



Residential
Property
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/21UDL/LDC/2009/0015

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTIONS 20ZA & 20C OF THE
LANDLORD AND TENANT ACT 1985 (AS AMENDED)**

**Premises: 15-16 Queens Road & 11-13 Russell St Hastings East Sussex
TN34 1QY**

Applicants: Integral Investment Ltd

Respondent: Pioneer Property Ltd

Appearances for Applicant: Mr K Pain of Counsel

Appearances for Respondent: Mr C Buckley of Counsel

Date of Hearing: 01 September 2009

Date of Decision:10 September 2009.....

**Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM
Mr C White FRICS
Mr P Gammon MBE BA**

DECISION

- 1 The Respondent is precluded from defending this application because it failed to file any statement of case in answer to the application and failed to serve witness statements in accordance with the Directions issued by the Tribunal.
- 2 The Applicant's application under s20ZA Landlord and Tenant Act 1985 is granted in respect of the emergency water repairs effected in December 2007 and completed in about May 2008.
- 3 The Applicant's application under s20ZA Landlord and Tenant Act 1985 is refused in respect of the exterior repairs and redecorations effected between July and December 2008.
- 4 The Respondent's application under s20C Landlord and Tenant Act 1985 is granted.

REASONS

1 The Applicant brought an application before the Tribunal asking for an order under s20ZA Landlord and Tenant Act 1985 in respect of two separate sets of works to the property which had been carried out by the Applicant in late 2007 and 2008 .

2 Directions were issued by the Tribunal on 18 June 2009 which required the Respondent to file its statement of case and accompanying witness statements by 17 July 2009 (this date was extended by agreement between the parties to 31 July 2009) . The Respondent failed to file a statement of case but served a single witness statement on the Applicant on 26 August 2009.

3 The hearing of this matter had been fixed for 31 July 2009 but was postponed at the Respondent's request and took place in Hastings on 1 September 2009.

4 No request for an extension of time for compliance with the Directions was made by the Respondent who had at all material times been legally represented.

5 The Applicant objected to the late service of the witness statement and asked the Tribunal to preclude the Respondent from relying on it at the hearing.

6 Having heard representations from both parties' representatives the Tribunal ordered that the Respondent would be precluded from defending the application or from relying on its witness statement . The Respondent's counsel said that his client had been away but that there was no excuse for the non-compliance with the Directions of the Tribunal. The Respondent was given the opportunity to cross examine the Applicant's witness and to make closing submissions.

7 The Tribunal inspected the property prior to the hearing. The property comprises a late Victorian/Edwardian mid terrace building which fronts on to Queens Road and backs on to Russell St. Queens Road is a

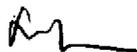
busy retail street in the town centre. The ground floor of the Queens' Road frontage is a betting shop above which are residential units. The ground floor of the Russell St facade comprises a doorway to the two rear upper floor flats and two garage type doors which it is assumed lead to a storage area at the rear of the betting shop. The upper floors of the building are rendered. Two new windows had been put in to the upper floors of the Russell St side of the building. The remaining windows on both sides of the building had been repainted but looked to be in a poor condition. The building has an irregular facade with one part of it having two upper floors and the remainder having three upper floors. The Tribunal was told that there is an area of flat roof at first floor level between the front and rear elevations of the building. Internal inspection of the building was not possible and given the nature of the works which were the subject of the application the Tribunal did not consider that such an inspection was necessary.

- 8 The ground floor commercial premises are let to a betting shop (Betfred). The tenants of this part of the building took no part in this application. The residential parts of the property are let by the Applicants on a single lease to the Respondent who sub-let the individual units to their own tenants.
- 9 Under the terms of their lease the Respondent is liable for 54.23% of the service charge of the whole building.
- 10 The first set of works to which this application relates concern repairs carried out to deal with water damage to the property. On 12 December 2007 the Applicant received a report from Betfred of ongoing water ingress into the ground floor of the property. Following this a site visit was carried out by the Applicant which identified urgent remedial work which was carried out on 20 and 21 December 2007. As a result of this further remedial works were identified by the Applicant's surveyor as being necessary. The Respondent was copied in to a letter of 9 January 2008 (page 40) and notified by letter of 17 January 2008 ((page 41) of these further works which were carried out in the early part of 2008. The Respondent raised no objections to these works.
- 11 No section 20 notice was served on the Respondent in respect of these works. Mr Wilmott, a witness for the Applicant, said that he had regarded the premises as a commercial unit and had at that time not been aware of the provisions of the section.
- 12 Mr Wilmott manages a portfolio of property on behalf of the Applicant company and while the Tribunal does not condone his ignorance of the relevant law, it accepts his evidence that the water ingress into the property was serious and ongoing and needed to be dealt with promptly.
- 13 Under s 20ZA Landlord and Tenant Act 1985 the Tribunal has power to grant a dispensation with all or any of the consultation requirements in

relation to any qualifying works if satisfied that it is reasonable to do so.

