12031

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	:	**CAM/26UJ/LDC/2017/0004**
Properties	:	**70a, 72a, 74a, 78a, 80a & 82a Church Lane, Mill End, Rickmansworth, WD3 8HE**
Applicant	:	**Daejan Investments Ltd.**
Respondents	:	**Ms P Patterson & Mr D Scobie (70a)** **Ms A J Maddrell (72a)** **Mr & Mrs K C K Tang (78a)** **Mr L S Jhutty (80a)** **Ms V Nicholls (82a)**
Date of Application	:	**17th January 2017 (rec'd 19th)**
Type of Application	:	**for permission to dispense with consultation requirements in respect of qualifying works (Section 20ZA Landlord and Tenant Act 1985 ("the 1985 Act"))**
Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. The Applicant is granted dispensation from further consultation requirements in respect of roof works to the property, specifically the investigation and repair work anticipated by DPM Building Services Ltd in their e-mail of 16th December 2016 to rectify a leak into flat 82a.

2. No order is made pursuant to section 20C of the **Landlord and Tenant Act 1985** ("the 1985 Act").

Reasons

Introduction

3. The undisputed facts from which this application arises are that on or about 28th November 2016 the Respondent Ms V Nicholls contacted the Applicant to inform them that her subtenant had reported a leak into flat 82a. Photographs have been supplied which appear show that the ceiling to the flat has been damaged by water penetration. The

Applicants contacted DPM Building Services Ltd. who inspected on the 15th December 2016. They sent an e-mail to the Applicant on the 16th December from which it can be inferred that they did not know the cause of the problem but suggested that it could involve re-pointing ridge tiles and/or the replacement of tiles.

4. DPM Building Services Ltd. suggested a budget figure of £1,500-2,000 plus VAT to erect scaffolding, clean off moss from the roof tiles and effect repairs. A decision was made by the Applicant that it could not wait for the full consultation requirements to be undertaken and they say that they instructed solicitors to make this application so that they could undertake remedial works "*without delay*". Why it had taken 2 weeks to arrange a contractor's inspection and then a a further month to make this application is not explained.

5. In a directions order dated 19th January 2017, it was said that this case would be dealt with on the papers on or after 15th February 2017 taking into account any written representations made by the parties. It was made clear that if any party wanted an oral hearing, then that would be arranged. No request for a hearing was received.

6. No representations have been received from the Respondents save for a letter dated 28th January 2017 from Penny Patterson and David Scobie from flat 70a saying:-

> *"Please accept this letter as our written notice that we would request an order to stop the landlord Daejan Investments Limited from adding any cost from the dealing of these proceedings being added to our future service charge*
>
> *We do not feel it would be fair for us to cover these costs when this matter has come about highly likely through the poor management of the ongoing maintenance of the properties."*

7. An allegation that it is highly likely that there has been poor management of the block is a serious allegation to make. And yet no evidence at all has been produced to support that allegation.

The Law

8. Section 20 of the 1985 Act limits the amount which lessees under residential long leases can be charged for major works to £250 per flat unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal (now called a First-tier Tribunal, Property Chamber). The detailed consultation requirements are set out in the **Service Charges (Consultation Requirements) (England) Regulations 2003**. These require a Notice of Intention, an invitation to lessees to nominate potential contractors, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. There then has to be a tender process with estimates being obtained including at least one from a contractor unconnected with the landlord. These requirements last well over 2

months.

9. Section 20ZA of the 1985 Act allows this Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.

10. Section 20C of the 1985 Act gives the Tribunal the power to prevent any costs of representation in respect of an application to be recovered from any tenant applying for such an order, as part of any future service charge.

Discussion

11. All the Tribunal has to determine is whether dispensation should be granted from the full consultation requirements under Section 20ZA of the 1985 Act. There has been much litigation over the years about the matters to be considered by a Tribunal dealing with this issue which culminated with the Supreme Court decision of **Daejan Investments Ltd. v Benson** [2013] UKSC 14.

12. That decision made it clear that a Tribunal is only really concerned with any actual prejudice which may have been suffered by the lessees or, perhaps put another way, what would they have done in the circumstances?

13. In answer to the letter from the owners of flat 70a, the Applicant has filed a statement from Gina Eris who is a Deputy Area Manager employed by the Applicant. This sets out details of various repairs and maintenance to the roof in recent years. It also says that an order under section 20C of the 1985 Act is not appropriate or reasonable.

Conclusion

14. It is self-evident that repair works are required in view of the leak in the roof causing the damage to flat 82a. It also seems clear that identifying the exact cause of the problem cannot be ascertained until scaffolding is erected and a full external inspection can take place. Thus it is not really feasible for competitive quotes to be obtained until that happens.

15. Having said that, the Tribunal is concerned to see the delay in this case which seems to have been occasioned by the Applicants. This has meant, in effect, that if consultation had started as soon as the problem was known about, the consultation period would be almost over.

16. The Tribunal finds (a) that there is evidence that the Applicant has undertaken routine maintenance and repairs of the roof and (b) that there has been little or no prejudice to the Respondent lessees from the lack of consultation at this stage. Dispensation is therefore granted.

17. The dispensation is only for the anticipated repair works referred to by the builder. If it becomes necessary for the roof to be replaced, then temporary repairs can no doubt be effected followed by a full consultation.

18. As far as the present anticipated cost is concerned, if there is any subsequent application by a Respondent for the Tribunal to assess the

reasonableness of the charges for these works, the members of that Tribunal will want to have clear evidence of any comparable cost and availability of other contractors at the time of the repairs.

19. As far as the application for a costs order under section 20C of the 1985 Act is concerned, the Tribunal is not prepared to make that order. The application had to be made and, indeed, should have been made earlier judging by the state of the damaged ceiling in flat 28a. Whether the application should have been made by solicitors is another matter. In any event, the Upper Tribunal has commented on several occasions that a service charge provision covering the cost of lawyers must be clearly set out in the lease. The Tribunal cannot see that such costs would form part of the service charges set out in clause 2 of the lease.

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Bruce Edgington
Regional Judge
15th February 2017

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.