



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

- Case Reference** : CAM/22UN/LSC/2018/0038
- 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** : 25<sup>th</sup> October 2018

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**DECISION FOLLOWING A PAPER DETERMINATION**

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1. For the reasons set out below the tribunal determines that, contrary to the evidence presented in a similar application in 2017<sup>1</sup>, the landlord is in fact Turney Management Ltd (a confusion drawn to the parties' attention by the tribunal in previous applications in 2012<sup>2</sup>, 2015<sup>3</sup> and that in 2017, and in the directions issued in the current application). By paragraph 6 of the Fourth Schedule to the lease it is therefore entitled in principle to include the cost of management fees incurred by it by way of service charge.

2. However, it being agreed that yet again no actual management or maintenance of the block has been undertaken other than the arranging of buildings insurance, and the respondent managing agent having failed to serve the required summary of tenant's rights and obligations concerning service charges when serving a combined demand for ground rent, insurance premium and management fees, the tribunal determines :

- a. That nothing is currently payable by way of service charge, and
- b. Upon serving the required summary the applicant's share of the insurance premium is payable but a reasonable sum for the poor service provided by the respondent managing agent is only £150, as previously awarded.

3. The tribunal also makes an order under section 20C that the landlord'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.

4. However, as the applicant :

- a. seems incapable of engaging with the managing agent about the property,
- b. issues these proceedings almost automatically, and against the incorrect party (despite the name of his landlord appearing in the Notice to Long Leaseholders of Rent Due dated 17<sup>th</sup> April 2018), and
- c. has failed to comply with the tribunal's directions by filing an application bundle containing only his own documents and none of the respondent's submissions,

the tribunal declines to order the respondent under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to reimburse the £100 application fee paid by the applicant. Costs shall lie where they fall.

**The lease**

5. As recited in the tribunal's previous decision dated 5<sup>th</sup> October 2017, the relevant lease is dated 28<sup>th</sup> 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

<sup>1</sup> CAM/22UN/LSC/2017/0059

<sup>2</sup> CAM/22UN/LSC/2012/0080

<sup>3</sup> CAM/22UN/LSC/2014/0099

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 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 27<sup>th</sup> September but payable within 14 days of it being actually demanded or is intended to be payable on 27<sup>th</sup> 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 decisions of the tribunal dealing with the 2012 and 2017 applications.

#### **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)<sup>4</sup> 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. Two further provisions, concerning demands for payment of service charge, have been put in issue or are relevant to this case. First, by section 47 of the Landlord and Tenant Act 1987, where any written demand is given to a tenant of premises for rent or other sums payable under the lease (which expression would include a demand for payment of service charge), the demand must contain the name and address of the landlord.
14. Secondly, since 1<sup>st</sup> October 2007 section 21B of the 1985 Act provides that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. The content of that summary is prescribed by the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007.<sup>5</sup> The document must contain the prescribed heading and text and must be legible in a typewritten or printed form of at least 10 point.<sup>6</sup>
15. 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.

### **Evidence and findings**

16. The parties having agreed that the case could be dealt with by way of written representations, the tribunal was provided with a small bundle of documents which the applicant had prepared; but this did not include certain documents sent to the tribunal by the applicant on 6<sup>th</sup> July 2018 (including a Notice to Long Leaseholders of Rent Due dated 17<sup>th</sup> April 2018) and others that the respondent posted on 24<sup>th</sup> July 2018 (including information about the insurance premium and two quotes by Boydens and Omega Property Services for acting as managing agents for the block). Had the tribunal members not remembered that these had been forwarded to them by email when they were received in the tribunal office then the determination would have proceeded on a false premise if relying solely on the bundle. That is why the directions require the party preparing the bundle to include submissions and documents from all parties – not just their own.
17. That, including page 1 of the Land Registry's official copy entries for the freehold title and a schedule of Turney & Associates Lettings LLP's overheads for the fiscal

<sup>4</sup> 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

<sup>5</sup> SI 2007/1257

<sup>6</sup> *Op cit*, reg 3

year 2016–17, 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 which Mr Turney appears to assess the fee.

18. It is common ground that no works were carried out or services provided during the material year other than the arranging of landlord's buildings insurance and the normal billing for ground rent and a quarter share of the insurance premium.
19. In his application the applicant complained about the increase in management fee of £100 for 2018. He did not seek to challenge the insurance premium.
20. The letter from Mr Turney says, on the subject of management fees :  
...An e-mail was sent to the applicant along with two quotes from other managing agents for his perusal and an invitation to seek other quotes to manage the properties. See quotes from Boydens and Omega Property Services. I feel it is not feasible to manage the properties for £600 per annum. We are not liable for VAT which reduces the cost. Our charges are on par with the other agents. If Mr Cronin can find an agent to manage the properties for less I would welcome this information from him. I hope we can clear this up once and for all as I'm aware this is a recurring issue, of which the tribunal has to deal with over and over again. I am reasonable and have invited Mr Cronin to provide another agent who can manage the properties for less.
21. As sought in the tribunal's directions order the parties have each confirmed that the demand for payment as served on behalf of the landlord is the short emailed document appearing at page 33. This comprises a joint demand for ground rent of £55 for the period 1<sup>st</sup> January to 31<sup>st</sup> December 2018, a managing agent's fee of £250, and building insurance for the period 26<sup>th</sup> April 2018 to 25<sup>th</sup> April 2019 of £242.52. This document does not comply with the law, as it does not identify the name and address of the landlord. Confusingly, it says in bold "We do not accept cheques" and provides bank details but then, at the foot of the document, states "Cheques payable to Turney & Ass Lettings LLP 1 - 4 Branston Ct".
22. This purported demand was not accompanied by the prescribed summary of tenant's rights and obligations concerning service charges, so nothing is payable until that defect is corrected.
23. Yet again, the tribunal is not impressed with the method chosen for calculating an appropriate management fee by reference to the respondent's overheads. On this occasion, however, quotes by two other firms of managing agents have been provided. Mr Cronin has not sought to engage in this exercise at all. He prefers to complain about the cost without proposing an alternative agent.
24. In the tribunal's determination a fee of £250 per unit (with or without VAT) is a reasonable cost for managing the block properly, with additional charges being sought for managing major works contracts. That is the yardstick against which the respondent and the landlord must be measured. They are found wanting. It is the responsibility of the landlord to manage the building in accordance with its maintenance and repair covenants in the lease. Mr Cronin is leaseholder of one out of four flats, and if work is required he is in no position to prevent it, yet for

years Mr Turney has failed to seize the initiative. As stated in its 2017 decision, at paragraph 22 :

...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.

25. Mr Turney's firm lacks expertise in the management of leasehold property, as demonstrated also by its failure to issue a lawful demand for service charges. The emailed demand also included ground rent, yet in the documents disclosed by the applicant (although not in the bundle) is an unexplained Notice to Long Leaseholders of Rent Due dated 17<sup>th</sup> April 2018 which deals only with the ground rent due for consecutive half-years.
26. In the tribunal's determination a reasonable management fee for a job well done would be £250 per unit. The respondent (on behalf of the landlord) has paid the annual insurance premium and may be liaising with insurers about a previous year's claim, but it has done little else. £150 was allowed last year and the tribuna; is prepared to do so again, once a valid demand is served.
27. As the applicant has again succeeded in his application the tribunal makes the order sought under section 20C. However, for the reasons stated in paragraph 4 above it declines to order the respondent to reimburse the £100 application fee that Mr Cronin was required to pay. Approaching the tribunal should be his last resort where the parties disagree; not the first.

Dated 25<sup>th</sup> October 2018

*Graham Sinclair*

Graham Sinclair  
Tribunal Judge