

10666



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

**Case Reference** : CAM/22UN/LSC/2014/0099

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

**Applicant** : Timothy Lloyd Cronin

**Respondent** : Turney Management Ltd (wrongly named in the application as Mark Turney)

**Representative** : Turney & Associates Lettings LLP (wrongly named in the application as landlord)

**Type of Application** : For determination of reasonableness and payability of service charges for the years 2013 and 2014  
[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 & C St Clair MBE BA

**Date of Decision** : Monday 23<sup>rd</sup> March 2015

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**DECISION FOLLOWING A PAPER DETERMINATION**

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**Summary**

1. Despite the decision in previous tribunal proceedings<sup>1</sup> drawing to the parties' attention the correct identity of the landlord (a matter of critical importance in that case) it has again been incorrectly identified in the application form, and so too has that of the respondent. The respondent landlord is as stated above, and its managing agent is referred to as its representative.
2. For the reasons which follow the tribunal determines that the work carried out as managing agent in the two years in question was minimal, arranging insurance and invoicing for the premium, ground rent and annual service charge, and using the tribunal's own knowledge and experience of the fees which managing agents in the area would charge it allows £150 per year and not the £200 levied.
3. The tribunal also notes that a fee of £90 was demanded by the managing agent for disclosing details of how it calculated its charge. As identified in the previous decision, the lease contains no provision for the levying of an administration charge such as this. This is a cost which is irrecoverable, unless by agreement.
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 £65 application fee paid by Mr Cronin.

**The lease**

5. 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 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

<sup>1</sup> CAM/22UN/LSC/2012/0080 : decision dated 10<sup>th</sup> December 2012

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 decision of the tribunal dealing with the 2012 application : 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)<sup>2</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.

<sup>2</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

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.

#### **Evidence and findings**

14. 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. In view of the decision reached in 2012 the lessor company appointed a related entity, viz Turnley & Associates Lettings LLP, as its managing agent. For the work involved in 2013 and 2014 this entity sought to charge an annual fee of £200 per unit.
15. In a letter to the applicant dated 23<sup>rd</sup> May 2014 Mr Turney explains the £200 charge as follows :
- The £200 management charge covers my costs for managing the Freehold i.e. obtaining quotations for insurance then applying for it, obtaining quotations for repairs when necessary, sourcing and dealing with trades people. This charge also covers : our premises from which we need to work - building rates, water rates, secure waste, electricity, telephone, internet, rent, data protection licence, stationery, postal costs including rental of franking machine, staff cost - please note this is the largest expenditure, bank charges.
16. This could have been summarised as "general office overheads", but instead the offer was made to provide an exact "breakdown to the penny" on payment of a further charge. Mr Cronin paid £90 and by letter dated 14<sup>th</sup> August 2014 this was provided by means of a schedule with columns for annual expenditure, weekly cost, and a cost apportioned for 20 hours. Mr Turney explained that :
- I have come to this figure by the amount of hours spent administering the Branston Court accounts. The amount of hours spent per annum on the Branston Court accounts is 20.
17. Nothing was produced to justify the alleged 20 hours spent annually managing a property on which no maintenance was carried out or services provided other than the arranging of insurance. The bundle includes an invitation by Towergate Underwriting dated 15<sup>th</sup> March 2014 to renew the policy for another year, but nothing else indicating that any time was spent in connection with managing this property.
18. Arranging for a broker or underwriter to obtain quotes for the annual insurance is not a time-consuming business. Nor is the generation of invoices for ground rent or additional rent. Of course some properties are more time-consuming than others, and from time to time a particular property may require major works to be consulted about, undertaken and monitored. That is not the case here, for the years in question, but the tribunal appreciates that – particularly in the case of small blocks where one lacks the economies of scale – a managing

- agent may wish to impose a minimum unit fee.
19. Bearing in mind :
- a. The tribunal's own knowledge of and expertise concerning the market in the Clacton area for property management
  - b. The fact that management fees take into account general overheads, with the *Service Charge Residential Management Code* ("the Blue Book")<sup>3</sup> encouraging the use of a basic unit price for work of a standard nature plus a "menu with prices" for additional items such as preparing tenders, supervising major works, and drafting and serving section 146 notices
  - c. The fact that the managing agent in this case is connected with the lessor and so is unlikely to want to charge above the market rate, and
  - d. The minimal amount of work undertaken,
- the tribunal considers that charging for 20 hours' work per annum is excessive and it determines that a reasonable unit fee for each of the two years in question is £150.
20. When properly invoiced, the applicant is therefore liable to pay a total sum of £300, instead of £400, in respect of managing agents' fees incurred for the years 2013 and 2014.
21. Finally, as the application has succeeded in achieving some reduction which the lessor was unwilling to concede the tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that the lessor's costs of these proceedings shall not be regarded as relevant costs when assessing any present or future service charge liability of the applicant. Pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the respondent lessor shall also reimburse the £65 application fee paid by Mr Cronin.

Dated 23<sup>rd</sup> March 2015

*Graham Sinclair*

Graham Sinclair  
Tribunal Judge

<sup>3</sup> Published by the Royal Institution of Chartered Surveyors, and approved by the Secretary of State under the terms of section 87 of the Leasehold Reform, Housing & Urban Development Act 1993