12303

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BH/LDC/2017/0062**
Property	:	**82/84 Howard Road, Walthamstow, London E17 4SQ**
Applicant	:	**The Alan Mattey Trust Corporation Ltd**
Respondent	:	**Ms Claire King**
Type of Application	:	**Dispensation from consultation requirements under Landlord and Tenant Act 1985 section 20ZA**
Tribunal Member	:	**Judge Richard Percival**
Venue of Deliberations	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**3 June 2017**

DECISION

Decisions of the tribunal

The Tribunal pursuant to section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") grants dispensation from the consultation requirements in respect of the works the subject of the application, to the extent that it is necessary to do so.

Procedural

1. The applicant landlord applied on a form dated 17 May 2017 for a dispensation from the consultation requirements in section 20 of the 1985 Act and the regulations made thereunder in respect of works to replace a concrete slab and wooden stair. The application was allocated to the paper track.

2. The Tribunal gave directions on 7 June 2017, which provided for a form to be distributed to the tenants to allow them to object to or agree with the application, and, if objecting, to provide such further material as they sought to rely on. The deadline for return of the forms was 21 June 2017.

3. A form was returned from the Respondent, Ms King, the lessee of number 84, raising objections to the application for dispensation.

The property and the works

4. The property is a mid-terrace building comprising two maisonettes, one on the first floor (number 82) and the other on the ground floor (number 84). The Respondent suggests that the property was originally a single house, which at some point was converted. The Respondent has provided a lease variation dated 1971, by which the garden was shared between the two maisonettes. She also explains that the garden is now fenced into two parts.

5. The occupants of number 82 have access to their part of the garden by means of an external stair. At first floor level, a concrete slab projects from a door in the kitchen of number 82. There is inset structural support provided by the wall of the property to the side of the slab adjacent to the wall of number 82. The slab is supported on one side by the wall forming the boundary with the garden of the neighbouring property, and on the other by a single cast iron column. Attached to the slab are steps down to the garden, made of soft wood.

6. The slab and stairs were inspected on 11 April 2017 by Elford Residential, chartered surveyors. They found the following:

> "There is severe cracking and distortion to the concrete slab from the wall through to the left hand cast iron support which is out of alignment with the fixing distorted, thought to be due to the point load being out of place due to the failure within the slab.
>
> The wooden steps are bowed, rotten, cracked and the wood structure is generally breaking down, thought to be due to its age and lack of maintenance. The step fixings are no longer effective resulting in significant movement in the steps and the banister/side structure. The wood is no longer capable of being repaired and is not in serviceable condition.
>
> ... The concrete slab and the steps are considered dangerous ..."

7. The surveyors found that the slab and the stair required replacement.

8. Two quotations for the work have been obtained, for £8,557 and £5,225 plus VAT. The former specifies that the replacement stair would be constructed of hard wood. The second states "as spec". The Tribunal has not seen the relevant specification.

Submissions and determination

9. The landlord's explanation for their application to dispense reads, in it's entirely, "Due to the serverity [sic] of the works reuired [sic], we would like to undertake the repairs as soon as possible." The landlord also relies on the surveyors' report.

10. The Respondent, in her submissions, states that she does not object to the work being carried out, but that she does object to paying half the cost of the work.

11. The Respondent argues that the slab and steps are the responsibility of the occupants of number 82 to replace, and are not chargeable to the service charge. She observes that the leases do not mention the staircase, and that a previous occupant of number 82 replaced the steps at her own expense. She also makes a generalised point that it is not fair that she should pay the cost of repair of stairs she does not use.

12. Further, the Respondent says that the repair is necessary because of a previous lack of maintenance, and that replacement of soft wood with hard wood for the stairs is not like for like.

13. The leases to both properties have been provided to the Tribunal. Both exclude from the lessees' repairing obligation "the external parts of the

maisonette (other than windows and the glass therein and the entrance of door of the demised premises)" (clause 3(ii) in both leases).

14. The lessor's repairing obligation (clause 4(4)) states that the lessor is required:

> "to maintain repair and keep in good and substantial repair order and condition the building, together with the entrance forecourt of the property the boundary walls thereof and all party walls, sewers drains pipes ducts and conduits serving the same (other than those parts for which the lessees ... are responsible) and to replace all worn or damaged parts thereof."

15. The service charge obligation is to pay half of the costs of (amongst other things) such repairs and maintenance (clause 3(15)).

16. The sole issue for determination is whether it is reasonable to dispense with the consultation requirements imposed by section 20 of the 1985 Act.

17. If the landlord is required to carry out the work under the lease, then the application must be allowed. Although the explanation for the need for a dispensation from the consultation requirements given by the landlord is rudimentary, it is supported by the surveyors' report, which states and demonstrates that the stairs, and the slab from which they proceed, are not only unusable but also dangerous. These considerations make the undertaking of the work a matter of urgency.

18. Further, the respondent does not object to the work being undertaken, and so clearly cannot be prejudiced by the lack of consultation.

19. However, the Respondent's submission shows that she wishes to raise issues of both the payability and the reasonableness of any service charge demand made in respect of the works.

20. The Tribunal is not in a position to determine those issues on the current application. On the one hand, as I have made clear above, if the repairing obligations of the landlord extend to the works, then the application is allowed and the requirements of section 20 of the 1985 Act are dispensed with. On the other hand, if the repairing obligations of the landlord do not cover the works, then there would be no consultation requirement to be dispensed with.

21. The result is that the works may go ahead. It remains open to the Respondent to apply to the Tribunal to contest the payability and/or reasonableness of the costs of the work on an application to the Tribunal under section 27A of the 1985 Act.

Name: Judge Richard Percival **Date:** 3 June 2017

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20ZA

(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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.