



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

Case Reference : CHI/29UN/LDC/2015/0009

Property : 13 Cedric Road, Westgate on Sea, Kent CT8
8NZ

Applicant : Powell & Co Property Limited

Representative : Sean Powell

Respondent : Charles Kenward (Flat 1)
Mr & Mrs Newman (Flat 2)
Sean Powell (Flat 3)

Representative :

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

Tribunal Member : Mr D Banfield FRICS

Date of Hearing : 2 June 2015; on the papers.

Date of Decision : 2 June 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 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Landlord is also the lessee of Flat 3 in a personal capacity.
3. The grounds for seeking dispensation are that it was necessary to carry out emergency roof repairs in March 2014 due to ongoing damage to Flat 3.
4. Directions were made on 24 February 2015 setting out a timetable for the proper disposal of the matter including a requirement for any lessee who wished to make representations to do so by 10 March 2015 on an attached form and with a copy to the Applicant.
5. A form was received from the lessee of Flat 1 on 26 March 2015 objecting to the application but it has subsequently transpired that no copy was sent to the Applicant hence further Directions were made on 8 April 2015 amending the timetable for submission of documents.
6. Forms were also received from the lessees of Flats 2 and 3 supporting the application.

The Law

7. 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.
8. 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

9. In their statement of case the Applicant says that emergency roof work was carried out in March 2014 to replace broken and missing tiles, repair and cleaning of gutters, sealing a roof light all causing damage to Flat 3. The cost including scaffolding was £1,326.00 for which an invoice dated 27 March 2014 is provided.
10. The Applicant says that the delay incurred by following the S.20 procedures would have resulted in further damage to Flat 3 which would in turn have increased the ultimate cost to the leaseholders.
11. In a statement from the lessee of Flat 1 an objection is raised on the grounds that; such issues should have been covered by insurance, only one quotation was received, the work was not urgent and the cost is too high.
12. The Tribunal applying the legal principles cited above is not satisfied that the lessees have suffered prejudice by the lack of consultation. We are satisfied that on the balance of probabilities a delay in effecting

repair would have caused damage to Flat 3 and that the repairs were not matters for which insurers would take responsibility.

13. The Lessee of Flat 1 indicates that he considers the costs to be too high but provides no evidence to support the contention.
14. The Tribunal has applied the relevant legal principles to the evidence before it, mindful that Parliament has intended dispensation to be an exception to consultation and is not satisfied that the Lessee of Flat 1 has demonstrated that he has suffered prejudice by the failure to comply with the requirements of the Act.
15. The Tribunal is satisfied that the water ingress to Flat 3 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.
- 16. On the basis of the evidence before it the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.**
17. 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

2 June 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.