



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

Case Reference : CHI/45UF/LDC/2017/0013

Property : 18 Bedford Road, Horsham,
West Sussex. RH13 5BJ

Applicants : Andrew Knight

Representative :

Respondent : John O` Sullivan (Flat 18a)
Melinda Clements (Flat 18b)
Martin Lee (Flat 18c)
Jessica Lewis (Flat 18d)

Representative :

Type of Application : Application to dispense with consultation-
Section 20ZA Landlord and Tenant Act
1985

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 18 May 2017

DECISION

The Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985.

The Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Background

1. The Applicant seeks a determination under Section 20ZA for dispensation from all or any of the consultation requirements of section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") with regard to;
 - Scaffold hire to allow an inspection of the bay roof - £594; 31 March 2016
 - Recovering of the bay roof - £780; 31 March 2016
 - Cutting out cracks to wall, filling and repainting - £282; 4 May 2016
 - Replacement of gutter - £45.60; 13 May 2016
2. The Tribunal made Directions on 27 February 2017 requiring the Applicant to send a copy of the application with quotations and receipts to each lessee together with the Tribunal's Directions and a form for the lessees to indicate whether they opposed the application and required an oral hearing.
3. No objections have been received and the application is therefore determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
4. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

5. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

(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.

6. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following
 - The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

- The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA(1).
- The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

7. The Lessee of Flat 18b confirms in a letter dated 21 February 2017 that she is not disputing the costs of the works.
8. In his statement of case the Applicant refers to the leaseholder of Flat 18c reporting a damp stain on his ceiling on 1 December 2015 which by January 2016 had got worse. Scaffolding was then erected to carry out an inspection. Repairs were identified and a contractor instructed due to the urgency of the problem.
9. Penetrating damp was then discovered in Flat 18b and a leak from the gutter was reported. Remedial works were carried out using the already erected scaffold.

10. Letters and emails were sent to the lessees about the roof works and no objections were received.

Decision

11. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.
12. In this case the work required attention and no prejudice of the type referred to in the Daejan case referred to in paragraph 6 above has been identified.
13. I also take note that there have been no objections to the application.
- 14. The Tribunal therefore grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985.**
- 15. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
18 May 2017

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.