1205L

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/LSC/2016/0283**
Property	:	**5 Havelock House, 60 The Avenue, Highams Park, London E4 9RF**
Applicant	:	**Mr Anthony White (freeholder)**
Respondent	:	**Mr Lawrence Goldblatt (leaseholder, flat 5)**
Interested person	:	**Mr A Fakokunee (leaseholder, flat 3)**
Type of application	:	**Reasonableness and payability of service charges & dispensation from consultation requirements**
Tribunal members	:	**Judge Timothy Powell** **Mr Alan Ring**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of interim decision	:	**14 October 2016**
Date of this final decision	:	**7 December 2016**

FINAL DECISION

Summary of the tribunal's final decision

(1) Of the principal sum of £2,435.28 claimed in the county court (claim no. B5QZ3M7A), the tribunal determines that the sum of **£1,935.28** is reasonable and payable by the respondent, Mr Goldblatt.

(2) The matter should now be returned to the county court for it to decide issues relating to interest (if any), court costs and court fees.

Background

1. This Final Decision follows on from the tribunal's Interim Decision dated 14 October 2016, to which reference should be made for additional background facts.

2. Havelock House, London E4 is a purpose-built block of six flats. The original court proceedings issued by the applicant freeholder, Mr White, were in respect of an invoice dated 1 July 2014 in the sum of £2,435.28 plus interest. This sum was said to be payable by the respondent, Mr Goldblatt, in his capacity as long leaseholder of flat 5, Havelock House.

3. By paragraph 7 of the Interim Decision, the tribunal determined that the amount of that invoice was reasonable; but the tribunal sought further submissions from the parties as to whether the full invoice was payable by Mr Goldblatt, or only part of it.

4. The invoice contained a mix of service charges, but those disputed by Mr Goldblatt related to roof works carried out by Mr White in April/ May 2014. The total costs of those works came to some £10,848, to which Mr White added a 10% management fee, making a total cost of £11,932.80. Mr Goldblatt's one-sixth share of the cost of the roof works was £1,988.80.

5. The issue of payability turns upon Mr White's admitted lack of compliance with the statutory consultation requirements in respect of qualifying works (contained in section 20 of the Landlord and Tenant Act 1985 and regulations made thereunder), and the question whether, or not, the tribunal should grant Mr White dispensation from some, or all, of those requirements.

Attempted consultation

6. The evidence before the tribunal included a letter sent by Mr White to Mr Goldblatt on 10 April 2014, addressed to him "C/O Hobson and Co", the letting agents for flat 5. That letter sought to notify Mr Goldblatt of the proposed roof works and to seek his comments within 28 days, but Hobson and Co claim never to have received it.

7. However, even had they received it, the letter did not comply with the statutory consultation requirements. While it gave an indication of the works that Mr White planned to carry out (recovering the whole of the roof) and the reason why such work was necessary (water ingress, in particular into flat 6), the letter did not invite written observations from Mr Goldblatt within the relevant period of 30 days; nor did it invite him to propose within that period the name of a person from whom the

landlord should try and obtain an estimate, before carrying out the proposed works.

8. At best, the letter of 10 April 2014 amounted to incomplete compliance with stage one of the consultation procedures; and there has been no compliance at all with the later stages.

9. Although not entirely clear, it appears that the roof works may have been carried out even within the 28-day period that had been given to Mr Goldblatt for his comments. Mr Goldblatt says that he first knew of the roof works was after he received the invoice dated 1 July 2014. His agents, Hobson and Co, asked for fuller details; and, by letter dated 3 September 2016, Mr White sent them a copy of the 10 April letter and copies of the three quotations that he had obtained from roofing contractors.

Consequence of non-compliance

10. The law states that where a landlord such as Mr White does not comply with the statutory consultation requirements in respect of qualifying works, he may not recover more than £250 from any leaseholder, such as Mr Goldblatt, towards the costs of those works.

11. However, the £250 limit on cost recovery may be avoided if, on application, the tribunal grants dispensation from some, or all, of the consultation requirements, pursuant to section 20ZA of the Landlord and Tenant Act 1985.

Dispensation application

12. In the present case, Mr White has submitted an application for dispensation from some or all of the consultation requirements, pursuant to section 20ZA.

13. Following the issue of the Interim Decision on 14 October 2016, the tribunal invited the parties' submissions as to whether or not dispensation should be granted to Mr White. It did so by means of Further Directions dated 17 October 2016, which also joined Mr Fakokunee, the long leaseholder of flat 3, to the proceedings as an Interested Person. The purpose of doing this was to enable Mr Fakokunnee, if he so wished, to make submissions on the question of dispensation, in addition to Mr Goldblatt.

14. Having considered the detailed submissions from Mr Goldblatt dated 21 October 2016 and Mr White's responses, received on 1 December 2016 (no submissions having been received from Mr Fakokunee), the tribunal reaches the following determination.

The tribunal's determination

15. Of the principal sum of £2,435.28 claimed in the county court (claim no. B5QZ3M7A), the tribunal determines that the sum of £1,935.28 is reasonable and payable by Mr Goldblatt.

Reasons for the tribunal's determination

The proper approach

16. In the determining whether or not dispensation should be given, and the extent of such dispensation, the tribunal took into account the decision in *Daejan Investments Ltd v Benson and Others* [2013] UKSC 14. In giving the leading judgment, Lord Neuberger set out the proper approach to the dispensing under section 20ZA(1). At paragraph 44, he stated:

> "Given that the purpose of the Requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements."

