

12426



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/22UN/LSC/2017/0059**

Property : Flat 1, Branston Court, Coppins Road, Clacton-on-Sea, Essex CO15 4QH

Applicant : Timothy Lloyd Cronin

Respondent : Turney & Associates Lettings LLP (named in the application as landlord)

Type of Application : For determination of reasonableness and payability of service charges for the year 2017
[LTA 1985, s.27A]

For an order that all or any of the costs incurred by the landlord in connection with these proceedings before the tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant
[LTA 1985, s.20C]

Tribunal Members : G K Sinclair & G F Smith MRICS FAAV REV

Date of Decision : 5th October 2017

DECISION FOLLOWING A PAPER DETERMINATION

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- Decision paras 1–4
- The lease paras 5–8
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- Evidence and findings. paras 15–24

1. For the reasons set out below the tribunal determines that if, as appears to be admitted by its short letter in response dated 22nd August 2017, the landlord is in fact Turney Lettings & Management LLP and not Turney Management Ltd or Mr Mark Turney personally (a confusion drawn to the parties' attention by the tribunal in both previous applications in 2012¹ and 2015², and in the directions issued in the current application) then by paragraph 6 of the Fourth Schedule to the lease it is entitled to demand from Mr Cronin no more by way of service charges in respect of its management of the building than his one quarter share of ten per cent of the expenditure incurred by the landlord upon insuring the building in the relevant year, it being agreed that no maintenance or other work has been undertaken. The tribunal has not been provided with any details of the insurance premium paid.
2. The lease makes no provision for payment of any late payment or other penalty charges, and none are therefore recoverable. They cannot be imposed at the whim of the landlord and/or managing agent.
3. If the tribunal is wrong as to the true identity of the landlord, and that Turney Lettings & Management LLP is in fact merely its managing agent, then the tribunal sees no good reason why it should award more than the £150 awarded on previous occasions. No such evidence has, however, been provided.
4. The tribunal also makes orders :
 - a. Under section 20C that the lessor's costs of and arising from these proceedings shall not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessee; and
 - b. Under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the respondent lessor shall also reimburse the £100 application fee paid by Mr Cronin.

The lease

5. As recited in the tribunal's decision dated 23rd March 2015, the relevant lease is dated 28th September 1989 and was made between The Dacon Trust Ltd and Beryl Constance Curzon as lessor and Timothy Lloyd Cronin (the present applicant) as lessee. The lease plan shows the building of which the demised premises form part as occupying a corner site at the junction of Coppins Road and Branston Road, Clacton. The term granted is 99 years with a stepped ground rent payable half-yearly in June and December and, by way of additional rent, one quarter of the annual insurance premium paid by the lessor, such sum to be paid on the half-yearly rent date after it has been incurred.
6. By clause 4(2) the lessee covenants to contribute the sum of thirty pounds on the

¹ CAM/22UN/LSC/2012/0080

² CAM/22UN/LSC/2014/0099

signing of the lease and thereafter annually within fourteen days of the same being demanded by the lessor the sum of thirty pounds or one quarter (whichever is the greater) of the costs, expenses, outgoings and matters mentioned in the Fourth Schedule; such sum to be recoverable by the lessor as additional rent. It is unclear whether "thereafter annually" means that the annual service charge is calculated for the year ending 27th September but payable within 14 days of it being actually demanded or is intended to be payable on 27th September. This tribunal inclines to the former interpretation.

7. The lease makes no provision for advance or interim payments, for a sinking or reserve fund, or for payment of any administration charges other than for the registration of any assignment, etc and the usual provision for payment of such expenses and fees as may be incurred in the preparation and service of a section 146 notice.
8. Amongst the expenses referred to in the Fourth Schedule are, at paragraph 6, the fees and disbursements paid to any managing agents appointed by the lessor in respect of the property provided that so long as the lessor does not employ managing agents the lessor shall be entitled to add the sum of ten percent to any of the above items for administration. This point was critical to the decision of the tribunal dealing with the 2012 application (unlike here and in 2015, at a hearing attended by both parties) : the lessor company had dealt with matters itself, could not appoint itself as managing agent, and therefore could not charge a separate management fee but was restricted to ten percent of its outlay.

