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Leasehold Reform Briefing Note

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Subject: "Peppercorn Rent"

What is a "Peppercorn Rent"?

A single peppercorn has been used by English land lawyers for centuries as something which has no money value. A "peppercorn rent" in a lease (almost invariably a long lease for which the leaseholder has paid a premium) is a method of technically reserving a rent, but one which has no money value.

Why bother reserving a rent of no money value?

There are a number of reasons why historically it was important to reserve a rent of some sort, even in a long lease for which the lessee paid a full premium and was not to pay a rent as well.

First, there were at one time different technical requirements for the valid creation of a lease at common law and in equity, which could depend on there being a rent.

An example of this can be seen in *Barker v Keat* (1677) 86 ER 1054, which concerned a lease of land in Norfolk at a peppercorn rent. As the Law Report explains, an old Act, the Statute of Uses 1540, allowed for the valid grant of a lease without actual physical entry onto the land by the lessee provided that the lease was made "for good consideration". Prior to that Statute, it was necessary for the lessee to make actual entry onto the land to validate the grant of the

lease[1]. It was held that a peppercorn, though of no money value, was nevertheless "good consideration" for the purposes of the Statute and so the lease was valid.

Secondly, a simple contract in English law always requires "consideration" passing both ways. A peppercorn is good or sufficient consideration[2] (but not *valuable* or adequate consideration).

Thirdly, there were certain differences in the causes of action (types of claim) which a landlord could bring under the old common law; it was an advantage if there was technically a rent even though it be of no money value[3].

Is there any doubt about what a "peppercorn rent" or a "rent of one peppercorn" means?

None at all.

Leases at a peppercorn rent have been granted in England & Wales since the late Middle Ages. Peppercorn rents are mentioned in the earliest of cases. As noted earlier, the *Westlaw* database includes *Barker v Keat* (1677), which concerned a lease of land in Norfolk at a peppercorn rent.

This established meaning of a peppercorn as a rent or consideration of money value has been adopted in numerous landlord and tenant statutes past and present.

The earliest such Act on *Westlaw* is the Regents Park, Regent Street etc. Act 1831. Section 9 of that Act empowered the Crown Estate Commissioners to grant a lease to the National Society for the Education of the Poor, for a term not exceeding 99 years at a peppercorn rent, to establish the Westminster National Free School.

The peppercorn concept is found in one of the earliest leasehold reform statutes, the Renewable Leasehold Conversion Act 1849. This Act gave lessees

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[1] This is something of an over-simplification of the position but it is sufficient explanation for the purposes of this Note.

[2] See *Chappell & Co v Nestle* [1960] AC 87 per Lord Somervell: "*A peppercorn does not cease to be good consideration if it is established that the promisee does not like pepper and will throw away the corn*".

[3] There is a history of "rent" at Ch.3 of *The History of the Law of Landlord and Tenant in England and Wales,* Mark Wonnacott QC (2011)

of perpetually renewable leases in Ireland the right to have the freehold. S.1 of that Act required the landlord to grant the leaseholder the freehold, without a premium, but reserving a "fee farm rent" (a freehold ground rent, what we would now call a rent-charge) which reflected both the rent under the lease and any premium payable on renewal. S.2 provided that:

> "*…the Fee-farm Rent to be made payable by every such Grant … shall, where the Lease or Under-lease … is renewable without Fine, or upon Payment of a Peppercorn or other merely nominal Fine of like Nature, be of the like Amount as the yearly Rent…*"

("Fine" is an old word for a premium or capital payment). In other words, a peppercorn payable on the perpetual renewals was clearly understood by Parliament and everyone else to be a purely nominal premium and so the "fee farm rent" on the freehold only needed to reflect the rent under the lease.

Section 153 of the Law of Property Act 1925 (which is still in force) also confers the right to "enlarge" a lease into a freehold, in limited circumstances:

> ***153.— Enlargement of residue of long terms into fee simple estates.***
> *(1) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof,—*
> *(a) without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term; and*
> *(b) without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released or has become barred by lapse of time, or has in any other way ceased to be payable;*
> *the term may be enlarged into a fee simple in the manner, and subject to the restrictions in this section provided…."*
>
> ("Fee simple" means freehold)

Again, this Act understands a peppercorn rent to be a rent having no money value.