The need for works

17. Consideration of the documents makes clear, and the tribunal finds, that some work to the roof was necessary; and Mr Goldblatt is not correct to say that there had been no previous record of the leakages. Not only did Mr White produce invoices dated 28 October 2013 and 3 February 2014, relating to previous roof works, but Mr Goldblatt's own evidence (at Item 6) was an e-mail dated 31 May 2011 that he had received from his own managing agents, advising him that some heavy rain had flooded through the roof of flat 5.

18. Notwithstanding Mr Goldblatt's concerns, there was no evidence to suggest that the problem of water ingress may have been caused by the telecommunications mast on the roof, and indeed, the tribunal felt that this was unlikely, given that the mast had been erected more than a decade previously.

The extent of consultation

19. Although it is impossible to know what happened to Mr White's letter of 10 April 2014, the clear statement by Hobson and Co was that "We can confirm that on no occasion have we received any paperwork before the commencement of the works and have not received a notice

of intention to carry out the works or ... the opportunity to make any comments, observations or nominations within 30 days". On balance, therefore, the tribunal accepts, and finds, that Mr White's letter of 10 April 2014 was not received at all; and, therefore, there had been no consultation whatsoever prior to carrying out the works.

20. The position is all the more concerning because it appears, from the documentation produced by Mr Goldblatt, this is not the first occasion when Mr White has carried out major works without any consultation. Where in a block of six flats, four of them are owned by Mr White, the other two leaseholders are in a clear minority and at a disadvantage; and it becomes all the more important for Mr White not only to comply with statutory consultation requirements before carrying out major works, but also to ensure that his letters are received, if necessary sending multiple copies by different means, and to ensure that leaseholders have full and proper opportunities to participate in consultation process.

Prejudice suffered by Mr Goldblatt

21. Be that as it may, against the background that there was a leaky roof, the question is: did Mr Goldblatt suffer any prejudice by Mr White not consulting with him properly in advance of the works being carried out?

22. In his statement of 21 October 2016, Mr Goldblatt said that he "would certainly have responded differently" had he been consulted. He would have examined the roof himself and also enquired from professional roof repairers "how much of the roof actually needed repairing and what was the cause of the problem". Mr Goldblatt would also have investigated whether it was possible to remedy the problem via the interior of the building, rather than the exterior (but given the history roof leakages, affecting at least two flats, this seems unlikely); and he would have investigated whether the roof problems related to the telecommunications mast that Mr White had arranged to be placed on the roof of the building. He also questioned whether cheaper quotes might have been obtained for the works.

23. The tribunal finds that the inability to do these things prior to the works being carried out amounts to prejudice suffered by Mr Goldblatt; and that such prejudice arose directly as a result of Mr White's non-compliance with the consultation requirements.

Quantifying the prejudice

24. When quantifying the prejudice, in terms of inappropriate costs that may have been incurred, there was no evidence to say that a cheaper quote could definitely have been obtained by Mr Goldblatt, had he been

able to nominate an alternative contractor; and despite the passage of time since the works were carried out, Mr Goldblatt had not obtained any alternative quote. In any event, he was protected to an extent from the lack of consultation, by the fact that Mr White had chosen the cheapest of three quotes that he had obtained; and by the fact that he is able to challenge the reasonableness of any costs incurred, under sections 19 and 27A of the 1985 Act.

25. In his submission, Mr Goldblatt said that he had incurred costs "in the region of £2,300" in dealing with the proceedings. These, he said, "would include items such as round trip journeys, Thailand to England (2), hotels, food, car hire, telephone calls, postage, faxes, stationery, and loss of earnings. A more detailed breakdown of expenditure can be supplied if required."

26. However, the tribunal considers that such costs would be largely, if not completely, irrecoverable both in the county court, under the small claims track, and before the tribunal, which is a "no-cost" jurisdiction. Furthermore, , to the extent that such costs could relate to investigating and establishing non-compliance with the consultation requirements and prejudice, and challenging the dispensation application, such costs far exceed what the tribunal considers reasonable. In particular, the tribunal is unwilling to reimburse Mr Goldblatt the cost of two round-trip journeys, Thailand to England, nor the cost of hotels and car hire, as such costs are extremely unlikely to have been incurred solely for the purpose of the proceedings; but, if they were, they are considered to be wholly disproportionate to the sum and the issues in dispute.

The tribunal's conclusions

27. The tribunal therefore concludes that as roof repair works were needed and Mr White accepted the cheapest of three quotes obtained, it is reasonable to dispense with the consultation requirements, but on terms that would go some way to compensate Mr Goldblatt for the prejudice that he has suffered and the cost that he has incurred in disputing the payability of the service charge resulting from the lack of consultation.

28. Overall, we conclude that dispensation should be granted on terms that the costs relating to the roof works should be reduced by £500, in order to reflect these factors. This reduces the principal sum of £2,435.28 claimed in the court proceedings to £1,935.28.

29. In reaching this conclusion, we bear in mind paragraph 74 of the judgment in *Deajan v Benson*, where Lord Neuberger stated that:

> "All in all, it appears to me that the conclusions which I have reached, taken together, will result in (i) the power to dispense with the Requirements being exercised in a proportionate way

consistent with their purpose, and (ii) a fair balance between (a) ensuring that tenants do not receive a windfall because the power is exercised too sparingly and (b) ensuring that landlords are not cavalier, or worse, about adhering to the Requirements because the power is exercised too loosely."

The next steps

30. The matter should now be returned to the county court for it to decide issues relating to interest (if any), court costs and court fees. Having said this, there does not appear to be any contractual provision in the lease entitling Mr White to interest on late payments of service charges, though, if the tribunal incorrect about this, Mr White will no doubt draw any such provision to the attention of the court.

Name: Timothy Powell **Date:** 7 December 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).