



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

Case Reference	: CHI/21UC/LDC/2023/0082
Property	: St Johns House, 28 St Johns Road, Eastbourne, East Sussex, BN20 7JB
Applicant	: St Johns Limited
Representative	: Prestige Property Management Limited
Respondent	: The Lessees
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
Date of Decision	: 10 August 2023

DECISION

The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of electrical repairs to the lift.

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

The Applicant must send copies of this determination to the lessees.

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 on 13 July 2023.

2. The property is described as:

“St Johns House is a purpose built residential block of 16 self contained flats, over 4 floors (including two basement car parks) constructed in 1988 occupying a slightly sloping site in St Johns Road, situated close to the seafront in Eastbourne. The property has one lift which provides access to all floors, including car parks, recycling bins etc.

Prestige Property Management Ltd were appointed as managing agents for the property on 1st June 2023 by St Johns Ltd. Company registration 02645181”.

3. The Applicant explains that:

“The property only has one lift, which is extremely unreliable and has a long history of failing.

The property has an exceptionally high percentage of residents who require a PEEP and are totally dependent on a working lift, for example flat 16, which is a penthouse. For many residents, the lift failure renders them completely housebound. Also, their carers and medical visitors struggle with equipment etc.

The lift broke down again on 12/07/2023, the frequency and length of time the lift is out of action are rapidly increasing, the engineer is struggling to keep the lift working. He has recommended a complete refurbishment of the electrical system.

Please see attached quotes from Emerald Elevators and South Downs Elevators.

As there is a lead time regarding ordering the required parts, (prior to the work actually commencing) we will pay the required deposit shortly and authorise the contractor to order the required parts.

We would like to go ahead with the works, to remove the danger of further failures/breakdowns and to stop people being stuck in the lift, the refurbishment work is a huge priority to ensure the safety of all residents and visitors.

All Leaseholders have been advised accordingly.

We seek dispensation for all consultation requirements as the required work is extremely urgent. The lift engineer has recommended the work is completed as a matter of urgency. We are concerned regarding the danger to all residents especially the penthouse flats on the top floor and the residents who have a Personal Emergency Evacuation Plan (PEEP) in place..”

4. The Applicant has supplied copies of two quotes for the required works, one dated 25 January 2023 from Marjan Stojanovski and the second, undated from Emerald Elevators.
5. The Tribunal made Directions on 17 July 2023 setting out a timetable for the disposal. The Tribunal required the Applicant to send them to the lessees together with a form for them to indicate to the Tribunal whether they agreed with or opposed the application and whether they requested an oral hearing. If the Leaseholders agreed with the application or failed to return the form they would be removed as a Respondent although they would remain bound by the Tribunal's Decision.
6. The Applicant confirmed on 25 July 2023 that the Directions had been served.
7. Four replies were received by the tribunal all of which agreed with the application. 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.
8. 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

9. 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.
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.
 - 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

- 11. The Applicant's case is set out in paragraphs 2,3 and 4 above.

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 those requirements. Guidance on how such power may be exercised is provided by the leading case of Daejan v Benson referred to above.
- 13. The works were clearly required as a matter of urgency and no lessee has objected to the application.
- 14. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of electrical repairs to the lift.

15. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
16. The Applicant must send copies of this determination to the lessees.

D Banfield FRICS
10 August 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.