

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

**Case Reference** : **BIR/OOFN/LDC/2018/0011**

**Property** : **12 Turner Street  
Leicester LE1 6WY**

**Applicant** : **JH Watson Property Investment  
Limited**

**Respondents** : **Mr P Patel (1)  
Ms P Kaur (2)  
Sami Property Co. Ltd (3)  
Mr PH and Mrs S Dattani (4)**

**Type of Application** : **Application for the dispensation of all  
or any of the consultation  
requirements provided for by Section  
20ZA of the Landlord & Tenant Act  
1985**

**Tribunal Members** : **Judge S McClure  
Mr C Gell FRICS**

**Date of Inspection** : **22<sup>nd</sup> January 2019**

**Date of Decision** : **24<sup>th</sup> January 2019**

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**DECISION**

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## **Background**

1. By application dated 1 November 2018, and received by the Tribunal on 5 November 2018, the Applicant applied to the Tribunal for Dispensation from the consultation requirements imposed by Section 20 of the Landlord & Tenant Act 1985 (“the Act”) and the Service Charges (Consultation Requirements) (England) Regulations 2003 in respect of the property known as 12 Turner Street, Leicester, LE1 6WY (“the Property”).
2. The Application was in respect of works pursuant to a leak from Flat 1 of the Property into the basement below. At the time of the Tribunal’s inspection, the works have been virtually completed.
3. Subsequent to directions dated 6 November 2018, the Applicant filed a submission and evidence, received at the Tribunal on 30 November 2018. Nothing was filed by any of the Respondents.
4. The Tribunal carried out an inspection of the Property on 22 January 2019 in the presence of Mr M Patel, a surveyor and employee of the Applicant, and Mr Hayton, a builder instructed by the Applicant in respect of the works. There was no attendance by the Respondents. Proper notice of the inspection was given to all parties.
5. No party requested an oral hearing. The Tribunal did not find an oral hearing to be necessary. The matter was determined on the basis of the papers and the findings from the inspection.

## **The Law**

6. Where a landlord proposes to carry out qualifying works, which will result in a charge being levied upon a leaseholder of more than £250, the landlord is required to comply with the provisions of Section 20 of the Landlord & Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).

7. Failure to comply with the Regulations will result in the landlord being restricted to recovery of not more than £250 from each of the leaseholders unless the landlord obtains a dispensation from the First-tier Tribunal under Section 20ZA of the Act.
8. The test at Section 20ZA is whether the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.
9. The Tribunal is entitled to take into account all the circumstances in deciding whether or not it would be reasonable to grant dispensation. An application to grant dispensation may be made before or after the commencement of the works.
10. In the case of **Daejan Investments Ltd v Benson [2013] UKSC 14**, the Supreme Court held that an important factor when considering reasonableness is whether any prejudice has been caused to the leaseholders as a result of a failure by a landlord to comply with the consultation requirements and, if there has been prejudice, the extent of that prejudice. It is for the leaseholder to show that there has been prejudice. It is not for the landlord to show there has been no prejudice.
11. The Applicant concedes that the statutory consultation requirements were not followed, and seeks the dispensation of the Tribunal in order that the full cost of the works can be claimed from the Respondents, rather than be subject to the statutory cap of £250 per Respondent.

## **The Background**

12. The Property is a terrace house of 2 storeys containing 4 flats and, in addition to the 2 storeys, a basement.
13. Flat 1 is on the ground floor of the Property (“the Flat”). The basement is immediately below Flat 1. The First Respondent, Mr P Patel, is the leaseholder of the Flat. The First Respondent does not live at the Flat. It is let to tenants, although currently unoccupied.

14. In early 2016 there was a leak from Flat 1, which extended to the joists between the Flat and the basement, and into the basement.
15. There was then correspondence between the Applicant and the First Respondent regarding the leak and the consequent remedial works.
16. In or around May 2016 the Applicant carried out some works, both to repair the leak in Flat 1 and to carry out some emergency repair works to the basement. The Applicant submitted an invoice from Mr Hayton in respect of these works and others in Flat 2, dated 23 May 2016, in the sum of £960 (“the 2016 works”). It appears those works have been completed.
17. The tenant of Flat 1 was reluctant to provide access to the Flat, which appears to have contributed to a delay to the full necessary works being carried out during 2016. In October 2016 the tenant died and Flat 1 has been vacant since.
18. The Applicant required the First Respondent to remove the floorboards from the Flat to enable the replacement of the floor joists. On 6<sup>th</sup> February 2018, it was established that the floorboards had been removed and the Applicant obtained a quote from Mr Hayton, dated 12 March 2018, in respect of the works to replace the floor joists, in the sum of £2100 (“the 2018 works”). Those works are almost complete save that, as at the date of the inspection, one of the 9 joists still has to be replaced.
19. The Applicant submits that it was detrimental to the Property for the works not to be carried out. The damage included water damage to wooden joists which had started to rot, and delay would be likely to lead to further damage.
20. The Applicant submits that the First Respondent has not been at all cooperative, and has not responded to the Applicant’s request that the First Respondent contact them to discuss the outstanding works and to provide his own quote for the works.
21. The Applicant advised the First Respondent that they, the Applicant, could not commence works to the basement until, inter alia, the First Respondent had removed the floorboards to the Flat.

