of the individual elements of cost making the total administration charge were specified.

11. In May 2009, following receipt of planning permission for the conservatory, the Applicant requested that the Respondent reconsider the cost of consent. In the absence of a reply, this application was made.
12. The Respondent's submissions include an acknowledgement that part of the costs, a premium of £750 is inappropriate and that the sums now requested are £150 + VAT administrative charge and £350 + VAT solicitor's costs being a reduced charge for a licence.

### **Tribunals Conclusions and Reasons**

13. We have first considered whether an administration charge is payable. We have carefully examined the terms and conditions within the Lease. We do not find a covenant by the Lessee to pay a charge or costs and expenses which the Lessor incurs in dealing with an application by the Lessee for consent or approval.
14. In the absence of such covenant or condition we have considered whether the Respondent is entitled to request a variable administration charge falling within paragraph 1 of the Commonhold & Leasehold Reform Act 2002.
15. We have been guided by the decision of George Bartlett QC, President of the Upper Tribunal (Lands Chamber) when refusing permission to appeal relating to 69 Granary Court, Haslers Lane, Great Dunmow, Essex CM6 1BW, Number LRX/40/2010 in which he stated "The contention advanced by the applicant – that 'under the provisions of the relevant Act the respondent is entitled to make a 'variable administration charge' whether it is specified or not in the Lease' – is incorrect. The provisions of section 158 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 do not create an entitlement to make an administration charge where the lease does not itself provide for this. An Appeal would accordingly fail."
16. We conclude that an administration charge is not payable irrespective of whether the Lessor intends to incur the individual elements of cost specified in the Respondent's submissions. Whilst the Respondent might consider a formal licence appropriate, it is not clear why and we see no reason why the Lessee should be responsible for the cost of preparation.
17. In the circumstances above, taking into account the Respondent's conduct and the outcome of the application, in exercise of our power under paragraph 9(1) of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 we order that the Respondent shall reimburse the Applicant the application fee (£70) paid in these proceedings. Such to be paid within twenty-eight days.

### **Order**

18. An administration charge is not payable for granting consent under paragraph 2(12) of the Lease.
19. Kirphil Properties Ltd shall pay Mr Scholes within twenty-eight days the sum of £70, by way of reimbursement of the application fee in these proceedings.

**Date:** 27 August 2010

**Signed:**

**Chairman:** L J Bennett