

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



S.20ZA Landlord & Tenant Act 1985

DECISION & REASONS

Case Number: CHI/45UC/LDC/2010/0024

Property: 21 Norfolk Road
LITTLEHAMPTON
West Sussex
BN17 5PW

Applicant: Mrs V E Batt &
Mr D F Dadswell

Respondent: Mr M J Neve

Date of Application: 22 July 2010

Date of This Decision: 13 September 2010

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr J B Tarling MCMI (Legal Member)

DECISION

1. The Tribunal determines to dispense with all of the S.20 consultation requirements in relation to the qualifying works, the subject of this application described as roof repairs.

INTRODUCTION

2. This is an application by Mrs V E Batt on behalf of herself and her Brother Mr D.F. Dadswell the joint owners of the property, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the S.20 consultation requirements in respect of qualifying works. The qualifying works in the application relate to the repair and renewal of the flat roof structure and coverings.

THE LAW

3. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 (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 complete estimates and a provision whereby a lessee may make comments about the work and nominate a contractor to provide a quotation for the work.

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 do so. 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 the lease of the upper flat at 21 Norfolk Road (known as 21a), which comprises the top two floors of the building. The Applicant's mother occupies the other flat on the ground floor.
10. Although the Tribunal had regard to the full lease, little turned on its interpretation during the course of representations made to it. There are provisions for the landlord to keep the whole property in good repair and decoration and for half the costs to be recovered from the tenant of the upper floor flat on demand.
11. There were no matters raised by the parties in respect of the interpretation of the lease.

BACKGROUND

12. On 28 July 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 and notice was issued that the Application would be heard on the basis only of written representations without a formal hearing. Neither party objected to this procedure.
13. Statements and documents were received from both parties.

INSPECTION

14. The Tribunal members inspected the exterior of the property on 10 September 2010. Mr Dadswell attended but the Respondent did not attend and was not represented.

15. The property comprises an inner terrace Victorian property probably built of a mixture of brick and flint with part cement rendered elevations. Accommodation is arranged on three floors and there is a rear addition. The roofs are of pitched design covered with slates. The first floor flat is approached from a door leading from a side tunnel passage. There was no inspection of the interior.
16. The property appeared well maintained. There was visual evidence that the roof slopes had been recently recovered with natural slates. The flaunching had been renewed to the rendered wall surfaces. Mr Dadswell advised the Tribunal that a wooden roof light had also been replaced with a Velux roof light, but this was not visible from ground level.
17. The Chairman explained how the consideration would be conducted based on the documents that were available to the Tribunal. No evidence was taken at the inspection.

EVIDENCE

The Applicant's Case

18. In November 2009 Mr Neve, the Respondent, reported to Mrs Batt that there was water ingress at the property and indicated that the roof was leaking, was beyond repair and required renewal.
19. In January 2010 Mrs Batt provided Mr Neve with an estimate for the work from Best Choice for a total cost of £11,603.10. The accompanying letter asked Mr Neve to forward any estimates that he may have obtained.
20. Because of inclement weather there was a delay in obtaining further estimates however on 31 March 2010 three further estimates were provided to Mr Neve namely: Country Roofing - £11,280; K V Jenkins - £12,800 and D J Roofing - £15,900. At the same time Mr Neve was asked to sign an agreement to pay the Applicant half the cost of the work, this agreement form was not returned.
21. The work started on 19 April 2010 and was completed 2 weeks later.

22. Attempts have been made to recover the cost from Mr Neve without success. On 14 June 2010 Mr Neve advised Mrs Batt that she had failed to follow the S.20 consultation procedure so his contribution was limited to £250.00. This prompted the Applicant to start the S.20ZA dispensation application under consideration. Subsequent attempts to recover the amounts alleged to be due have been unsuccessful
23. Throughout Mr Neve has been fully aware of the proposed works and their cost. The Applicant accepts that the proper S.20 Procedure was not followed but the work was urgent and they had performed their duties as landlord to the best of their abilities.

The Respondents' Case

24. The Respondent does not dispute the facts outlined by the Applicant. He is concerned that there was no formal consultation and the correct procedure should be followed. He believes that he is only responsible for £250.00.
25. The roof has been out of repair for a long time. Works were proposed in early 2008 but never completed. Mr Neve had to fund repairs himself in the interim.

CONSIDERATION

26. There is no dispute between the parties that roof repairs were required to prevent water ingress and as time moved on the need became more urgent. The delay may have allowed the extent of the damage to spread and more extensive works may have been needed. There is no dispute that the repairs to the roof have been completed.
27. The Tribunal makes no comment on whether the extent of the work was required or not, it has received no information regarding the condition of the roof before the work started, but this is not the matter before the Tribunal.
28. To stop water ingress was an emergency but as it turns out there was sufficient time for some consultation to have taken place between the

notification by Mr Neve in November 2009 and the work starting in April 2010. In any case the works have now been completed.

29. Mr Neve had been kept fully informed about the work and its likely cost as early as January 2010. The landlord had obtained three further estimates and made these available to Mr Neve. The Respondent has only raised the question of S.20 consultation as late as June this year, some 2 months after the work was completed. He had ample opportunity to comment earlier. The tenant has not been disadvantaged.
30. It would be unreasonable to enforce the strict terms of S.20 consultation and on the basis of the evidence before it the Tribunal is satisfied that it is reasonable to dispense with the requirements.
31. Merely for the sake of clarification the Tribunal reminds the parties that either the landlord or the tenant may make an application to the Tribunal under section 27A, or other sections, of the Act for a determination as to the payability and reasonableness of charges either before or after any works. The decision given in this document does not prevent any future application to the Tribunal.

Dated 13 September 2010

[Signed]

Brandon H R Simms

Brandon H R Simms FRICS MCI Arb
Chairman