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**HM Courts
& Tribunals
Service**



**Residential
Property**
PROPERTY SERVICES

EASTERN RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**ON AN APPLICATION UNDER SECTIONS 27A AND 20C OF THE LANDLORD
AND TENANT ACT 1985**

Case Reference: CAM/22UN/LSC/2012/0080

Premises: Flat 1, Branston Court, Coppins Road, Clacton-
on-Sea CO15 3LE

Landlord: Turney Management Ltd but named as Mark
Turney in the County Court summons and initially
in the tenant's section 27A application

Representative: Mark Turney

Tenant Timothy Lloyd Cronin

Representative: Mrs Cronin, his mother

Date of decision: 10thDecember 2012

**Leasehold Valuation
Tribunal:** Mr Adrian Jack, Mr Gerard F Smith MRICS FAAV,
Mrs Cheryl St Clair MBE BA

Procedural

1. There are two matters before the Tribunal. The first in time is a claim issued in the Northampton Bulk Issuing Centre under action no 2QT68486 on 20th June 2012, in which Mr Mark Turney claimed £1,032.67 plus a court fee of £70. This action was transferred to the Tribunal by Order of District Judge Mitchell made on 17th July 2012.
2. The second in time was an application under section 27A of the Landlord and Tenant Act 1985 made on 22nd June 2012 by the tenant seeking determination by the Tribunal of his liability for service charges in the year 2012. The named landlord was again Mr Mark Turney.
3. The Tribunal gave directions that both matters should be heard together. The directions were substantially complied with. This decision deals with the section 27A application. It should be read in conjunction with the decision of even date on the transferred matter.
4. The Tribunal heard the matter on 16th November 2012. Neither party requested an inspection and none was held.

The landlord

5. At the hearing it was common ground that the landlord was in fact Turney Management Ltd. This presented a problem in relation to the County Court matter, since the Tribunal has no power to amend the parties on such a transfer. Since nothing was owed to Mr Turney personally, all the Tribunal was able to do was declare that the tenant owned Mr Turney nothing, which is what the Tribunal did in relation to the transferred matter..
6. In relation to the tenant's application, the position is different. The Tribunal has the power to add a respondent on the would-be respondent's application. Mr Turney sensibly asked that Turney Management Ltd should be added as a respondent to that application and we granted the application.

The lease

7. The lease was made 28th September 1989 and is in an old-fashioned form. By clause 1 there was reserved as additional rent the payment of one quarter of the landlord's insurance premiums. By clause 4(2) the tenant covenanted to pay annually on 28th September one quarter of the landlord's expenditure on service charge matters. There is no provision for payments on account or for the creation of a reserve fund. Nor is there provision for a late payment charge or administration charge.

8. Paragraph 6 of the Fourth Schedule to the lease allows to be passed through the service charges the disbursements to any managing agents with a proviso that "so long as the Lessor does not employ Managing Agents the Lessor shall be entitled to add the sum of Ten per cent to any of the above items for administration."

Notices

9. Under section 47 and 48 of the Landlord and Tenant Act 1987 the landlord, before it can claim service charge monies, must serve a notice of demand including its address and an address for service in England and Wales. In addition the landlord must serve a summary in statutory form of the tenant's rights and obligations. None of this was done in this case. Accordingly unless and until the appropriate documentation is served on the tenant nothing is owed.

The sums claimed and due

10. The sums claimed by the landlord are as follows:

| | |
|--|---------|
| Ground rent | £40.00 |
| Accountants | 62.50 |
| Managing agent | 200.00 |
| Compliance | nil |
| Building insurance Dacon Trust Ltd 1 July 2011 to 23 March 2012 | 96.62 |
| Building insurance 24 March 2012 to 23 March 2013 | 268.75 |
| General repairs | 250.00 |
| Reserve fund | nil |
| | <hr/> |
| | £917.87 |

11. Ground rent is not within the Tribunal's jurisdiction.
12. So far as the accountant's fee is concerned, this fee has not yet been incurred. There is no provision in the lease for payments on account, so nothing is owed in respect of this item. The same applies to the general repairs head. This is an estimate of work which will need doing. However, since the work has not yet been done, nothing is owing.
13. The £96.62 insurance premium in respect of the former landlord was conceded by the tenant, subject to the question of a valid demand having been made.
14. So far as the managing agent's fee is concerned, this is a sum claimed by Turney Management Ltd for its services. Since Turney Management Ltd is the

landlord, it cannot appoint itself as managing agent. Accordingly, it is limited to a fee of ten per cent of the other items in the service charge account. The £200 would thus stand to be disallowed.

