



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

Case reference : LON/00BJ/LDC/2014/0108

Property : 241 Lavender Hill, SW11 1JW

Applicant : Irlen Holdings (2001) Limited

Representative : Michael Elisha of Hummerstone & Hawkins

Respondents : Ms E Morgan (flat 241a)
Mr J Newell & Ms Wadcock (flat 241b)
Mr F Douglas (flat 241c)

Representative : None

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

Tribunal members : Mr L Rahman (Barrister)
Mrs S F Redmond BSc (Econ)
MRICS

Date and venue of hearing : 1st October 2014 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 1st October 2014

DECISION

Decision of the Tribunal

- (1) The Tribunal determines it is reasonable to dispense with the relevant consultation requirements.

The application

1. An application has been made under s.20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) for a determination that all or any of the consultation requirements in relation to works to be undertaken by the Applicant may be dispensed with if the Tribunal was satisfied it was reasonable to dispense with such requirements.
2. The Applicant confirmed it was happy for the application to be dealt with on paper if the Tribunal thought it appropriate. There was a Pre Trial Review on 3rd September 2014. The Tribunal considered that if none of the Respondents requested an oral hearing then it would be appropriate for the application to be dealt with in this manner (without a hearing). Mr Douglas requested a hearing and the matter was listed for 1st October 2014.

The hearing

3. The Applicant was represented by Mr Michael Elisha at the hearing and Mr Douglas appeared in person. The remaining Respondents did not attend and had not previously indicated that they intended to attend.
4. Pursuant to the Tribunals directions the Applicant prepared a bundle of documents totalling 49 pages. The Applicant provided two further pieces of evidence, namely, two photographs and an email dated 7.5.14, with the Respondents agreement and the Tribunals permission.

The background

5. The property which is the subject of this application is a 5 storey building comprising two retail units on the ground floor with basements, a flat on the first floor, a flat on the second floor, and a flat on the third floor (occupied by Mr Douglas).
6. The works for which the Applicant sought a dispensation of the consultation requirements were as follows:
 - (i) Handrail protection and ladder access to the roof of the rear extension area.

- (ii) Liquid plastics or similar coating to the flat roof area, excluding any repair works the coating would not remedy.
 - (iii) Internal decorations to the room affected by the leak.
7. The Respondents would each be responsible for the proportion required under the terms of their leases. The Applicant stated at the hearing that each flat would be required to pay 1/5th of the total cost, the remainder of the costs being paid by the two retail units (1/5th each) as per the commercial leases, which the Tribunal was not provided with copies of. The total estimated cost was £2,758.00 plus vat, therefore, each flat was to pay £661.92.

The Applicant's case

8. The Applicant states it was informed of water leaking into the retail unit, used as hairdressers, on 5th May 2014. The Applicant initially thought the roof could be repaired at low cost, below £250.00 for each flat, and would therefore not require any Consultation. However, after an inspection by the contractor in early June 2014, it became clear that the roof would need to be replaced and the cost was going to be above the £250.00 threshold for each of the flats.
9. The Applicant served its Stage One Notice of Intention to carry out works on 28th August 2014. The reason for the delay was firstly because the Applicant was not satisfied with the first quote and was and still is in the process of getting a second quote and had contacted three other companies, all of which had failed to provide a quote. Secondly, the lessee of the retail unit was not chasing the Applicant, until after rain storms in August, when the lessee started putting more pressure on the Applicant to deal with the leak.
10. The consultation period ended on 27th September 2014. The Applicant did not intend to serve a Stage Two Notice as it was seeking dispensation from the Tribunal because the leak was causing disruption and needed to be dealt with without delay (letter dated 28th August 2014). The application was made to the Tribunal on 27th August 2014.
11. Mr Elisha stated he had visited the hairdressers 4 weeks ago and saw two buckets on the floor to collect water and had seen the timber boarded floor beginning to lift due to water damage. Mr Elisha stated the rear of the shop affected by the leak was accessible by customers.
12. Mr Elisha stated the roof space was about two metres by three and a half metres. The roof was accessible by the three flats via double doors from the common landing. The roof was used for storage of various items and the photograph showed a dustbin on the roof. The Applicant was responsible

for repairing the roof and the Respondents were liable to contribute towards the cost under their respective leases.

13. Mr Elisha stated the contractor that had provided the quote for the relevant works had previously carried out major works to the building in 2012 and which included minor repairs to the relevant roof. Mr Elisha stated the quote refers to internal redecoration of the hairdressers. He was not sure what proportion of the total cost related to internal redecoration, but he would tell the contractor not to redecorate the internal parts of the hairdressers.

