11438

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AF/LDC/2015/0096**
Property	:	**13 High Street, London, SE20 7HJ**
Applicant	:	**Newservice (Number 2) Ltd**
Representative	:	**Salter Rex, Managing Agent**
Respondents	:	**The Lessees**
Representative	:	**In person**
Type of application	:	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal members	:	**Judge I Mohabir** **Mr L Jarero, BSc FRICS**
Date and venue of determination	:	**30 September 2015** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**11 November 2015**

DECISION

Introduction

1. The Applicant make an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") for dispensation from the consultation requirements imposed by section 20 of the Act.

2. This application relates to emergency roof works carried out to the building from 27 to 31 August 2015 in the sum of £2,480.

3. The building is described as a three-storey end of terrace property comprised of 5 two bedroom self-contained flats with a communal hallway, landings and staircase.

4. The reason given by the Applicant for not carrying out statutory consultation under section 20 is that the leaseholder of Flat 1 reported a leak, which was in turn causing damage to that flat and flats 2 and 5. An inspection by contractors revealed that major repairs to the roof were required. In view of the substantial damage caused to the three flats and the need to mitigate any further damage, contractors were instructed to carry out the remedial repairs and to seek dispensation after the work had been completed.

5. On 26 August 2105, prior to the commencement of the work, the Applicant through its managing agent, Salter Rex, made this application seeking dispensation. The Tribunal subsequently issued Directions that included a direction for the application to be a paper determination. However, pursuant to the Directions, the lessees of Flat 2 (Mr Mitchell), Flat 4 (Mr Read) and Flat 5 (Ms Ope) objected to the application and requested an oral hearing.

Relevant Law

6. This is set out in the Appendix annexed hereto.

Decision

7. The hearing in this matter took place on 30 September 2015. The Applicant was represented by Mr Preko and Ms Lambertucci, both from Salter Rex. The lessees, Mr Mitchell, Mr Read and Ms Ope, all appeared in person.

8. Mr Preko, for the Applicant, placed reliance on photographs taken of the roof prior to the commencement of the work as evidence of the disrepair. By way of background, he said that it was intended to include the roof repairs as part of proposed major works to the property generally, for which a specification had already been prepared. However, the urgent nature of the roof repairs meant that this work had to be done sooner. He confirmed that the scope and cost of the roof repairs carried out would be removed from the specification.

9. The lessee, Mr Read, said that the roof had been left in the same condition for approximately 5 years and there was no particular urgency to carry out the repairs, as the Applicant had asserted. To corroborate his evidence, M Read drew the Tribunal's attention to a letter sent by Salter Rex to him dated 23 January 2014 advising him of the need to carry out roof repairs because a leak was affecting Flats 1, 3 and 5. The estimated cost of the repairs was placed at £760 plus VAT. The letter went on to state that the repairs would not be carried out until the lessees had discharged the outstanding service charge arrears in the sum of £15,530.81, as there were not funds in the service charge account.

10. Mr Read also said that the Applicant's photographs of the roof taken prior to the commencement of the repairs were not in fact photographs of the roof of the building at all. Mr Preko was unable to challenge this assertion because it seems that he had no personal knowledge of the building. When asked by the Tribunal if in fact there were no funds in the service charge account at the beginning of 2014, Mr Preko initially confirmed this. However, when pressed by the Tribunal about whether he actually knew there were no monies in the service charge account, he said he did not actually know this information but had surmised there were none. Both Mr Mitchell and Mr Read said they had paid thousands of pounds by way of service charge contributions and did not accept that there were no funds in the service charge account.

11. Materially, Ms Ope, the lessee of Flat 5 which was affected by water ingress, also confirmed that the roof repairs were not urgent. Indeed, she had reported the problem to Salter Rex as long ago as July 2010 and nothing had been done to address it.

12. Mr Mitchell, the lessee of Flat 2, also confirmed that the roof repairs were not urgent. He said that he had complained to Salter Rex approximately 10 times since he purchased the flat in October 2014 about the leaking roof but nothing was done. A further delay of 2 or 3 months to carry out statutory consultation would not have made any difference.

13. The relevant test to the applied in application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

14. The Tribunal refused the application to grant dispensation the following reasons:

    (a) There was a cogent body of evidence from the leaseholders to find that the roof repairs were not urgent. On the Applicant's own case, the letter from Salter Rex to Mr Read dated 23

January 2014 putting him on notice about the need to carry out repairs confirm that the disrepair was long standing and known to the Applicant. The evidence of Ms Ope, whose flat is affected by the leak, that the repairs were not of a sufficiently urgent nature to prevent the Applicant from carrying out statutory consultation, was material.

(b) There was no evidence about the nature and extent of the roof repairs that demonstrated the urgent need to carry out the work. The Tribunal accepted the unchallenged evidence of Mr Read that the photographs adduced by the Applicant were not of the roof of the building.

(c) There was no evidence from the Applicant that there were no monies in the service charge account to carry out the roof repairs at the beginning of 2014. In any event, it is now settled law that the landlord's repairing obligation under the terms of a lease is not contingent upon the payment of service charge contributions as Salter Rex sought to contend in its letter dated 23 January 2014. In the event that the Applicant's failure to repair the roof then resulted in additional work and cost when the repairs were eventually carried out then this would be precisely the prejudice envisaged in ***Daejan*** above. This is especially so when the estimated cost of carrying out the roof repairs at the beginning of 2014 was placed at £760 plus VAT by Salter Rex and they were eventually carried out some 20 months later at a cost of £2,480.

15. Accordingly, the Tribunal dismissed the application seeking dispensation. None of the lessees' contended that they should pay a service charge contribution of less than £250 for the roof repairs. Therefore, this is the maximum statutory amount that the Applicant is permitted to recover from them for the cost of the roof repairs.

Name: Judge I Mohabir **Date:** 11 November 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is 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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.