15. So far as the building insurance obtained by the landlord is concerned, Mr Turney said that Turney Management Ltd was a registered insurance broker. He also said that no commission was payable to Turney Management Ltd. We find that most surprising, since it is almost unheard of for an insurance broker not to receive commission: it is the general means by which the broker is paid. The increase in the insurance premium over that obtained by Dacon Trust Ltd was also unexplained. Since, however, nothing is owed at present, the Tribunal does not need to and does not determine what sum would be owed in respect of this insurance, if the appropriate notices etc were served.

Costs

16. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal. These comprise a £70 application fee and a £150 hearing fee paid by the tenant. The landlord was not required to pay anything to the Tribunal.
17. In our judgment the tenant has won comprehensively and it appropriate to order that the landlord reimburse him for the £220 paid to the Tribunal.
18. The tenant sought an order under section 20C of the Landlord and Tenant 1985. This allows the Tribunal to make an order preventing the landlord recovering the cost of the proceedings from the tenant through the service charge. The landlord realistically conceded that it was appropriate to make such an order. Accordingly we make a section 20C order.

DETERMINATION

The Tribunal accordingly determines:

- (a) that Turney Management Ltd be added as an additional respondent to the tenant's section 27A application;
- (b) that at present nothing is owed by the tenant to the landlord due to the landlord's failure to serve proper notices under sections 47 and 48 of the Landlord and Tenant Act 1987 and a summary of the tenant's rights and obligation;
- (c) that the service charges for a particular service charge year are only due on 28th September of each

year, save that the landlord may demand the tenant's proportion of the insurance premium as soon as liability is incurred;

- (d) that the management fees to date are limited to ten per cent of the total of the service charge account and will continue to be so limited unless and until the landlord appoints managing agents;
- (e) that the landlord is not entitled to make a late payment charge or an administration charge;
- (f) that the landlord shall pay the tenant £220 in respect of the fees payable to the Tribunal;
- (g) that pursuant to section 20C of the Landlord and Tenant Act 1985 the landlord be prevented from recovering its costs of the current proceedings from the tenants.

Adrian Jack, Chairman

10th December 2012

ANNEX: The law

Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

Section 18

- (1) In the following provisions of this Act "service charge" means 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, improvement or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
- (3) for this purpose
 - (a) costs includes overheads and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
 - (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; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service 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.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.

The Landlord and Tenant Act 1987 provides in sections 47 and 48 that any demand made by a landlord must contain the landlord's name and address and must provide an address in England and Wales at which notices may be served. Failure to comply with either of these requirements makes the monies demanded irrecoverable until the default is remedied.



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EASTERN RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION ON A TRANSFER FROM THE COUNTY COURT

Case Reference: CAM/22UN/LSC/2012/0080

Premises: Flat 1, Branston Court, Coppins Road, Clacton-on-Sea CO15 3LE

Landlord: Turney Management Ltd but named as Mark Turney in the County Court summons and initially in the tenant's section 27A application

Representative: Mark Turney

Tenant Timothy Lloyd Cronin

Representative: Mrs Cronin, his mother

Date of decision: 10th December 2012

Leasehold Valuation Tribunal: Mr Adrian Jack, Mr Gerard F Smith MRICS FAAV, Mrs Cheryl St Clair MBE BA

DECISION

The Tribunal determines:

1. that nothing is owed by the tenant to Mr Mark Turney, the Claimant in the County Court proceedings, because he is not the landlord;
2. that the case should be returned to the Colchester County Court for final determination.

Reasons

3. There are two matters before the Tribunal. The first in time is a claim issued in the Northampton Bulk Issuing Centre under action no 2QT68486 on 20th June 2012, in which Mr Mark Turney claimed £1,032.67 plus a court fee of £70. This action was transferred to the Tribunal by Order of District Judge Mitchell made on 17th July 2012.
4. The second in time was an application under section 27A of the Landlord and Tenant Act 1985 made on 22nd June 2012 by the tenant seeking determination by the Tribunal of his liability for service charges in the year 2012. The named landlord was again Mr Mark Turney.
5. The Tribunal gave directions that both matters should be heard together. The directions were substantially complied with. These reasons should be read in conjunction with the decision on the section 27A application.
6. The Tribunal heard the matter on 16th November 2012. Neither party requested an inspection and none was held.
7. At the hearing it was common ground that the landlord was in fact Turney Management Ltd. This presented a problem in relation to the County Court matter, since the Tribunal has no power to amend the parties on such a transfer. Since nothing was owed to Mr Turney personally, all the Tribunal was able to do was declare that the tenant owed Mr Turney nothing.

Adrian Jack, Chairman

10th December 2012