



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

**Case Reference** : CHI/ 00MS/LDC/2019/0009

**Property** : Flats 71-102 Oceana Boulevard, Briton Street, Southampton SO14 3HU

**Applicant** : Freehold Managers (Nominees) ltd

**Representative** : Warwick Estates

**Respondents** : n/a

**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** : 4 April 2019

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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 in respect of the repairs to the lift carried out in February 2019.**

**In granting dispensation in respect of part of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## **Background**

1. The Applicant seeks 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 a report was received that, following a visit from the Lift Maintenance contractor it was identified that the ropes have disproportionately cut and worn through the main drive sheave. The lift was isolated, the parts ordered and work should be completed within two weeks
3. The Tribunal made Directions on 14 February 2019 but the Applicant failed to comply with them. The Tribunal therefore made further directions on 4 March 2019 with amended dates. The Directions required the Applicant to send a copy to each Lessee. Attached to the Directions was a form for the lessees to return to the Tribunal indicating whether the application was agreed with, whether a written statement was to be sent to the applicant and whether an oral hearing was required.
4. The Directions noted that those parties not returning the form and those agreeing to the application would be removed as Respondents
5. Five replies were received all of which agreed with the application. The lessees are therefore removed as Respondents as previously indicated.
6. No requests have been received for an oral hearing and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.
7. 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**

8. 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.
9. 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
  - b. 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.

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

### **Evidence**

10. In a letter from Warwick Estates dated 28 March 2019 it is explained that the servicing contractor attended on 9 January 2019 to carry out routine servicing of the lift. Due to concerns regarding the safety of the ropes and drive sheath as witnessed by the engineer in attendance the lift was put out of action and the applicant advised to make an application to the Tribunal.
11. A quotation was received on 11 January 2019, photographs received and instructions to proceed given on 16 January 2019.
12. Letters were sent to lessees on 21 January 2019 advising of the timescales to bring the lift back into action, the costs quoted and that an application had been made to the Tribunal for dispensation due to the urgency involved.
13. The work was completed on 27 February 2019 and the work invoiced on 5 March 2019.

### **Determination**

14. The works were urgent as it was necessary to bring the lift back into service. No lessee has objected, and no evidence has been submitted

identifying the type of prejudice referred to in paragraph 9 above. In these circumstances, I am prepared to grant the dispensation required.

**15. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the lift carried out in February 2019.**

**16. In granting dispensation in respect of part of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
4 April 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.