

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

In the matter of section 20 and section 20ZA of the Landlord & Tenant Act 1985 (as amended) ("the Act")

Case Number: CH/OOML/LDC/2009/0007

Re: 9 Raphael Road, Hove BN3 5QP ("the property")

Between:

Mrs S Huberman Applicant

and

Mr K Foolhea Respondent

Decision

Hearing: 21st April 2009

Decision issued: 24th April 2009

Tribunal:

Mr R P Long (Chairman)
Mr J N Cleverton FRICS

Decision

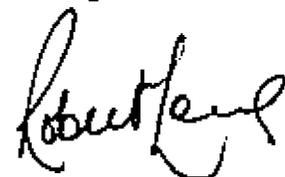
1. The Tribunal has determined that the Applicant may dispense with the consultation requirements imposed by section 20 of the Landlord & Tenant Act 1985 ("the Act") in connection with the works described in the report ("the Report") to the Applicant by Messrs H T Partnership dated 10th October 2008 ("the works").

Reasons

2. On 4th March 2009 the Applicant through her solicitors made application to the Tribunal for dispensation from the consultation requirements imposed by section 20 of the Act in respect of the works. Unless the Applicants either fully followed those consultation requirements or alternatively obtained the dispensation from this tribunal that she has sought she would have been able to recover a maximum of £250 as service charge contribution from the Respondent to the cost of the works.
3. Section 20ZA(1) of the Act allows an application to be made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works, and provides that the tribunal may make such a determination if it is satisfied that it is reasonable to dispense with the requirements.
4. The Tribunal inspected the property on 21st April 2009 before the hearing. They saw a semi-detached house built about a hundred years ago. It faces west, so that the flank wall the subject of these proceedings is the southerly wall, and to the front is a semi hexagonal bay to both ground and first floors. The works were still in progress so that its members were able only to see that the majority of the works set out in the report have been completed, but it appeared that there remained work to do in the roof area and that this was being undertaken.
5. The history of the matter as it appears from the papers before the Tribunal is that the Applicant gave initial notice of intention to carry out the works pursuant to the requirements of section 20 of the Act to the Respondent on 9th January 2009, and the consultation period following that notice was stated in it to end on 8th February. The Respondent replied on 26th January to say that he had been ill. The Applicant's solicitors replied 28th January suggesting that he should urgently seek advice and on 19th February he wrote to say that he had instructed Mr Edwards of Messrs TLC 4 Homes.
6. It became apparent that the problems described in the Report were becoming worse and that work should urgently begin. The Applicant's solicitors established that Mr Edwards was not a surveyor as they had thought but a contractor whom the Respondent had directly asked to provide an estimate for the work under the mistaken understanding that this is what the initial notice had required him to do. Accordingly the Applicant's solicitors, having by then obtained two estimates on her behalf, served a statement of those estimates on the respondent on 25th February 2009. On 27th February Messrs H T

Partnership wrote to say that they had inspected the property again at the Applicant's request and that they considered the works were now very urgent if there was not to be a risk of damage to the property.

7. The Applicant's solicitors then made the present application. The Respondent wrote to the Tribunal on 16th April to say that he had not intended to object to the works and had always agreed to go ahead, but that there had been a misunderstanding. He did not attend the hearing.
8. Messrs Howlett Clark told the Tribunal first that the property is divided into two flats. The ground floor flat belongs to the Respondent, but the Applicant retains the first floor flat and lets it. Thus it was not necessary to serve anyone other than the Respondent with the section 20 notices or to commence these proceedings against anyone else. The dispensation was sought because the works had been commenced, in view of their urgency, before the closing date mentioned in the statement of estimates.
9. The Tribunal considered that in the circumstances of the matter it was reasonable to grant the dispensation sought. The letter of 27th February from HT Partnership showed that the matter had become very urgent. The Respondent says that he has always agreed to the work being carried out. In the circumstances he has not been disadvantaged. He has had almost the full period for consultation that the Act would have required and, had it not been for the misunderstanding that he mentions, it appears from his letter to the Tribunal that he would have consented to the work being carried out. In the light of the further letter from HT Partnership it appears that the work had to be done urgently in order to protect the property and thereby the interests of its owners.
10. This decision is made for the purposes of the grant of the dispensation sought only. It expresses no view as to the reasonableness of the cost incurred or the standard of the work or any other matter that might be brought before the Tribunal under any other jurisdiction.



Robert Long
Chairman
23rd April 2009