



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

Case Reference : CHI/ 29UQ/LDC/2020/0022

Property : 74-82B Goods Service Road, Tunbridge
Wells, Kent TN1 2DB

Applicant : Town and Country Housing

Representative : Richard Brothers

Respondents :

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works and/or a
Qualifying Long-Term Agreement

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 4 May 2020

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to two sections of roof above flat no.74B

In granting dispensation, 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 that repairs are required to two sections of roof above flat no.74B following water ingress reported on 26 February 2020.
3. Maintenance of the property is undertaken by a contractor appointed under a Qualifying Long Term Agreement entered into following consultation with lessees in 2016/17. The cost of the works will be in accordance with the pricing structure agreed in 2016 when the agreement was entered into. Estimates will be sent to lessees in early March.
4. The Tribunal made Directions on 10 March 2020 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. The Tribunal sent a copy of the Directions to the parties notified as Respondents together with a form for the Respondents to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.
5. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
6. Due to the current closure of the Tribunal offices due to the Covid 19 emergency it is not possible to establish whether responses were received at the Tribunal offices. However, the Applicant has indicated that no objections have been received by them and as such the Lessees have been removed as Respondents in accordance with the above paragraph.
7. No requests for an oral hearing have been received and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal Procedural Rules 2013.
8. 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

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

20ZA Consultation requirements:

- a. 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.
10. 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
- i. 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.
 - ii. 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.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
 - iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
 - v. 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).
 - vi. 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.
 - vii. 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.

- viii. 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.
- ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

- 11. In accordance with Directions a determination bundle has been provided by the Applicant. In their statement of case they set out the timeline of events leading to the repairs the subject of this application together with the costings and a schedule of actions leading to instructing the works to be carried out. Letters dated 6 March 2020 were sent to the Lessees explaining the position.

Determination

- 12. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.
- 13. The only issue for the Tribunal is whether the lack of consultation has prejudiced the lessees in that if it had taken place the landlord may have done something different when arranging for the repairs to be carried out.
- 14. It is clear that the works to repair a defective roof should be carried out without the delay that Section 20 consultation inevitably involves.
- 15. No evidence of relevant prejudice as considered in the Daejan case referred to above has been identified.
- 16. Whilst in this application the Tribunal is not concerned with the payability of any service charge it has identified that there may be a drafting error in the lease of Flat 78A. Whilst clause 1.(6)(b) requires the lessee to pay a proportionate sum of the total cost of the Lessor complying with its obligations under Clauses 3(2) 3(3) and 3(5) the expenditure on roof repairs falls squarely into Clause 3(4) and on the face of it the expenditure may not be recoverable.
- 17. **The matter raised in the preceding paragraph does not affect the determination of this application and 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 repairs to two sections of roof above flat no.74B

- 18. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
- 19. The Applicant is required to send copies of this determination to the Lessees of the 3 flats concerned.**

D Banfield FRICS

4 May 2020

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.