- 14 In the case of the works relating to the water ingress the Tribunal is satisfied that the works were necessary and urgent and that it was in these circumstances reasonable to proceed with the works as a matter of urgency without undertaking the full consultation process under s20 Landlord and Tenant Act 1985.
- 15 The second set of works which are the subject of this application relate to exterior decoration of the property . In March 2008 the Applicant received a letter from Hastings Borough Council (page 42) which warned that enforcement action could be taken against the Applicants if the exterior of the property was not restored to a suitable condition.
- 16 On receipt of this letter Mr Wilmott telephoned the Council to discuss the matter with them and instructed its surveyor to prepare a specification for external decoration and repair. A copy of the specification (pages 99-111) was sent to the Respondent on April 18 2009 (page 88) and copies of the three estimates obtained by the Applicant were sent to the Respondent on 19 May 2009 (page 49).
- 17 Mr Wilmott maintains that the Respondent through Mr Karmiol left a voice message on Mr Wilmott's telephone on 26 June 2008 agreeing to the works. The Applicant's written submissions acknowledge that this is denied by the Respondent. The Respondent raised a query with the Applicant regarding the need for a s20 consultation on 26 September 2008 (page 126) at which stage the works were in progress and were completed in December of that year.
- 18 Mr Wilmott's explanation for his failure to serve a s20 notice was that he had (as before) been unaware of the provisions of the Landlord and Tenant Act 1985. This is not an acceptable excuse for the omission. Mr Wilmott is professionally engaged in property management and had the advice of a surveyor.
- 19 The works involved in this second tranche of repairs and redecorations were undoubtedly necessary but were not so urgent that they justified proceeding without following the requisite statutory procedures. Even if the Council had proceeded with an enforcement notice (which it did not) , the Applicant would still have been given a reasonable time in which to effect the works.
- 20 The Respondent was notified of the works and was given copies of the estimates but was not given the benefit of the statutory right to be consulted, to nominate a contractor or to have its views taken into account. As a result of this it has suffered prejudice.
- 21 Mr Wilmott was made aware of the provisions of s20 Landlord and Tenant Act 1985 in September 2008 (page 126) and could at that time have made an application to the Tribunal under s20ZA but did not do so.

- 22 In the light of the lack of immediacy of the repairs , the prejudice suffered by the Respondent and the Applicant's total disregard of the statutory procedures the Tribunal does not consider that this is a case in which it is reasonable to grant a dispensation under s20ZA in respect of the external decoration and repairs works.
- 23 The Respondent made an application under s20C of the Landlord and Tenant Act 1985. It submitted that the reason for the present application was solely because the Applicant had failed to observe the statutory procedures in circumstances where it could and should have done so. The Applicant argues that it was not necessary to seek a dispensation where there had been an agreement to pay and that the Respondent had so agreed but had reneged on his promise.
- 24 Having heard the submissions of both parties' representatives the Tribunal concludes that this is a case where it will grant the application under s20C. There appears to be no reason why the Applicant could not have either complied with the s20 consultation procedures either before or during the progress of the works or alternatively have made an earlier application to the Tribunal under s20ZA. The present proceedings have arisen solely as a result of the Applicant's failure to follow those procedures, even after having been made aware of them by the Respondent in September 2008.
- 25 The Tribunal was also asked by the Applicant to consider whether a surveyor's professional fees were subject to s20 Landlord and Tenant Act 1985. The Applicant could not produce any authority or argument to support his contention that they should be excluded from those provisions. It appears to the Tribunal that the provisions of s20 apply to the 'costs' of works. The costs of a surveyor would normally be an integral part of the overall costs of works which are borne by a tenant under the service charge provisions of his lease and the Tribunal can see no reason why they should be exempted from the provisions of s20 which section makes no express exception relating to this item of cost.



Frances Silverman
Chairman
10 September 2009