FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HG/LDC/2020/0039
Property	:	2-4 Middlefield, Plymouth, Devon PL6 6TF
Applicant	:	Plymouth Community Homes
Representative	:	
Respondent	:	Mr D McCoy (2) Mr S P Cox (4)
Representative	:	
Type of Application	:	Dispensation with consultation
Tribunal Member(s)	:	Judge D. R. Whitney
Date of decision	:	3 September 2020

DETERMINATION

© CROWN COPYRIGHT

Background

1. The Applicant is the freeholder of the Property. The Respondents are the owners of the two leasehold flats.

2. This is the Applicants application for dispensation from consultation in respect of works undertaken in February and March 2020 to deal with water ingress to 4 Middlefield.

3. Directions were issued dated 17th June 2020. The parties have substantially complied with the same. The directions provided for the matter to be dealt with on paper. The Tribunal is satisfied having considered the bundle that it is appropriate to proceed to determine the matter on the papers. An electronic bundle of documents has been supplied by the Applicant. References in [] are to pages within that bundle.

The Law

4. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

5. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements".

6. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of Daejan Investment Limited v Benson et al [2013] UKSC 14.

7. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were "a means to an end, not an end in themselves".

8. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

9. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

   "I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with."

10. If dispensation is granted, that may be on terms.

11. The "main, indeed normally, the sole question", as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the Lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

12. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

DETERMINATION

13. The Tribunal has read and considered carefully all documents within the bundle. In particular, the statements of case provided by the Applicant [2 and 3] and that of Mr Cox [4-6]. No response has been received from Mr McCoy.

14. It would appear on 17th February 2020 following a period of storms and wet weather Mr Cox informed the Applicant that his tenant had reported that his flat was suffering from water ingress which may be affecting electrical fittings [25]. Mr Cox considered this a "serious issue". Within the bundle are various photographs provided by Mr Cox showing the water penetration [26 and 27].

15. The Applicant arranged for their contractor, Hallwell Projects Ltd to attend. They inspected the loft but recommended the erection of scaffolding for further external investigations. We are told by the Applicant scaffolding was erected on 3rd March 2020 with the agreement of the leaseholder. There is no evidence of this agreement and Mr Cox appears to dispute that such agreement was reached.

16. Repair works were undertaken including the fitting of new eave trays. The Applicant suggests the works were completed and scaffolding removed by 13th March 2020.

17. Subsequently Mr Cox has challenged the cost of the works and whether the works have been undertaken to a reasonable standard. It would appear that the Applicant is undertaking a review of these works.

18. The works are said to have cost £1272.96 in total which cost is shared between the two leaseholders. The repairs cost £470.40 and the scaffolding cost £802.56, both figures inclusive of VAT. The Applicant has added a 15% management fee.

19. The Tribunal is mindful that its role is only to assess whether or not it is appropriate for the requirements to consult to be dispensed with. In reaching this decision the Tribunal makes no findings as to whether or not the leaseholders are liable to pay for such works or whether the works are reasonable in terms of the costs and the standard of any works. Any such determinations may be subject to a separate determination of the Tribunal.

20. We note that Mr Cox himself when reporting the works appeared to accept they were serious and urgent. His communications which are within the bundle appeared to make clear he expected the Applicant to act with all haste to resolve. The Tribunal is mindful that from its own knowledge the country had experienced significant storms and rainfall.

21. The Tribunal is satisfied that the Applicant was entitled to treat any and all such works as an emergency. Mr Cox had provided evidence of what appeared to be water penetration within his flat. He had explained the potential adverse effects this may have upon his tenants whom were actually in occupation of the flat. We are satisfied that it was reasonable for the Applicants to treat the works as urgent and an emergency and to proceed without consulting on the same.

22. The Tribunal has considered carefully whether or not any prejudice can be shown to the leaseholders. There is little evidence Mr McCoy was notified of the works until after they were finished when the Applicant wrote to both leaseholders. Mr Cox was aware throughout either as a result of communications with the Applicant (some of which are within the bundle) or from information given to him by his own tenants. On balance we are not satisfied that prejudice has been demonstrated. We do not believe that this is a case where it would be appropriate to attach any conditions to the granting of dispensation. The leaseholders may challenge the costs and the quality of the works and it would be for the Applicant to justify the same in the same way that they would in respect of any service charge cost.

23. As a result, this Tribunal reaches the determination that it is just and equitable for dispensation to be granted. The tribunal grants such dispensation from the requirement to consult for the emergency roof works undertaken in or about February and March 2020 costing £1272.96 in total. As stated above the Tribunal makes no findings as to whether any part of this sum is reasonably due and payable from any leaseholder.

RIGHTS OF APPEAL

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.

2. 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.

3. 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.

4. 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 application is seeking

© CROWN COPYRIGHT