



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

**Case Reference** : CHI/ 29UC/LDC/2019/0094

**Property** : 2 Central Parade, Herne Bay, Kent CT6  
5HT

**Applicant** : David Cannon Properties Ltd

**Representative** : Warwick Estates

**Respondent** : Mr N Whiteoak; 2<sup>nd</sup> floor flat

**Representative** :

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

**Tribunal Member** : Mr D Banfield FRICS

**Date of Decision** : 19 December 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 work of replacing a communal window and banisters together with remedial decoration necessitated by water ingress**

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

## Background

1. On 18 November 2019 the Tribunal received an application seeking dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant explains that while part way through the consultation process with regard to proposed remedial works consisting of replacing a communal window and banisters together with remedial decoration necessitated by water ingress, one of the lessees independently instructed a contractor to carry out the works. That lessee is seeking reimbursement from the applicant who wishes to recover the cost from the lessees through the service charge.
3. The Tribunal made Directions on 19 November 2019 indicating that the application would be determined on the papers in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. Attached to the directions was a form for the Respondent to indicate whether they agreed with or objected to the application. It was further indicated that if the application was agreed to or no response was received the lessee would be removed as a Respondent.
4. One form was returned objecting to the application. The other lessees have been removed as Respondents as indicated above.
5. The only issue for the Tribunal is whether 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

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

20ZA Consultation requirements:  
(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
  - 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**

- 8. In the hearing bundle is a copy of the Notice of Intent dated 24 July 2019 addressed to the Respondent inviting observations by 26 August 2019. There was also an estimate from Allen & Brown Ltd dated 27 March 2019, an undated estimate from JM2 Support Services Ltd and an undated invoice addressed to the Respondent from Avis Ltd.
- 9. An email from Warwick Estates to the Respondent dated 10 October 2019 explained that; the works are the responsibility of the landlord, they were part way through a section 20 consultation and that unless dispensation from the consultation requirements could be obtained only £1,000 could be demanded from the lessees. It was further stated that until sufficient funds were available it was not possible to reimburse the Respondent.
- 10. On 9 December 2019 The Tribunal received a statement from the Respondent objecting to the application on the following grounds;
  - 1. The section 21 (sic) process was started in July 2018
  - 2. The repairs have taken over two years to be done leaving a dangerous and unsafe window and mould spores in the hallway.

3. Numerous attempts were made to get Warwick to address the situation.
4. He has photographic evidence.
5. A claim has already been made to the small claims court.

## **Determination**

11. The purpose of section 20 of the Act is give lessees the opportunity to be consulted on works for which they must contribute through their service charge. In this case although consultation was started, Warwick were prevented from concluding the process due to the Respondent arranging for the works to be carried out himself. The opportunity for other lessees to contribute to the consultation was therefore lost.
12. As the Applicant has indicated, unless dispensation is granted by this Tribunal they will be limited to the recovery of £250 per lessee, an amount significantly less that required to cover the cost of the works carried out.
13. The Respondent has referred to delays in the process and the need to remedy an unsafe situation. By taking the matter into his own hands however the statutory process that the Applicant is bound to follow has been prevented.
14. The matter the Tribunal has to determine is whether by not carrying out the full consultation process any of the lessees were prejudiced. The Respondent's comments have been noted but I am not satisfied that they demonstrate the type of prejudice referred to in the Daejan case referred to in paragraph 10 above.
- 15. In view of the above the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the work of replacing a communal window and banisters together with remedial decoration necessitated by water ingress**
- 16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS  
19 December 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.