



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

Case reference : **CAM/00KF/LDC/2024/0009**

Property : **35 and 35a Marine Parade, Leigh on
Sea, Essex,
SS9 2NB**

Applicant : **Kim Ian Main**

Representative : **In person**

Respondent : **Roger John Nicholls**

Representative : **In person**

Type of application : **For dispensation under section 20ZA of
the Landlord & Tenant Act 1985**

Venue : **Cloud Video Platform (CVP)**

Tribunal member : **Judge Bernadette MacQueen
Roland Thomas, MRICS**

Date of hearing : **10 May 2024**

Date of decision : **16 May 2024**

DECISION

Decision of the Tribunal

1. Notwithstanding the Applicant's failure to comply with the consultation requirements, the Tribunal granted conditional dispensation to the Applicant and found that the Applicant was entitled to recover the charge for the work from the Respondent subject to:
 - i. A deduction of £5,507.04 to the total cost of the works, meaning that the total cost of the works payable was £6,319.96, of which the Respondent's 50% share was £3,159.98.
 - ii. The Applicant's costs of applying for dispensation could not be claimed back through the service charge.

Introduction

2. The Applicant sought an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") for retrospective dispensation of the consultation requirements in respect of exterior decoration and repair works to 35 and 35a Marine Parade, Leigh on Sea, Essex SS9 2NB (the Property).
3. The Property was a semi-detached property which was divided into a ground floor and first floor flat. The Applicant was the freehold owner of the Property, and the Respondent was the Leaseholder of 35a Marine Parade (the ground floor flat).
4. On 16 February 2024 directions were made by the Tribunal for the Applicant to serve the application on the Respondent and for the Respondent to send any objections to the Tribunal by 15 March 2024.

The Applicant was also directed to produce a bundle of relevant documents by 27 March 2024.

5. The Respondent completed a reply form objecting to the application on 4 March 2024 and the Applicant requested an oral hearing by letter dated 11 March 2024. An oral hearing was therefore held on 10 May 2024 via Cloud Video Platform (CVP), to which all parties consented.

6. A bundle of documents totalling 73 pages was provided by the Applicant (the Bundle) for the hearing.

Agreed Facts

7. The Applicant made this application for retrospective dispensation for works to the exterior of the Property, namely repainting and repair. The Applicant employed Andrew Hoskin to complete the work at a cost of £9,000 for exterior house decoration, £1,027 for materials and £1,800 for scaffolding, giving a total cost for the works of £11,827.00 (invoices at pages 47 and 48 of the Bundle). It was not disputed that the terms of the lease were that the Respondent was liable to 50% of the work which in this case would be £5,913.50.

8. The Applicant did not comply with the consultation requirements and so the Respondent sent a cheque for £250 to the Applicant by letter dated 6 November 2023 (page 57 of the Bundle).

9. The Applicant therefore made this application for retrospective dispensation for all of the consultation requirements provided for by s.20ZA of the Act.

The Hearing

10. At the commencement of the hearing, the Respondent asked permission to include further documents. These ran to 8 pages and consisted of:
 - Covering letter dated 18 April 2024
 - Retrospective quote from Jule's Painting Service
 - 3 quotes from previous painting work
 - 2 quotes from chimney stack repair
 - Email from contractor dated 15 August 2023
 - Letter from freeholder [Applicant] dated 15 August 2023
 - Email from Respondent dated 15 August 2023
11. Despite the Respondent stating that he had sent the above documents to the Tribunal and copied the Applicant by email sent on 18 April 2024, the Applicant told the Tribunal that he had not received them. The Tribunal therefore adjourned the hearing to allow the Applicant time to consider the documents.
12. Following this adjournment, the Applicant confirmed that he had had sufficient time to consider the documents.
13. The Respondent told the Tribunal that the reason why the documents were late was because he had sought advice, including from the Leaseholder Advisory Service, and it had therefore taken him time to understand what he needed to send in response to the application.
14. The Applicant stated that he believed that the Respondent should have sent these documents to the Tribunal and Applicant on time, but was prepared to accept whatever decision the Tribunal made as to whether the documents should be included or not.
15. The Tribunal noted that the directions made by the Tribunal required the Respondent to send his evidence to the Tribunal and the Applicant by 15 March 2024, however, the Respondent had not sent the additional

documents until 18 April 2024 (and the Applicant stated that he had not received the documents until they were sent to him at the hearing). The Tribunal considered the Tribunal Procedure Rules (First-tier Tribunal) (Property Chamber) Rules 2013, and in particular the overriding objective of the rules to enable the Tribunal to deal with cases justly and fairly (rule 3) by avoiding unnecessary formality and seeking flexibility in proceedings, and also the need to enable, so far as practicable, the parties to be able to participate fully in the proceedings. The Tribunal found that, as the Respondent was a litigant in person and had had to take advice as to the evidence he needed to put before this Tribunal, this would have taken time. Therefore, the Tribunal accepted the additional evidence that the Respondent wished to adduce. The Tribunal was satisfied that there was no prejudice to the Applicant as he had had time to consider the documents.

