



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

Case Reference : CHI/29UK/LDC/2023/0019

Property : 7-12 Tockwith Court, 15 Bayham Road,
Sevenoaks, Kent, TN13 3XQ

Applicant : 16 Bayham Road (Block 1) Sevenoaks Flat
Maintenance Ltd

Representative : HML Group

Respondent :

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works section
20ZA of the Landlord and Tenant Act 1985

Tribunal member : D Banfield FRICS Regional Surveyor

Date of Decision : 4 April 2023

DECISION

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. The application was received by email on 9 February 2023.
2. The property is described as “*a converted building, originally built as a house in the 19th Century it was converted into flats spread out over three floors in the early 2000's. There are seven flats, 6 that are accesible via the internal communal parts and one (flat number 7) that has it's own external front door.*”
3. The Applicant explains that:

“The main communal front door serving flats 8-12 is faulty and is currently permanently left open due to a fault, it cannot be shut. The door itself is a heavy glass double door, similar to what you would get at a shop front. A contractor has looked at it and advised the door needs to be removed and a new closer and pivot sets installed to get it working correctly, due to the weight of the door two men are required to lift it meaning extra labour charges, the total price for this is £1,500.00 including VAT which of course breaches the section 20 threshold but currently with the door being open it is of course a security risk as anyone can access the building.

There are three directors of the management company who have all been consulted about the situation, all three are in agreement the work needs to be carried out ASAP and dispensation sought, should you require proof of this let me know as i have it in writing.

As above, the door currently cannot be shut and is left open 24/7 meaning it is a security risk.”
4. The Tribunal made Directions on 22 February 2023 setting out a timetable for the disposal and requiring the Applicant to send them to the parties together with a form for the Leaseholders to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. Those Leaseholders who agreed with the application or failed to return the form would be removed as Respondents although they would remain bound by the Tribunal’s Decision.
5. On 27 February 2023 the Applicant confirmed that the documents had been distributed to the Leaseholders and on 24 March 2023 that no objections had been received and one lessee had written in support. In the absence of an objection received the lessees are removed as Respondents.

6. No requests for an oral hearing were made and the matter is therefore determined on the papers in accordance with Rule 31 of the Tribunal's Procedural Rules.
7. Before making this determination, the papers received were examined to determine whether the issues remained capable of determination without an oral hearing and it was decided that they were, given that the application remained unchallenged.

The Law

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

S.20 ZA Consultation requirements:

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.

9. 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 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

- 10. The Applicant's case is set out in paragraphs 2 and 3 above.

Determination

- 11. 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 those requirements. Guidance on how such power may be exercised is provided by the leading case of Daejan v Benson referred to above.
- 12. Maintaining the security of the building is clearly urgent and should not be delayed by the time taken to follow the full consultation procedures. No objections have been received from the Lessees indicating that the type of prejudice referred to in the Daejan case above has been suffered. As such I am prepared to grant the dispensation required.
- 13. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of repairs to the front door.
- 14. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
- 15. The Decision is binding on all Lessees and the Applicant is to send a copy of this determination to all of those liable to contribute to service charges.

D Banfield FRICS
4 April 2023

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 by email to rpsouthern@justice.gov.uk 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.