

10808



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

Case Reference : CHI/21UG/LDC/2015/0013

Property : 70, Sea Road, Bexhill on Sea, East Sussex
TN40 1JL

Applicant : Southern Land Securities Limited

Representative : Hamilton King Management Limited

Respondent : Susan Royston Claire
Andrew Ezelio
Russell and Nicola Nixon
Mrs M Brittle
Mrs C Eccleshall
Andrew Tsoi
Mr A Barnes
Ian Pool

Representative :

Type of Application : To dispense retrospectively with the
requirements to consult lessees about
major works

Tribunal Member : Mr D Banfield FRICS

Date of Decision : 23 April 2015

DECISION

Summary of Decision

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (The Act) from the consultation requirements imposed on the landlord by Section 20 of the Act.
2. The application concerns works already completed to prevent water ingress into the common parts and Flat 1 at the property.
3. This is an end of terrace four storey Victorian house converted in to self contained flats let on long leases.
4. Directions were made on 18 March 2015 setting out a timetable for the resolution of the matter and requiring the Respondents to complete a form stating whether they supported the application, whether they wished to make representations to the Tribunal and whether a hearing was required.
5. Forms were returned by the lessees of flats 5 and 8 both of whom supported the application and that the Tribunal may determine the matter on the basis of written representations.

The Law

6. The relevant section of the Act reads as follows:
20ZA Consultation requirements:
(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.
7. The matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson. In summary the Supreme Court noted the following
 - The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
 - The financial consequences to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
 - Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA(1).
- The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

The Evidence and Decision

8. In their statement of case the Applicant's agents say that they were contacted by the Leaseholder of flat 1 on 23 July 2014 indicating that there was bad leak with water entering her bedroom. Contractors were instructed to attend and a quotation received. Due to the urgency of the matter they instructed the contractors to proceed without delay.
9. They confirm that they did not serve Section 20 notices due to the damage being caused to the basement flat and now request retrospective dispensation for the works carried out.
10. An invoice from PMC (London) Limited dated 11 August 2014 is exhibited indicating that work was carried out to repoint damaged pointing, boarding up of a basement window and repairing render to the rear of Flat 1. The invoice was for £1,800 inclusive of VAT.
11. The Tribunal applying the legal principles cited above, notes that nothing has been received from the Respondents that purport to identify any prejudice.
12. The Tribunal is satisfied that this is an uncontested application in respect of the factual burden of identifying prejudice. However the Tribunal have still applied the relevant legal principles to the evidence

before it, mindful that Parliament has intended dispensation to be an exception to consultation.

13. The Tribunal is satisfied that the water ingress to Flat 1 and the common parts required urgent attention and that this urgency precluded the Applicant from following the S20 consultation. They further determine that the Lessees did not suffer prejudice from the lack of consultation.

14. On the basis of the evidence before it the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.

15. Tribunal makes no findings as to whether the sum is in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.

D Banfield FRICS

23 April 2015

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking