



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

**Case Reference** : CHI/00LC/LDC/2021/0098

**Property** : 21 Railway Street, Gillingham, Kent, ME7  
1XF

**Applicant** : Southern Land Securities Limited

**Representative** : Together Property Management

**Respondent** : Mr S B Gajda (Flat 3)

**Representative** :

**Type of Application** : To dispense with the requirement to  
consult lessees about major works section  
20ZA of the Landlord and Tenant Act 1985

**Tribunal Member(s)** : D Banfield FRICS  
Regional Surveyor

**Date of Decision** : 9 December 2021

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**DECISION**

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**The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 solely in respect of the works to repair the leak affecting Flat 3 and the subject of the invoice from Darran Hall Roofing dated 23 June 2021 for £1,572.**

**In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

**The Tribunal will send a copy of this determination to the Respondent and the Applicant is to send a copy to each of the remaining Lessees.**

## **Background**

1. By an application dated 14 October 2021 the Applicant sought dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant explains that they had completed urgent roof repairs at the property which had been causing damage in Flat 3.
3. The Tribunal made Directions on 2 November 2021 indicating that it considered that the application was suitable to be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected.
4. The Tribunal required the Applicant to send to the Lessee Respondents its Directions together with a copy of the Application and a form to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant and Tribunal.
5. It was indicated that those lessees who agreed to the application or failed to respond would be removed as Respondents.
6. An objection was received from the Lessee of Flat 3 who therefore remains as a Respondent. The other Lessees have been removed as Respondents in accordance with the above paragraph.
7. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were given that the application remained unchallenged.
8. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.

## **The Law**

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

### **S.20 ZA Consultation requirements:**

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.

10. 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;

- i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
- ii. 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.
- iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- v. 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).
- vi. 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.
- vii. 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.
- viii. 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.
- ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **Evidence**

11. In a document dated 16 November 2021 Mr Gajda states:

- *On the 8th of March 2021, Darran Hall Roofing arrived at my property to repair the roof above flat No 4 without my prior approval or consultation. I was then sent a bill for the sum of £1250 by the property management company, together property management for these repairs. After these repairs were complete, my roof started leaking at the first rain. This fault did not exist prior to these repairs. My ceiling cracked, dripping water into my flat and causing damage to my ceiling. I took photos and emailed together property management on the 05 May 2021, explaining the issues and requesting them to rectify the faults.*
- *Together property management called back Hamilton roofing to investigate, it was the same individual who carried out the work in the first place under a different company name. For Together Property Management to ask the same trader who is suspected of causing the initial failure through poor workmanship to return to investigate his own failed work under a different company name is negligent and potentially fraudulent.*

12. Mr Gajda also provided;

- An email from the Applicant dated 26 February 2021 advising that works were to be carried out at the property
- A quote from Darran Hall Roofing dated 24/2/2021 in respect of works to Flat 4 at a cost of £1250.
- A service charge statement dated 9 November 2021
- A service charge reconciliation produced on 7 October 2021 showing a payment to Darran Hall Roofing of £1,250 and one to Hamilton Roofing of £1,572
- An email from Mr Gajda dated 5 May 2021 stating that rainwater isn't affecting Flat 4 but is now causing a flood in his kitchen/living room.
- Two photos of a water leak at Flat 3
- An email trail regarding leaks to Flat 3 in June 2021
- An email from the Applicant dated June 30 2021 headed "Confirmation of works completed at 21 Railway Street" asking for confirmation of internal damage to Flat 3
- An email from the Applicant dated 23 June 2021 advising that Flat 3 had experienced a leak, that a quotation had been received from Hamilton Roofing for £1,310 and that an application to the Tribunal for dispensation was to be made.
- An email from the Applicant dated 14 October 2021 advising that the cost of work to Flat 3 was £1,572 and that an application to the Tribunal was to be made.

13. At page 40 of the hearing bundle is an undated Statement of Case referring to an invoice dated 23 June 2021 in the sum of £1,572.00 and indicating that Mr Gajda incorrectly considers that the roof repairs to flat 4 caused the leak to Flat 3. In fact, the repairs over Flat 4 were to the rear of the property and Mr Gajda's at the front.

14. At page 41 is the email dated 14 October 2021 referred to above attached to which is an invoice from Darran Hall Roofing dated 23 June 2021 for £1,572.
15. The Applicant has stated that there were two separate jobs in respect of the roof to this property, the first affecting Flat 4 and then another in respect of Flat 3. **This application is however only in respect of the second application** as is made clear in the application form and by the evidence presented by the Applicant.
16. In determining whether dispensation should be granted the Tribunal is not concerned with the cost of the works or why those works became necessary the only issue being whether the Applicant's failure to consult has prejudiced the Respondent.
17. It is clear from the evidence presented that water was entering Flat 3 and as such urgent remedial action was required. To have followed the full Section 20 procedures would have resulted in unacceptable delays in resolving the issue and it was therefore reasonable for the Applicant to proceed in placing the contract to carry out repairs.
18. Whilst raising a number of concerns over the manner in which these works have been conducted the Respondent has not indicated how he has been prejudiced by the failure to be consulted.
19. Given the above the Tribunal **grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 solely in respect of the works to repair the leak affecting Flat 3 and the subject of the invoice from Darran Hall Roofing dated 23 June 2021 for £1,572.**
20. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
21. **The Tribunal will send a copy of this determination to the Respondent and the Applicant is to send a copy to each of the remaining Lessees.**

D Banfield FRICS  
9 December 2021

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.