The Applicant's Submissions

16. The Applicant told the Tribunal that the Property exterior was last painted in 2016, and that he liked to repaint every five years to make sure the Property retained its value. He had therefore wished to repaint the property in 2021 but had been unable to find anyone to do the work because of the backlog caused by COVID-19.
17. The Applicant told the Tribunal that in 2022 he had contacted four local painters to do the work, but they were all fully booked. It was not until May 2023 that Andrew Hoskin had said that he was available.
18. The Applicant, in answer to a question from the Respondent as to when he had known about the cost of the work, explained that Andrew Hoskin had told him the cost of the work in mid-August 2023. The Applicant confirmed that he had sent a letter to the Respondent dated 15 August 2023 telling him the cost and the work had begun on 16 August 2023; however, in reality it was not until 17/18 August 2023 that the work had

begun in earnest.

19. The Applicant further stated that it was his view that the Respondent had been aware of the works as he had verbally informed the Respondent that he would be trying to arrange for a painter and decorator in 2022. Additionally, the Applicant referred to a conversation with the Respondent's partner when a colour change to the exterior had been discussed.

20. The Applicant confirmed that he had not complied with the consultation requirements as he had not been aware of his obligations. He did not have a managing agent and managed the building himself. The Applicant explained that he had employed Andrew Hoskin because he had done the previous painting at the Property. The Applicant therefore asked the Tribunal to grant him dispensation from the consultation requirements.

The Respondent's Submissions

21. The Respondent told the Tribunal that he had not received the quote until one day before the work had commenced. He therefore had had no notice and no time to consider it. The Respondent also explained that he had been unwell at the time the quote was delivered to him. Additionally, he told the Tribunal that the conversation about changing the colour had taken place, but it had been his understanding that other decorators would be asked quote and he would have the same conversation about colour with them.

22. Regarding financial prejudice, the Respondent told the Tribunal that because of the lack of consultation he had lost £2,753.52. This was because he had obtained a quote from Jule's Painting Service (Respondent's additional evidence) which was for £6,319.96 (rather than £11,827 charged by Andrew Hoskin, which was the cost of the

work). The Respondent confirmed that the quote obtained was on a like for like, except that the quote from Jule's Painting Service had actually included more scaffolding than was used by Andrew Hoskin but was still £5, 507.04 less.

23. The Respondent took the Tribunal to the invoices from previous work that had been completed at the Property (in his additional evidence) and confirmed that for previous work, the cheapest quote had always been chosen.

24. The Respondent told the Tribunal that Jule's Painting Service had stated that the work should take three weeks, which was in contrast to the two months that it had taken Andrew Hoskin to complete the work. The Respondent confirmed that the work had taken two months, which had included Andrew Hoskin taking a two week holiday in the middle of the job. Additionally, the Respondent's evidence was that Andrew Hoskin had worked short days. It was the Respondent's position that he was financially prejudiced because the quote obtained had been for a job that took two months to finish when it should have been three weeks.

25. The Respondent also told the Tribunal that he was financially prejudiced because of the quality of the work. The Respondent told the Tribunal that during the painting, tools were dropped onto his conservatory roof and this had broken a pane of glass. Additionally, the Respondent said that the work had been completed to a poor standard as his windows had been painted shut, the meter cupboard had also been painted shut, there had been paint splashed on glass, debris had been left and the "cutting in" had been badly done.

The Applicant's Reply to Financial Prejudice Argument Raised by the Respondent

26. The Applicant considered the additional evidence provided by the Respondent and noted that the quote from Dennis Foster from 2016 for the same painting work had been £8,000. He therefore submitted that

this showed that the cost of the work for this year had been in line with that. However, he did accept that the work in 2016 had been given to Andrew Hoskin for the price of £4,690.

