

9791



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

Case Reference : **LON/00AL/LDC/2013/0137**

Property : **Flats 1-11 Hermes Court, 273
Greenwich High Road, London
SE10 8BH**

Applicant : **Freehold Managers (Nominees)
Limited**

Representative : **Broadlands Estate Management
LLP – Mr A Missenden**

Respondent : **The leaseholders as per the
schedule attached to the
application**

Representative : **None**

Type of Application : **For dispensation of the
consultation requirements under
section 20ZA**

Tribunal Members : **Judge O’Sullivan**

Date of Decision : **9 January 2014**

DECISION

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements.
2. The building in question is described in the application as a purpose built block with commercial unit. The development is split into 2 buildings. The property is part of a mixed development over several floors constructed about 2 years ago. Flat 1 is on the first floor and in part extends over the vehicular access way.
3. The application relates to works of repair and reinstatement to the sub floor of Flat 1 of the Building. It is said that the floor has “*shrunk*” in the lounge, lobby and bathroom by approximately 10mm.
4. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with. The Applicant says that

The background

5. The application was received on 2 December 2012. Directions were made dated 4 December 2013 and the application was considered by way of paper determination in the week commencing 6 January 2014.

The issues

6. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.

The Applicant’s case

7. The Applicant had filed a bundle in accordance with the directions.
8. The Applicant says it is making the application under section 20ZA so as to enable the works to be carried out with a minimum period of delay. Flat 1 is said to be currently unrentable due to the sunken floors.
9. As the original developers of the property are apparently no longer in business the Applicant says that no redress can be sought from them.

10. A Stage 1 notice was served under section 20 of the Act dated 27 November 2013. The works stated to be required can be summarised as follows;
 - *Repair and reinstatement of the main sub floor and affected areas in the lounge, inner lobby and bathroom area of Flat 1, Hermes Court*
11. Investigations have been carried out by a chartered surveyor, a loss adjuster and a building contractor. A copy of the specification for the works was enclosed with the application.
12. A quotation has been obtained from Titan Refurbishments for the works in the sum of £25,540.15. However the Applicant has made a claim under a Zurich Buildings Guarantee dated 9 September 2013. By a letter dated 26 September 2013 Cunningham Lindsey acting for Zurich confirmed that the excess payable would be £13,321. This letter makes it clear however that at this time further enquiries were being made into the damage to the property to identify the cause of the issue. The tribunal is not clear whether at this time Zurich has accepted that the claim is valid and comes within the terms of the building guarantee.

The Respondents' position

13. The directions provided for any Respondent who wished to oppose the application for dispensation to serve a statement of case. A short handwritten statement was received from the leaseholder of Flat 11 Ms Johnstone which questions why the responsibility for these works falls on the leaseholders. A letter was also received from Mr Field, the leaseholder of Flat 6. He questioned whether there were any warranties in place.

The Tribunal's decision

14. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the works outlined above.

Reasons for the Tribunal's decision

15. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
16. In making its decision the tribunal had regard to the fact that the works are considered urgently required to deal with the shrunken floor at the property and the danger emanating from that.

17. Only two leaseholders objected to the application as referred to above.
18. Pursuant to paragraph 3 of the Fourth Schedule the landlord has the responsibility to keep the structure floor slabs roof and foundations of the blocks in good repair and to renew replace as appropriate.

Payability of charges

19. The Tribunal would stress that it is not making any assessment of the reasonableness of the charges and a challenge to those charges may be raised by the leaseholder pursuant to section 27A of the 1985 Act in the future.
20. As far as payability is concerned the tribunal was concerned that it only had one quotation before it. In any future application under section 27A the tribunal would expect to see additional quotations which showed that the quotation obtained was competitive.
21. Secondly we would add that on the issue of payability on an application under section 27A given that this appears to be an inherent building defect the tribunal would question whether there was the usual 10 year building warranty in place. This should have been issued to the leaseholders at the time of certificate of practical completion.
22. In addition we would mention that Cunningham Lindsey in their letter of 26 September 2013 state that there will be an excess of £1,211 per leaseholder. It should be considered whether this includes all incidentals. Further the landlord should consider whether the excess should be divided per flat or in accordance with the proportions set out in their leases.
23. The tribunal hereby orders that the Applicant shall serve a copy of this decision on each leaseholder.

Name: S O'Sullivan

Date: 9 January 2014