



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

Case Reference : CHI/00ML/LDC/2018/0104

Property : 38 Regency Square, Brighton BN1 2RF

Applicant : Southern Land Securities

Representative : Together Property Management

Respondents : -

Representative :

Type of Application : To dispense with the requirement to consult lessees about major works

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 17 January 2019

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to damp proof those walls of the ground floor flat affected by moisture ingress.

Background

1. This is an application for dispensation from the consultation requirements of Section 20 of the Landlord and Tenant Act 1985.
2. The Applicant explains that following the grant of Listed Building Consent it is intended to damp proof those walls of the ground floor flat affected by moisture ingress.
3. The Applicant has served a Notice of Intention dated 7 December 2018 on each leaseholder.
4. The Tribunal made Directions on 12 June 2018 which were sent to the Applicant and Respondents.
5. The Respondents were invited to complete a form and return it to the Tribunal indicating whether they agreed or objected to the application, whether they wished to remain as Respondents and whether an oral hearing was required.
6. The Lessees were advised that if they agreed to the application or did not return the form they would be not remain as Respondents.
7. One responses was received in favour of the application. There have been no calls for an oral hearing.
8. In accordance with paragraph 6 above the Lessees have been removed as Respondents.
9. The application will therefore be determined on the papers without an oral hearing in accordance with Rule 31 of the Tribunal procedural rules.
10. The only issue for the Tribunal is if 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

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

20ZA Consultation requirements:

- a. (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.

12. 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
- a. 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.
 - b. 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.
 - c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - e. 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).
 - f. 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.
 - g. 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.
 - h. 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.
 - i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

13. In a statement of case the applicant refers to the investigations carried out following reports of damp in the bedroom of the ground floor flat. Damp proofing works have been specified and Listed Building Consent obtained. The flat remains vacant until the remedial works have been completed.

Determination

14. 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.

15. The flat remains vacant pending the remedial work, there have been no objections from any of the lessees and no prejudice as referred to in paragraph 12 above has been identified.
- 16. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to damp proof those walls of the ground floor flat affected by moisture ingress.**
- 17. In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
17 January 2019

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 appeal is seeking.