Most recently, the Leasehold Reform Housing and Urban Development Act 1993 adopts "peppercorn rent". S.56(1) provides that any new lease to a long

leaseholder of a flat shall be "*at a peppercorn rent*". And para.8 of Schedule 9 provides that a lease-back to a freeholder of a flat or other unit not held by a qualifying tenant shall be "*at a peppercorn rent*". So well-established is the meaning of "peppercorn rent" that the 1993 Act does not even bother to define it.

Is a peppercorn the only proxy for a rent of no money value?

A peppercorn is by far the most common and best-known, but there are others. In 1604 a property in Billinghurst was held on a 10,000 year lease at a yearly rent of "one red rose" and a property in Peniston at a rent of "a snowball at Midsummer and a red rose at Christmas"[4].

Clifton v Liverpool City Council [2017] L&TR 14 (UT) concerned a lease granted as recently as 1985 of which "The yearly rent was the nominal rent of one red rose"[5].

Roses these days can be expensive so it is probably best to stick to a peppercorn.

Isn't £10 the same as a peppercorn rent?

Obviously not. As explained above, a peppercorn rent is a rent of no money value. £10 is not a very large sum these days but it is still £10. It is money, so it has a money value. £10 could be used to buy 10 items in a "poundshop". If a landlord has 10,000 reversions each at a £10 ground rent, he receives an income of £100,000 per year and the leaseholders in aggregate have paid that amount out. By contrast, if those 10,000 leases were all at a peppercorn rent, the landlord receives nothing and the leaseholders pay nothing.

There are also consequences in law if there is an actual rent in money value, as discussed below.

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[4] *The History of the Law of Landlord and Tenant in England and Wales,* Mark Wonnacott QC (2011) p.99 n.111
[5] Decision para.4

Does it matter whether the ground rent is truly a peppercorn or other rent of no money value?

Yes it does. The difference between something of no money value, and something which is money or money value even if it is very low, is fundamental.

Importantly, a failure to pay a £10 per year ground rent can lead to forfeiture of a lease. If a lessee withholds service charge because of a dispute, and makes the mistake (because they don't understand the technicalities) of also withholding payment of a £10 ground rent then if three years' arrears accrue the lease can be forfeit[6] – the landlord will not have to obtain a court or tribunal determination[7] that any service charge is due. This cannot happen if the ground rent is a peppercorn rent.

There are also statutory provisions, s.153 of the Law of Property Act 1925 being an example, which apply if there is a peppercorn rent but would not apply to a lease at a £10 per year rent.

Do we need to keep reserving peppercorn rents?

In theory, maybe not. Lease at £nil rents do exist, and the old reasons for reserving a rent are largely gone. But land law is highly complex and there might be some overlooked provision which may require reservation of a rent of some sort to be operative. Caution suggests adhering to the traditional peppercorn rent formula, as per the Leasehold Reform Housing and Urban Development Act 1993.

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[6] Because s.167 of the Commonhold and Leasehold Reform Act 2002 prevents forfeiture for non-payment of ground rent unless the arrears exceed a specified sum or have been in arrear for more than a specified period, which has been set at 3 years by The Rights of Re-entry and Forfeiture (Prescribed Sum and Period) (England) Regulations 2004

[7] Under s.81 of the Housing Act 1996

Disclaimer

This is a Briefing Note for the assistance of those interested in leasehold reform. It is not legal advice and the author assumes no responsibility to anyone who reads this Note.

About the author

Philip Rainey is Queens Counsel specialising in property law. In his professional practice at the Bar, Philip acts in landlord and tenant cases for landlords, tenants and third parties. He has appeared in a number of leading cases in this field, including *Howard de Walden v Aggio* and *Cadogan v Sportelli* (both in the House of Lords), where he acted for the landlord of a flat, and *Daejan v Benson* and *Kumarasamy v Edwards*, (both in the Supreme Court) where he acted for the lessee of a flat.

This Briefing Note is written in Philip's personal capacity as someone with a keen but apolitical interest in reform of the law of landlord and tenant. Philip does not accept instructions to act for any parties to draft submissions to HM Government or the Law Commission concerning the content of any reform proposals.

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