

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
SOUTHERN LEASEHOLD VALUATION TRIBUNAL



S.20ZA Landlord & Tenant Act 1985

DECISION & REASONS

Case Number: CHI/00ML/LDC/2010/0036
Property: 6 Grand Avenue, Hove, East Sussex BN3 2LF
Applicant: 6 Grand Avenue (Hove) Limited represented by Deacon and Company
Respondent: The lessees of the property as per schedule
Date of Application: 3 November 2010
Date of consideration: 26 November 2010
Date of this determination: 26 November 2010
Tribunal members: Mr. R. A. Wilkey FRICS (Valuer/Chairman)
Mr. N. Robinson FRICS (Valuer Member)

DECISION

1. The Tribunal determines to dispense with all of the consultation requirements in relation to the qualifying works the subject of this application described as replacement of the calorifier.

REASONS

INTRODUCTION

2. This is an application by the freeholders of the block, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.

THE LAW

3. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has

of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.

4. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
5. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
6. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
7. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements) (England) Regulations 2003, SI2003/1987. These requirements include amongst other things a formal notice procedure, obtaining estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.
8. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

THE LEASE

9. The Tribunal was provided with a copy of lease for Flat 8, 6 Grand Avenue dated 13 August 1999 between Laurence Colin McMurdie and Margery McMurdie (the Lessors) and John Alec Charles Waterman and Ian John Bush (the Lessees).

10. There are provisions for the landlord to *"use the lessor's best endeavours to maintain the central heating and constant hot water plant and installation serving the building in good order and repair..."*
11. The Tribunal has not interpreted the lease to determine whether or in what proportion a service charge may be levied on the tenant.
12. There were no matters raised by either of the parties in respect of the interpretation of the lease.

BACKGROUND & REPRESENTATIONS

13. Hot water and central heating to all seven flats are provided by a central boiler.
14. Arrangements have recently been made for the asbestos lagging to the boiler to be replaced. During the course of these works it became apparent that the calorifier was leaking and will have to be replaced. It is the replacement of the calorifier that is the subject of the application before the Tribunal.
15. On 5 November 2010 the Tribunal issued directions for the conduct of the case. In view of the urgency expressed in the application, the matter was listed to be dealt with on the fast track.
16. A letter was sent to all residents on 2 November 2010 advising them of the additional work required and the likely cost. In addition, there was a meeting of the residents at the property on 11 November 2010. The three quotations obtained were discussed and the residents decided to appoint C. A. Goodwin Limited to deal with the matter at a total cost of £4,560 plus VAT

INSPECTION

17. 6 Grand Avenue is a substantial detached Victorian house which has been converted into 7 flats
18. The Tribunal inspected the property prior to the Hearing and were met by Mr. Staples, Managing Agent, who showed us the defective calorifier in a room at basement level.

19. None of the lessees were present at the inspection

HEARING

20. A hearing took place at the Holiday Inn, 137 Kings Road, Brighton commencing at 11.00
21. The Applicant had supplied a helpful bundle of documents in accordance with the Directions and this included copies of the three quotations that had been obtained. Mr. Staples outlined the details of the situation and emphasised that this was essential work that could not have been foreseen at the time that the work to remove the asbestos was undertaken. The residents have not had hot water for several weeks.

CONSIDERATION

22. It was clear from the information provided that the calorifier needs to be replaced as a matter of urgency. The additional work only became apparent when work to remove the asbestos was in progress.
23. The residents, some of whom are elderly, have been without hot water since mid October. They have been kept fully informed of the proposals and have raised no objections. The Tribunal has received a letter from the lessee of Flat 7 in support of the proposal. No other comments have been received from the lessees.

THE DECISION

24. Taking all the circumstance into account and for the reasons stated above, the Tribunal is satisfied that it is fair and reasonable in all the circumstances for it to grant dispensation from all the requirements of Section 20(1) of the Act in respect of all the works.
25. The Tribunal makes it clear that this dispensation relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with Section 20 of the Act. It does not prevent an application being made by the landlord or any of the tenants under Section 27A of the Act to deal with the liability to pay the

resultant service charges. It simply removes the cap on the recoverable service charges that Section 20 would otherwise have placed upon them

Dated 27 November 2010

R. A. Wilkey

Roger A. Wilkey FRICS

Valuer/Chairman