Material statutory provisions

9. Section 18 of the Landlord and Tenant Act 1985 defines the expression "service charge", for the tribunal's purposes, as :
 - an amount payable by a tenant of a dwelling as part of or in addition to the rent... (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management...
10. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
 - a. only to the extent that they are reasonably incurred, and
 - b. where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.
11. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985. The first step in finding answers to these questions is for the tribunal to consider the exact wording of the relevant provisions in the lease. If the lease does not say that the cost of an item may be recovered then usually the tribunal need go no further. The statutory provisions in the 1985 Act, there to ameliorate the full rigour of the lease, need not then come into play.
12. Please also note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a

post-dispute arbitration agreement)³ is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.

13. Section 20C(1) provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
14. Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides that the tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

Evidence and findings

15. The tribunal had before it a small bundle of documents, the parties having agreed that the case could be dealt with by way of written representations. It is common ground that no works were carried out or services provided during the material years other than the arranging of landlord's buildings insurance and the normal billing for ground rent and a quarter share of the insurance premium.
16. In his application the applicant complained about the "huge increase for 2017, and the issue of demanding a late payment fee." The entire statement of case in response consists of a short, four paragraph letter dated 22nd August 2017 headed "Turney & Associates Lettings LLP". It states that :

We have owned the freehold since 2012. The maintenance charge has been increased this year after 5 years ownership by £50.00. Please find attached statement of overheads.
17. The letter also admits that no maintenance has been carried out at the property, allegedly because

...all quotations submitted to Mr Cronin were rejected as he said the work was unnecessary. I have not tried to suggest any further maintenance works as Mr Cronin is very difficult to deal with and very negative. We would gladly do maintenance if he would like to suggest it.
18. Finally, the letter admits that late payment charges have been applied to Mr Cronin's account as payment has to be chased constantly. No justification for such charges is given by reference to any provision in the lease.
19. Despite being asked for in the tribunal's directions order no copies of any demands served by or on behalf of the landlord have been provided. Had they then the tribunal could see, if such demands were compliant with sections 47 and 48 of the Landlord and Tenant Act 1987, on whose behalf as landlord they were actually made.

³ Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

20. That, including a schedule of Turney & Associates Lettings LLP's overheads, is the sum total of the evidence provided. As in 2015, the schedule was divided into separate columns for annual expenditure, weekly cost, and a cost apportioned for 20 hours. On this occasion no attempt was even made to justify a claim for 20 hours work expended on this building. As in 2015, it is rejected as excessive.
21. On the limited information provided, however, the tribunal must find as it did in 2012 that the landlord is managing the property itself and is therefore not entitled to charge itself a management fee. Instead it may add 10% to the total of its actual expenditure. No expenditure on this building has been proved, save that it is accepted that insurance cover is being provided. The total that may be added for management is therefore 10% of the insurance premium. Of that, Mr Cronin's share is one quarter.
22. If, contrary to the cases put before the tribunal (and despite the issue of the true identity of the landlord being raised by it on each occasion), the landlord is not Turney & Associates Lettings LLP and the above finding by overturned on appeal, then the management fee that the tribunal would have regarded as reasonable would have been no more than £150, as before. In the tribunal's determination it is the landlord's responsibility to maintain the entire building and, if confident that work is necessary and that any required consultation is undertaken, then it should get on with it irrespective of the wishes of a leaseholder who may be reluctant to incur additional expenditure – even if such work helps to preserve or enhance the value of the leasehold asset.
23. As the applicant has again succeeded in his application the tribunal makes the order sought under section 20C and further orders the respondent to reimburse the £100 application fee that Mr Cronin was required to pay.
24. For a landlord or manager repeatedly to ignore tribunal decisions is neither sensible nor constructive. It only opens the path to an application by a tenant for the appointment by the tribunal of an independent manager.

Dated 5th October 2017

Graham Sinclair

Graham Sinclair
Tribunal Judge