27. The Applicant accepted that when he had received the quote from Andrew Hoskin in August 2023 he had initially misread the quote and had not realised that materials were an additional cost (letter dated 15 August 2023 page 43 of the Bundle).

28. The Applicant stated that he had thought that the price given by Andrew Hoskin had been reasonable, that he was able to complete the work to a high standard and could start the work in August 2023, and so he had given the work to him.

Relevant Law

29. This is set out in the Appendix annexed below. The only issue for the Tribunal was whether it was reasonable to dispense with the statutory consultation requirements. This application did not concern the issue of whether any service charge costs would be reasonable or payable, or the possible application or effect of the Building Safety Act 2022.

30. The relevant test to be applied is set out in the Supreme Court decision in **Daejan Investments Ltd v Benson & Ors** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no financial prejudice in this way.

Decision

31. The Tribunal can grant dispensation if it is satisfied that it is reasonable to do so. The Tribunal accepted that the exterior painting/repair work had been required; however, the Tribunal identified that the Respondent would suffer financial prejudice if an unconditional dispensation was given. The Tribunal therefore granted conditional dispensation to the Applicant and found that the Applicant was entitled to recover the charge for the work from the Respondent subject to:

- i. A deduction of £5,507.04 to the total cost of the works, meaning that the total cost of the works payable was £6,319.96, of which the Respondent's 50% share was £3,159.98.
- ii. The Applicant's costs of applying for dispensation could not be claimed back through the service charge.

32. The Tribunal reached this decision because it accepted the evidence of the Respondent as to the financial prejudice that the lack of consultation had caused him. The cost of the work which was the subject of this application had been £11,827. However, the Respondent had obtained a quote from Jule's Painting Service for £6,316.06. The Tribunal accepted the evidence of the Respondent that this had been quoted on a like for like basis to the work that had actually been completed by Andrew Hoskin. The Respondent had therefore demonstrated to the Tribunal that there had been financial prejudice to him in that the difference in the quotes was £5,507.04.

33. Additionally, the Tribunal did not accept the evidence of the Applicant that the price charged for the works by Andrew Hoskin had been in line with the quote from Dennis Foster in 2016. Instead, the Tribunal accepted the evidence of the Respondent that the lowest quote had always been used for previous work. The Tribunal therefore found that

because the consultation process had not been followed and additional quotes had not been obtained, the Respondent was financially prejudiced.

34. The Tribunal also found that the Applicant had initially misread the quote from Andrew Hoskin as he had not realised that materials were not included. The Tribunal therefore found that the Respondent was caused financial prejudice as the quote had not been scrutinised and understood carefully enough by the Applicant prior to the work commencing.
35. The Tribunal also accepted that financial prejudice had been caused by the length of time the work had taken. The Respondent told the Tribunal that Jule's Painting Service would have been able to complete the work in 2023 and had stated that the job would take 3 weeks. The Tribunal, using its expertise, found that this exterior painting job would take three weeks rather than 6 weeks. Whilst it was accepted that Andrew Hoskin's price for the work was on a fixed basis, in giving the quote he would have factored in the time the work would take. This finding meant that financial prejudice had been caused to the Respondent as he had had to pay for work that took 6 weeks rather than 3 weeks.
36. The Tribunal did not accept the Applicant's evidence that the Respondent had been aware of the work and could have objected earlier. The Applicant referenced a conversation that had taken place between the Respondent's partner and Andrew Hoskin about the colour of the paint and said that this showed the Respondent had been aware. The Tribunal did not accept the evidence of the Applicant but instead accepted the evidence of the Respondent that he had been expecting other painters to attend the Property to quote for the work and that he would have the same conversation about colour with them. The Tribunal accepted the evidence of the Respondent that the only notice he had had of the cost of the work had been given to him on 15 August 2023, with the work starting on 16 August 2023.

37. Whilst this Tribunal was considering the reasonableness of dispensing with the consultation requirements and not the reasonableness of the work, the Tribunal found that the poor quality of the work, which had resulted in a pane of the conservatory window being broken, windows painted shut and debris left on site would have caused financial prejudice to the Respondent as the work he was being asked to contribute to fell below an acceptable standard.

38. Finally, it should be noted that in granting this application, the Tribunal made no finding that the scope and estimated cost of the repairs were reasonable. Section 19 of the Act, preserves the Respondent's right to challenge the actual costs incurred by making a separate service charge application to the Tribunal under section 27A of the Act.

Name: Judge Bernadette
MacQueen

Date: 16 May 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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.