



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

Case Reference : BIR/00CN/LDC/2019/0018

Property : Apartments 1-20 Galbraith House, Great Charles St.,
Birmingham, B3 3LG

Applicant : Grey GR Limited Partnership

Representative : Centrick Limited

Respondent : The Leaseholders listed in the attached Schedule

Type of Application : An application to dispense with the consultation requirements
provided by s.20 of the Landlord & Tenant Act 1985 ('the Act')
under s.20ZA of the Act.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
N.J. Wint B.Sc. FRICS ACI Arb

Date of Hearing : 16th January 2020

Date of Decision : 20th January 2020

DECISION

Introduction

- 1 This is an Application for dispensation of the consultation requirements in section 20 of the Landlord & Tenant Act 1985 to enable a landlord to carry out urgent repairs to a lift.
- 2 The property is a nine storey block in Birmingham city centre comprising a basement, ground floor let to commercial tenants and seven upper floors that have been converted from offices to self-contained apartments. The only means of access to the flats is by two lifts and a staircase. However, one of the lifts has been non-operational since January 2018 and the other failed over the weekend of 9th-10th November 2019.
- 3 The repair was clearly urgent as the residents were left with no alternative to climbing up to eight flights of stairs to their flats.
- 4 The Applicant is the Freeholder and its agents, Centrick Limited, commissioned a Report from the lift manufacturer, Schindler Ltd., who provided a quote for repairs on 13th November 2019 in the sum of £14,902.38 including VAT.
- 5 As the cost of repairs exceeded the annual £250 service charge per flat that could have been levied without recourse to the tenants, the landlord was required to comply with the consultation provisions of the Landlord & Tenant Act 1985, which could have taken several months, unless they could obtain dispensation from the requirements from the Tribunal.
- 6 Accordingly, an Application for dispensation was made to the Tribunal on 12th December 2019.

Facts Found

- 7 The Tribunal inspected the property today, 16th January 2020 and found both lifts out of order. The only means of access to the apartments is via the lifts. There is no alternative means of access for emergency services and the lack of a working lift is creating major problems for the tenants, for example, difficulties of access for tenants with young children, elderly relatives, difficulties carrying shopping to upper floors and carrying waste from the flats down to the bin area in the basement.

Relevant Law

- 8 The Tribunal were provided with a sample lease which was for Flat 11 but we understand all the residential leases are in similar terms.
- 9 The lease requires the landlord to provide services under clause 8.2 that include repair and maintenance of the lifts in Schedule 6(3), for which the cost can be recovered from the tenants by means of the service charge provisions in clause 5.7.
- 10 Under section 20 of the Landlord & Tenant Act 1985, a landlord is required to consult tenants before placing any contract for 'qualifying works' that would cost each tenant more than £250 in any service charge year, and there are Regulations setting out a timetable and procedure to be followed for consultation.
- 11 However, the Act envisages there may be occasions where for various reasons a landlord is unable to consult, for example cases of emergency, and there is provision in section 20ZA for a landlord to apply to the First-tier Tribunal ('FTT') for 'dispensation' to over-

ride the consultation requirements. An application can be made before or after works are carried out.

- 12 The dispensation provisions in section 20ZA of the Act provide:
'Where an application is made to a leasehold valuation tribunal (a jurisdiction transferred to the FTT) 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.' (Our bracket and italics).
- 13 Furthermore, there has been case law on the subject in the Supreme Court, *Daejan Investments Ltd. v Benson et al.* [2013] UKSC 14, which establishes the matters to be taken into account by a Tribunal when considering an application such as this.

Submissions

- 14 Mr Hart on behalf of the Managing Agents requested dispensation as a matter of urgency, both in the application to the Tribunal and in oral evidence at the Hearing today.
- 15 None of the Respondent tenants objected. Four submissions were received by the Tribunal; from Mr & Mrs Williams (Flat 7), Mr Clark (Flat 10), Mr & Mrs Fisher (Flat 19) and Mr Kalsi (Flat 20), all of whom were supportive. Miss Fineghan of Flat 1 also attended the Hearing and was supportive.
- 16 The only question raised by the tenants was by Mr and Mrs Fisher who enquired into the liability for the cost of the repairs.
- 17 No objections were received from other parties.

Decision

- 18 In relation to the point made by Mr and Mrs Fisher, the Tribunal explained the liabilities of the parties and service charge provisions in the lease at the Hearing and emphasised that the Tribunal's power in this application is only to consider whether it would be reasonable to dispense with consultation. We are not endorsing the cost as 'reasonable', it may or may not be but if tenants wish to challenge it they may do so at a later date by separate application to the Tribunal under section 27A of the Landlord and Tenant Act 1985.
- 19 In respect of the application before us, the Tribunal reached its Decision at the Hearing and advised the parties and these Reasons provide formal confirmation.
- 20 The decision was based on the Application and quote provided by the Applicant.
- 21 The approach taken by the Tribunal when considering an application for dispensation was set out in the Supreme Court's judgment in *Daejan* above, summarised as follows:
- 1 The Tribunal should identify the extent to which tenants would be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations;
 - 2 No distinction should be drawn between 'a serious failing' and 'technical error or minor or excusable oversight' save in relation to the prejudice it causes;

- 3 The financial consequences to the landlord of not granting a dispensation are not relevant factors for the Tribunal to considering in exercising its discretion under section 20ZA and
- 4 The nature of the landlord is not relevant.
- 22 The Tribunal may grant dispensation on such terms and conditions as it thinks fit, provided any terms and conditions are appropriate in their nature and effect.
- 23 The Tribunal finds the proposed works reasonable and essential to provide access for the tenants and the scope of the proposed repairs is within the landlord's repairing liability.
- 24 Applying the tests above and the principles in *Daejan*, the Tribunal finds the tenants would not be prejudiced by granting dispensation of the consultation requirements in the Landlord & Tenant Act 1985 and it would be reasonable to dispense with them.

Schedule of Respondents

25	<u>Flat No.</u>	<u>Name</u>
	1	Miss Finnegan
	2	Miss Marshall
	3	S.Haire & F.Paterson
	4	Bricklane Residential REIT
	5	Mr & Mrs Thompson
	6	Mr & Mrs Dwyer
	7	Mr & Mrs Williams
	8	L.Hunt & M.Pitt
	9	J.We, J.Tian & M.Tian
	10	D.Clark & T.Doak
	11	Mr & Mrs Furniss
	12	J.Wood
	13	Mr & Mrs Abbott
	14	Ms Ewell
	15	G.Lappin
	16	R.de Souza
	17	S.Smith & H.Barnett
	18	Mr & Mrs Lambeth
	19	Mr & Mrs Fisher
	20	Harborne Commercial Partnership LLP (K.Kalsi & S.Caccianni)

Application to the Upper Tribunal

- 26 If any party is dissatisfied with this decision they may apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), within 28 days of the date this decision is sent to the parties. Any such request should identify the decision to which the appeal relates, stating the grounds on which the party intends to rely in the appeal and the result sought by the party making the application.

I.D. Humphries B.Sc.(Est.Man.) FRICS
 Chairman, First-tier Tribunal Property Chamber (Residential Property)

Date: 20 January 2020