22. The correspondence disclosed by the Applicant shows that they made repeated contact with the First Respondent during 2016 and to May 2017, and did not receive confirmation of the removal of the floorboards from the Flat until February 2018.

23. The Applicant has not asserted that the second, third and fourth Respondents were contacted regarding the 2016 or the 2018 works, and there is no evidence in the papers provided to show that such contact was made.

### **Facts Found by the Tribunal**

24. The Tribunal finds that there was a leak from Flat 1 in early 2016, and that the Applicant carried out emergency works in flats 1 and 2 around May 2016 at a cost of £960, (the 2016 works).

25. The Applicant corresponded with the First Respondent during 2016 and 2017 regarding the remaining works arising from the leak and did not receive a satisfactory response from the First Respondent.

26. In February 2018 the Applicant became aware that the First Respondent had removed the floorboards to the Flat. This enabled the Applicant to carry out a full inspection the Property, following which the quote dated 12 March 2018 was obtained.

27. By January 2019 the Applicant had carried out further essential works to the basement as set out in the 12 March 2018 quote, save one joist remains to be fitted (the 2018 works).

28. The Applicant accepts he did not comply with the statutory consultation requirements, and the Tribunal finds this to be the case. The Tribunal finds that there was no consultation with the Second, Third and Fourth Respondents. The Tribunal finds that there was some consultation with the First Respondent although this consultation was not fully compliant with the statutory requirements.

### **Determination**

29. The 2016 works of £960 equate to a cost of £240 to each of the 4 leaseholders. As the £240 cost is under the statutory limit of £250, the 2016 works are not qualifying works and the consultation requirements of section 20 do not apply. As there is no need to consult, there is no need for dispensation for a failure to consult.
30. The 2018 works of £2100 equate to a cost of £525 per leaseholder and so are qualifying works.
31. It is clear to the Tribunal that the 2018 works were urgent and if the work had been delayed further damage, which would be more expensive to repair, could have occurred, in particular further rotting of the wooden joists. The long delay caused initially by the tenant and, when the tenancy ended in 2016, by the First Respondent's failure to remove the floorboards, meant that the replacement of the floor joists needed to be actioned quickly.
32. The Tribunal finds no evidence that any of the Respondents have been prejudiced by the lack of consultation. That Tribunal is supported in that finding by the fact that none of the four Respondents have engaged with the application, whether by attending the inspection, providing submissions, requesting an oral hearing, or by any other method. It is more likely than not that if a Respondent felt that they had been prejudiced by a lack of consultation they would have responded to the application.
33. Taking all of the circumstances into account, and applying *Daejan v Benson*, the Tribunal finds it is reasonable to grant the dispensation requested in respect of the 2018 works.
34. It should be emphasised that the only issue for the Tribunal to determine in this case is whether or not it is reasonable to dispense with the consultation requirements of section 20ZA of the Act. **This application does not concern the issue of whether any service charge costs are reasonable or payable, and the Respondents will continue therefore to enjoy the protection of section 27A of the Act which enables them to challenge such matters.**

## **Decision**

35. The Tribunal grants dispensation in respect of the 2018 works.

## **Note**

36. At the inspection the Applicant provided the Tribunal with a third quote from Mr Hayton in the sum of £5000-£7000, dated 10.12.2018, in respect of further works to a different area of the basement due, the Applicant stated, to the age of the building and not due to any leak from Flat 1. The works set out in the 10.12.2018 quote are not part of this application, and although the Tribunal inspected the area concerned, the required works cannot be considered by the Tribunal within this application. If the Applicant wishes to seek dispensation in respect of these proposed works, a separate application will need to be made.

## **Appeal**

If either party is dissatisfied with this decision, they may apply for permission to appeal to The Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this Decision (Rule 52(2)) of the Tribunal Procedure (First-tier) (Property Chamber) Rule 2013.

**S McClure**

**Judge**

**24 January 2019**