The Respondent's case

14. Mr Douglas stated he accepts the Applicant was responsible for repairing the roof and the Respondents were liable to contribute towards the cost under their respective leases. He had not been to the hairdressers and did not know the extent of the problem. He used to live at the flat up until 2-3 years ago. Mr Douglas confirmed he received the Stage One Notice of Intention and he had not suggested any particular contractors as he did not have any communication with the other Respondents and because he was not living in London. He accepted works needed to be done but did not agree it was urgent given the problem had been there since May 2014. When asked what prejudice he would suffer if the Tribunal agreed to grant the Applicant dispensation from the remaining Consultation requirements, Mr Douglas stated the Applicant had told them they could not have access to the roof, therefore, why should he pay towards the cost of dealing with the leak. Mr Douglas did however accept that the occupants of the three flats do have access to the roof space, each flat had keys to open the double doors to the roof, the keys were now lost but the door was always unlocked, they always had access to the roof, and tenants do put things on the roof. He stated the double doors were fitted by his father, who replaced the old doors, which was paid for by the three flats as the Applicant refused to pay.
15. No representations have been received from the two remaining Respondents, nor any objection to the application, despite the Directions issued by the Tribunal at the Pre-Trial Review. No response has been received with respect to the Stage One Notice of Intention either.

The Tribunal's decision

16. The Tribunal can only make a determination to dispense with the consultation procedure if it is satisfied that it is reasonable to do so. The purpose of the procedure under s.20 of the 1985 Act is to ensure that the long leaseholders do not suffer any prejudice when they are asked to pay for works that cost in excess of £250 per flat. The legislation recognises that there may be instances of urgency where the lengthy consultation process, designed to give the long leaseholders full information about the works and to enable them to make comments and propose a contractor to

be asked to provide a quote, cannot be followed and that is the reason for the dispensation provisions under s.20ZA of the 1985 Act.

17. This is an application opposed by one of the three Respondents. When asked what prejudice Mr Douglas would suffer if dispensation were granted, he did not identify any real prejudice, but simply stated why should he pay towards the cost of dealing with the leak if the flats were not allowed to have access to the roof. The Tribunal noted Mr Douglas accepts the Applicant was responsible for repairing the roof and the Respondents were liable to contribute towards the cost under their respective leases, the flats did have access to the roof, he did not suggest that the works were not necessary and had not nominated any particular contractor of his choice.
18. The Applicant has attempted to comply with Stage One of the Consultation requirements. The Tribunal was surprised the Applicant had delayed serving the Stage One Notice until 28 August 2014 given it was aware of the problem since May 2014. However, the Tribunal accepts that despite the delay, the work is now of an urgent nature. Mr Elisha had visited the property recently and had noted the leak had got worse and there was damage to the timber flooring and two buckets were being used to collect water in an area accessible by customers. Mr Douglas stated he accepts the work was necessary but it was not urgent. However, given that he had not visited the premises and there was no reason to disbelieve the evidence from Mr Elisha, who Mr Douglas had described as being "brilliant", the Tribunal is not persuaded the work is not of an urgent nature. Delaying the work would cause further significant damage and increase the overall cost in the long run.
19. Mr Douglas stated the Applicant should provide access to the rear garden via the roof by installing a stair from the roof to the garden below and that the previous major works may not have been completed properly, given the problem with the roof. The Tribunal found those matters were not relevant to the application made by the Applicant. The matter concerning the stairs is not within this Tribunal's jurisdiction. If the Respondent is not happy with the previous works that were carried out he may seek to take legal advice, discuss the matter with the Applicant, and consider making an application to this Tribunal for a determination as to whether he should contribute towards the costs of the works by way of a service charge as the works were done to a poor standard.
20. For the reasons given, the Tribunal is satisfied it is reasonable to dispense with the relevant consultation requirements contained in s.20 of the 1984 Act.
21. The dispensation of any or all of the requirements of s.20 of the 1985 Act does not indicate that the cost itself is reasonable or that the work / service is of a reasonable standard. The Respondents may, if they wish, make a subsequent application under s.27A of the 1985 Act, challenging either the

need or quality of such works, the recoverability of the cost under the lease, or the level of the cost.

Application under s.20C and refund of fees

22. The Applicant did not make any application for a refund of the fees that had been paid in respect of the application/ hearing. The Respondent did not apply for an order under section 20C of the 1985. Accordingly, no orders are made.

Tribunal Judge: L Rahman

Date: 1.10.14