



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

**Case Reference** : CHI/21UD/LDC/2019/0052 and 0057

**Property** : 39 Perth Road, St Leonards-on-Sea, East  
Sussex, TN37 7EA

**Applicant** : Westone Properties Limited

**Representative** : Warwick Estates

**Respondent** : Debbie Davies (Flat 39A)  
Claire-Louise Hubble (Flat 39B)

**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** : 22 August 2019

**The Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for repairs carried out to the roof and described in invoices 483 and 592. (CHI/21UD/LDC/2019/0057)**

**The Tribunal declines to grant dispensation in respect of works to a water pipe as described in Cauldron Heating's invoice of 28 November 2018. (CHI/21UD/LDC/2019/0052)**

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

## **Background**

1. On 27 June 2019 the Tribunal received an application seeking 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 in respect of works to a water pipe and is the subject of Directions made on 3 July 2019.
2. A second application was received on 12 July 2019 for dispensation in respect of emergency repairs to prevent roof leaks into Flat 39C. Directions were made 23 July 2019 indicating that the applications would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objects in writing to the Tribunal.
3. The Tribunal served both Directions and the respective applications on the lessees. Included with the Directions was a form for the lessees to complete indicating whether they agreed with or objected to the applications. The Directions also noted that lessees who agreed with the application or did not return the form would be removed as Respondents.
4. Objections were received from the lessees of Flats 39A and 39B. The lessee of Flat 39 C did not reply and has therefore been removed as a Respondent. There were no requests for an oral hearing and the applications are therefore determined on the papers in accordance with Rule 31.
5. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. **This application does not concern the issue of whether any service charge costs will be reasonable or payable.**

## **The Law**

6. 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.
7. 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**

### **Water pipe**

8. The Applicant's evidence is confusing. The "Summary of Events" refers to an Invoice being received on 7 January 2018 following which a check of the lease was made on 21 September 2019 to confirm pipes were the landlord's liability following which on 30 January 2019 the contractor advised that the issue was a burst valve on the main pipe that served the tank in the loft.
9. A copy of a work order dated 26 June 2019 is submitted together with pictures of an unidentified pipe and a copy of an invoice from Cauldron Heating dated 28 November 2018.
10. The invoice refers to;
  - Running new mains water supply pipe for flat B to replace burst pipe in the attic and

- Replacing burst mains water pipe in bathroom wall of Flat C
11. The Lessee of Flat 39B objects to the application and in a written statement explains that on the lessee of 39A discovering a leak in her bathroom she investigated and heard water trickling in the wall cavity. She was aware that the lessees of Flat 39C had been having works carried out to their bathroom and when contractors attended they discovered that the bathroom to Flat 39C was flooded. She assumed that the cost of the remedial works would be recovered from the lessee of Flat 39C as it had originated from her property.
  12. In support she said that there are no communal areas in the building each flat having its own separate entrance and the only part accessed for works involving pipes was 39C.
  13. She was unaware of the claim until the application to the Tribunal was made by which time it was too late to obtain an impartial second opinion to challenge that of Cauldron, the contractors who carried out the work.
  14. Cauldron's invoice refers to the burst pipe originating from the attic. This is not a communal area as it is solely accessed from 39C and held their "water container" which had been converted to main supply.
  15. The Lessee of Flat 39A also objected to the application and added to the comments above by confirming that the leak occurred on the same day that Cauldron were working in Flat 39C, that in 16 years there had been no leak in the communal roof area and that on the balance of probability the leak was caused by the work being carried out.

## **Roof**

16. The Applicant explains that on 21 March 2019 they were told about a roof leak and arranged for a contractor to attend. The contractor arranged for scaffolding and on 23 April 2019 emailed to advise that they had carried out works to the chimney stacks and other areas and invoiced £1,176.00.
17. On 10 June 2019 the leaseholder of 39C called to advise that there was another leak and the contractor was asked to visit again. Works to the other side of the building was identified and quotation given which was accepted.
18. Dispensation is requested for the first occasion that the contractor attended on the grounds that they carried out works without agreeing cost or further instructions having only been instructed to locate the leak. Following the erection of scaffolding it would not have been possible to consult.
19. On the second occasion for which dispensation is requested they contacted the original roofer as it may have been an issue following his earlier work and they did not wish to pay for scaffolding just to obtain a quote from another contractor.

20. Copies of the contractor's invoices of 30 April and 18 July 2019 were included in the bundle together with the respective works orders.
21. The Lessee of Flat 39B accepts that the works were required but that the tenant of 39C had told her that the leaks were some months back after torrential rain fall and that would have been ample time to obtain two quotes and provide notification to her.

## **Determination**

22. In determining whether to grant dispensation from the consultation requirements I must first of all establish that the works fall within the landlord's obligations under the respective leases. These are contained in the Fourth Schedule at section 2 an extract of which reads as follows; *"To keep in good and substantial repair and condition :- (a) the roofs and outside walls and foundations and structure gutters and rain-pipes chimneys and chimney stacks of the Building and all pipes sewers drains cables and wires in under or upon the Building serving the Flat in common with other parts of the Building"*
23. Whilst the roof and chimneys are clearly a landlord's obligation, pipes only become so if they serve more than one flat. The evidence as to the purpose to which the pipes which were repaired is far from clear. The photographs in the bundle are referred to as "the pipe in question" but there is no explanation as to their function or the disrepair that presumably the photograph must reveal.
24. Some assistance is provided by the contractor's invoice which refers to "a burst pipe in the attic" and "replacing burst mains water pipe .....behind the wall up to the attic and connecting into the mains water supply"
25. If it is the main water supply leading from the mains up to the attic from whence it is distributed to the three flats then it is the landlord's responsibility to repair. If on the other hand it serves a single flat then it is not.
26. I do not find the evidence presented sufficiently persuasive to establish that this is a shared supply and therefore whether the cost of its' repair is recoverable through the service charge. I must therefore decline to grant the dispensation requested.
27. Turning now to the roof; as I have indicated above its' repair is firmly a landlord's responsibility. Whilst the purpose of S.20ZA is not to provide an escape for a landlord whose management of contractors may be at fault neither is to mete out punishment.
28. Faced with a lessee complaining of a leaking roof it is understandable that a managing agent wishes to get repairs attended to as quickly as possible. Whilst it may be possible to obtain an estimate from ground level many contractors will require the certainty that a close inspection from scaffolding will bring. Once a contractor has erected scaffolding it is not

cost effective to seek alternative quotations as additional scaffolding costs will have to be met.

29. Likewise, where a contractor has carried out work and knows from previous experience of the roof what further work is likely then it does make commercial sense to instruct them without seeking alternative quotations.
30. With regard to the roofing works therefore I am not satisfied that the lessees have demonstrated the type of prejudice referred to in the Daejan case referred to at paragraph 7 above and as such I am able to grant the dispensation required.
- 31. In accordance with the above the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for repairs carried out to the roof and described in invoices 483 and 592. (CHI/21UD/LDC/2019/0057)**
- 32. The Tribunal declines to grant dispensation in respect of works to a water pipe as described in Cauldron Heating's invoice of 28 November 2018. (CHI/21UD/LDC/2019/0052)**
- 33. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
27 August 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.