



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

Case Reference : CHI/ 00MW/LDC/2019/0016

Property : Savoy Court, Town Lane, Newport, Isle of Wight PO30 1AR

Applicant : Fast Central Limited

Representative : Glanvilles Damant Limited

Respondents : E Draper-Oatley (Flat 8)
A Rann (Flat 4)
K M & T G Edwards (Flat 1)
N Clark (Flat 14)
V Dyer (Flat 22)
R W Sims (Flat 16)

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 : 11 April 2019

DECISION

The Tribunal refuses 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.

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 that a report was received that, following a number of lift failures urgent repairs are required to ensure service is maintained for the lessees. The delay incurred by carrying out Section 20 consultations would cause unacceptable delays.
3. The Tribunal made Directions on 27 February 2019 requiring 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. Eleven replies were received six of which were against the application. The lessees agreeing with the application or not responding 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 the application it is explained that "there have been historic issues with the lift at Savoy Court. In March 2012 the lift was subject to a maintenance agreement with a company called Pickerings. They failed to properly maintain the lift which resulted in the lift being out of action for 3 months as a result of serious failings" "Due to these failings the contractor was replaced with a new contractor who has been responsible for maintenance of the lift since 2012. In June 2016 the lift failed again and there was a delay in getting parts of around 3 weeks." "In August/September 2018 the lift was out of service for a further 4 1/2 weeks which resulted in those leaseholders with mobility problems again being unable to get out and some missed hospital appointment. When the contractor advised that a number of repairs needed to be addressed the landlord was aware that this issue needed to be dealt with urgently as a result of the problems that had been experienced by the leaseholders and as detailed above. The landlord was not prepared to take the risk of not getting this work carried out urgently as they could not risk a further breakdown." "It is submitted that if a dispensation is granted the tenants will not suffer any prejudice. The works had to be carried out to prevent a future breakdown of the lift and the landlord believes that as the works were carried out by the current maintenance company the costs will have been more reasonable than if they had been required to use a different company to whom the lift was not known"

11. At page 6 of the bundle is the lift maintenance contract for 5 years from 1 April 2012 together with correspondence indicating that problems had been experienced from December 2007 onwards, the last correspondence being on 23 June 2016.
12. Objections from the lessees may be summarised as;
 - Not enough information provided, what was the cost? Would it have been better to replace the lift?
 - The landlord should have supervised the contractors better.
 - The report it received from the lift contractor should be disclosed, an estimate of costs provided, and an explanation given as to why consultation didn't take place between September 2018 and when the work was carried out.
 - The lessees have suffered prejudice as they have been unable to have any input into who should carry out the work and at what cost.

Determination

13. I am in some difficulty in determining this application. No details of the work undertaken, and for which dispensation from consultation is required has been given. No condition report has been provided and the maintenance issues had existed for at least 6 years.
14. Whilst the applicant suggests that using the existing contractor would result in more reasonable costs their contract having expired more competitive quotations may have been obtained by competitive tender.
15. However, without disclosure of the works undertaken or the costs incurred it would not have been possible for the lessees to seek evidence of alternative contractors or the extent of works to be carried out.
16. In these circumstances and based on the minimal evidence submitted I am not prepared to grant the dispensation requested.
17. **The Tribunal therefore refuses 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.**

D Banfield FRICS
11 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.