FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LDC/2024/0004**
Property	:	**51 Norland Square, London W11 4PZ**
Applicant	:	**Localstance Property Management Ltd**
Representative	:	**Warwick Estates**
Respondents	:	**(1) Sally Cooper** **(2) Max Hunt** **(3) Tania Anderson** **(4) Pavlos Aristodemou and Andrea Yiordamli**
Type of application	:	**Dispensation from statutory consultation requirements**
Tribunal	:	**Judge Nicol**
Date of decision	:	**24th June 2024**

DECISION

The Tribunal grants the Applicant dispensation under section 20ZA of the Landlord and Tenant Act 1985 from the statutory consultation requirements in respect of works to resolve ongoing leaks to the roof at the subject property.

Reasons

1. This application for dispensation from the statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") has been determined on the papers. A hearing was not held because the Tribunal directed that the case was suitable for the paper track and the parties did not object.

2. The Applicant is the management company for the subject property, a block containing 5 flats. The Respondents are lessees of the flats.

3. Under section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003, when the cost of building works exceeds the threshold of £250 per flat, consultation must be carried out with the lessees. On 8th November 2023, the Applicant made an application to the Tribunal for dispensation from those consultation requirements for certain works in which they stated,

> The works are to fix/seal cracks within the roof that are evidently causing leaks into the top floor flat of the building.
>
> The cost of the work equated to £3,880.00 plus an extension of the scaffolding cost was £1,200, there was already scaffolding up due to other works so the contractor already had the scaffolding up to use but had to extend the hire for a further two weeks due to the weather delaying the fix being done.
>
> The reason I am applying for dispensation is because the leak was worsening and we needed to have the issue rectified very quickly due to the damage being caused by the leak in the top floor flat.
>
> There was big urgency on the issue to be fixed due to the leaks worsening, and also being advised by a roofer about the extent of the issues and with it being winter, it will only get worse.

4. Under section 20ZA(1), the Tribunal may dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. The Supreme Court provided further guidance in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854:

(a) Sections 19 to 20ZA of the Act are directed to ensuring that lessees of flats are not required to pay for unnecessary services or services which are provided to a defective standard or to pay more than they should for services which are necessary and provided to an acceptable standard. [42]

(b) On that basis, the Tribunal should focus on the extent to which lessees were prejudiced by any failure of the landlord to comply with the consultation requirements. [44]

(c) Where the extent, quality and cost of the works were unaffected by the landlord's failure to comply with the consultation requirements, an unconditional dispensation should normally be granted. [45]

(d) Dispensation should not be refused just because a landlord has breached the consultation requirements. Adherence to the requirements is a means to an end, not an end in itself, and the dispensing jurisdiction is not a punitive or exemplary exercise. The requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them. [46]

(e) The financial consequences to a landlord of not granting dispensation and the nature of the landlord are not relevant. [51]

(f) Sections 20 and 20ZA were not included for the purpose of transparency or accountability. [52]

(g) Whether or not to grant dispensation is not a binary choice as dispensation may be granted on terms. [54, 58, 59]

(h) The only prejudice of which a lessee may legitimately complain is that which they would not have suffered if the requirements had been fully complied with but which they would suffer if unconditional dispensation were granted. [65]

(i) Although the legal burden of establishing that dispensation should be granted is on the landlord, there is a factual burden on the lessees to show that prejudice has been incurred. [67]

(j) Given that the landlord has failed to comply with statutory requirements, the Tribunal should be sympathetic to the lessees. If the lessees raise a credible claim of prejudice, the Tribunal should look to the landlord to rebut it. Any reasonable costs incurred by the lessees in investigating this should be paid by the landlord as a condition of dispensation. [68]

(k) The lessees' complaint will normally be that they have not had the opportunity to make representations about the works proposed by the landlord, in which case the lessees should identify what they would have said if they had had the opportunity. [69]

5. The Tribunal's role in this application is limited to determining only if the statutory consultation requirements may be dispensed with. As stated in the Tribunal's directions, "This application does not concern the issue of whether any service charge costs will be reasonable or payable."

6. Only one lessee responded to these proceedings but just to clarify when and how the service charges would reflect the costs incurred. Given the lack of objection to the works, let alone evidence of any prejudice to any lessee, the Tribunal has determined that it is reasonable to dispense with the statutory consultation requirements.

Name: Judge Nicol **Date:** 24th June 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).