

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



**Section 20ZA of The Landlord and Tenant Act 1985 (as amended)
(Application to dispense with consultation requirements)**

Case Number:	CHI/21UG/LDC/2010/0028
Property:	4 & 4A Fairmount Road Bexhill On Sea East Sussex TN40 2HN
Applicant :	Maarit-Liise Robinson
Respondent:	Dr Jon Brody
Date of Hearing:	15th October 2010
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr BHR Simms FRICS (Surveyor Member)
Date of the Tribunal's Decision:	1st November 2010

BACKGROUND

1. This is an application made by the applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") to dispense with the consultation requirements contained in Section 20 of the 1985 Act.
2. The work covered by this application is to reseal or replace the flashings on the main roof and to re-board and re-felt the roof. ("The Works").
3. On 8th September 2010 the tribunal gave directions that if the respondent objected to the application then he should attend the hearing. The directions also provided for the applicant to file a statement of case.
4. The applicant filed a written statement of case and the respondent attended the hearing with six copies of his written response, which were handed to the parties immediately before the hearing.

INSPECTION

7. The property comprises a three storey, semi-detached Victorian house converted into two flats, one occupying the lower ground floor and the other, the upper two floors. At the side is a ramp and steps leading to a single storey porch giving access to the upper flat. The building is constructed of brick with rendered quoins and dressings under a flat roof, believed to be covered with felt, having tile capped parapets. There is a substantial central chimneystack. During the inspection there were indications of serious damp in the porch. The ceilings of the front and rear bedrooms showed signs of water penetration with the face of the chimneybreast in the rear room being badly stained.

THE LAW

8. Section 20 of the 1985 Act limits the service charge contribution that lessees have to make towards "qualifying works" if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal.
9. Section 20ZA(2) of the 1985 Act defines "qualifying works" as works on a building or any other premises.
10. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 1987 ("the Regulations") provide that if a lessee has to contribute more than £250 towards any qualifying works then if the landlord wishes to collect the entire costs of those works the landlord must either carry out consultation in accordance with Section 20 of the 1985 Act before those works are commenced, or obtain an order from the tribunal dispensing with the consultation requirements.
11. The consultation requirements are set out in the Regulations and it is not proposed to set these out here. However, they include the need for the landlord to state why they consider the works necessary and for further statements setting out their response to observations received, and their reasons for the selection of the successful contractor. A tenant has the right to nominate an alternative contractor and the landlord must try to obtain an estimate from such a nominee.

12. Under section 20ZA(1) of the 1985 Act, the tribunal is given discretion to dispense with the consultation requirements. This section provides:

Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works or qualified long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with those requirements.

13. The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements? The decided cases have established that it is not necessarily the conduct of the landlord that has to be reasonable rather it is the outcome of making the order, which has to be reasonable taking into account all the circumstances of the case.

THE EVIDENCE

14. The evidence submitted to the tribunal consisted of the following documents:

- i. The application.
- ii. A witness statement from Natalie Smith the tenant of the first floor flat.
- iii. A witness statement from the applicant.
- iv. A hearing bundle submitted by the respondent.
- v. Estimate from B & S Flat Roofing Contractors.
- vi. Estimate from Haffenden Contractors.
- vii. Estimate from Mr T. Payne of Home Care.

CONSIDERATION

15. In the opinion of the tribunal the Works do constitute "qualifying works" within the meaning of the 1985 Act. As the contribution required from the respondent pursuant to the service charge provisions of his lease will exceed the threshold of £250, there is an obligation on the applicant under Regulation 6 to consult in accordance with the procedures set out in the Regulations.

16. The evidence put before us establishes: -

- (i) There is evidence of water ingress to the ceiling and chimneybreast of the front and rear bedrooms on the top floor of the first floor flat.
- (ii) The cause of the water ingress is very likely to be defective cover flashings to the parapet walls and chimney and a defective roof covering.
- (iii) Urgent repair is necessary to avoid further damage to the first floor flat.

17. The tribunal first considered the terms of the lease and in particular the repairing covenants contained therein. The lease places an obligation on the landlord to maintain the exterior of the property subject to receiving contributions from the respondent. The tribunal was thus satisfied that the applicant is obliged to carry out the Works and the respondent is obliged to contribute towards the cost.

18. In the applicant's statement of case it is contended that the Works, or at least part of them, are of an urgent nature and the delay that will result if the statutory consultation procedure must be carried out will result in further damage to the first floor ceiling and internal decorations.

19.

The applicant seeks dispensation on the grounds that further delay is not in the interests of the respondent and that dispensation is reasonable in all the circumstances of the case.

20.

The tribunal directed its attention as to how the water ingress might have occurred and it concluded that the situation is likely to have arisen because of a gradual deterioration over the years.

THE DECISION

21. The tribunal is satisfied that the water ingress at the property is an incident, which could not have reasonably been foreseen. It is aware from its collective knowledge and experience that properties of this design and age are prone to such incidents. In the tribunals' experience such outbreaks must be dealt with speedily and comprehensively rather than on a piecemeal basis because of the danger of more extensive damage and even the possibility of an attack of dry rot, which can be very expensive to rectify.

22. During the course of the hearing the respondent moved from a position of objecting to the Works to the position of agreeing that the Works were necessary. Indeed the respondent rejected the idea of only patch repairs on the grounds that the eventual bill, for which he would be responsible for two thirds, would be higher. Once the scope of the Works was agreed he indicated to the tribunal that he wished to forgo his statutory consultation rights so that the Works could be carried out without any more delay.

23. Having regard to paragraph 22 above, the tribunal is satisfied that the respondent will not suffer prejudice as a result of the failure to consult. The tribunal also considers that the scope of Works is clear and self-contained.

24. Taking all the circumstances 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 1985 Act in respect of all the Works and it so determines.

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 1985 Act. It does not prevent an application being made by the respondent under section 27A of the 1985 Act to deal with the resultant service charges. It simply removes the cap on the recoverable service charges for The Works that section 20 would otherwise have placed upon her.

Signed

RTA Wilson LLB

Dated 1st November 2010