



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

Case Reference	:	LON/00AY/LDC/2021/0295
Property	:	72, Kings Avenue, London SW4 8BH
Applicant	:	72 Kings Avenue (Management) Ltd
Representative	:	Dexters Block Management (Shannaleigh Batson)
Respondents	:	The Seven Respondents Named in the Application
Representative	:	Not Represented
Type of Application	:	For the determination of an application for dispensation from the statutory consultation requirements
Tribunal Member	:	Tribunal Judge S.J. Walker
Date and venue of Hearing	:	Decided on the Papers
Date of Decision	:	28 June 2022

DECISION

Decision of the Tribunal

The Tribunal determines that the statutory consultation requirements shall be dispensed with in respect of works to repair the roof of the property and to prevent water ingress.

Reasons

The application

1. The Applicant seeks a determination pursuant to section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) dispensing with the statutory consultation requirements which apply by virtue of section 20 of the 1985 Act in respect of repair works to the roof.
2. The application was made on 3 November 2021. It stated that the application was being made because there was water ingress into one of the flats due to a roof leak. The required works were to clear the box gutter, seal the gutter joints and replace the roof felt.
3. Directions were originally issued on 26 November 2021 but were amended on 21 December 2021 by Judge Vance. The directions provided that the Tribunal would determine the application on the papers in the week commencing 21 February 2022 unless any party made a request for an oral hearing by 28 January 2022. No such request has been received by the Tribunal and so this determination is made on the papers which have been provided by the parties.
4. The directions required the Applicant to send each of the leaseholders a copy of the application and the Tribunal’s directions by 3 December 2021 and to confirm to the Tribunal that this had been done by 6 December 2021.
5. The directions also provided that any of the Respondents who opposed the application were to complete a reply form and return it to the Tribunal by 21 January 2022.
6. By an e-mail dated 16 December 2021 the Applicant confirmed that the Respondents had been provided with the application. Copies of the notification letters to the Respondents were also provided in the Applicant’s bundle. The Tribunal is satisfied that adequate notice of the application and how to object to it has been given to the Respondents.
7. No reply forms were received by the Tribunal and the Applicant confirmed in their statement of case that no responses had been received from the leaseholders in respect of the works.
8. The relevant legal provisions are set out in the Appendix to this decision.
9. Neither party requested an inspection, and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The Background

10. The property is a purpose-built block of flats comprising six stories, including a basement, in which is located a total of 7 self-contained flats.

The Lease

11. No evidence of title was produced. However, no issue has been raised as to the right of the Applicant to make this application.
12. A lease dated 19 April 2013 made between Oppidan (Kings Avenue) Ltd., the Applicant, and Brooke Alexa Hutchinson in respect of flat 1 was provided with the application. By clause 3.2 of the lease the tenant covenants to pay a proportionate share of the service charge. By the Fourth and Fifth Schedules the service charge includes the cost of keeping the roof in good repair and condition.

The Issues

13. The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. The Tribunal is not concerned with the issue of whether any service charge costs will be reasonable or payable.

The Applicant's Case

14. The Applicant's case is that there was a leak to the roof which resulted in water ingress into one of the flats. The work required to be done included clearing and sealing the gutters, clearing debris and replacing roof felt. An application for dispensation was made on the basis that there was an ongoing leak which required urgent attention.
15. The costs of the works to be undertaken was £1,233.20 excluding VAT. If this sum were divided by 7 the total would be below the threshold above which consultation would be necessary. However, in an e-mail to the Tribunal dated 23 June 2022 the Applicant explained that the larger top flat pays 27.89%, so the consultation limit would be exceeded.

The Respondents' Case

16. As previously explained, no objections or comments have been received from any leaseholders.

The Tribunal's Decision

17. The Tribunal is satisfied that the consultation requirements should be dispensed with. It is satisfied that in view of the identified leak to the roof it is appropriate to carry out the identified repairs and that, in view of the need to minimise ongoing damage to the interior, it is appropriate to grant a dispensation.

18. The Tribunal is satisfied that the leaseholders have been notified of the application and bears in mind that there has been no objection from any of them to it. It also bears in mind the limited scope of the issue before it. The purpose of the consultation requirements is to protect tenants from paying for inappropriate works and from paying more than would be appropriate for such works. It follows that the issue when considering dispensation is the extent to which the tenants are prejudiced as regards these two protections. There is nothing before the Tribunal to suggest that the leaseholders would suffer any prejudice if this application were granted.
19. In all the circumstances the Tribunal is satisfied that it is reasonable to dispense with the consultation requirements.

Name: Tribunal Judge S.J.
Walker

Date: 28 June 2022

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate Tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

- (1) Where an application is made to the appropriate 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.
- (2) In section 20 and this section –
 - “qualifying works” means works on a building or any other premises, and
 - “qualifying long term agreement” means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement –
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

- (5) Regulations under subsection (4) may in particular include provision requiring the landlord
 - (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements

- (6) Regulations under section 20 or this section
 - (a) may make provision generally or only in relation to specific cases, and
 - (b) may make different provision for different purposes.

- (7) Regulations under section 20 or this section shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.