



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

Case Reference : CHI/ 00ML/LDC/2018/0090

Property : Flats 1-3, 4 Castle Square, Brighton BN1
1EG

Applicant : Mr I Carter & Mr B Levy T/A Carter
Investments

Representative : SDL Property Management

Respondents : -

Representative :

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

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 3 December 2018

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the eradication of Dry Rot as identified in the report of Poulton Remedial Services Ltd.

In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

Background

1. This is an application for dispensation from the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in respect of the eradication of dry rot
2. The Tribunal made Directions on 1 November 2018 requiring the Applicant to serve copies of the application and the Directions on the Respondent Lessees.
3. The Respondents were invited to complete a form and return it to the Tribunal indicating whether they agreed or objected to the application, whether they wished to remain as Respondents and whether an oral hearing was required. If they opposed the application, they were required to send a statement to the landlord by 13 November 2018.
4. The Applicant was to prepare the bundle upon which the determination was to be made and send it to any lessee who had objected and to the Tribunal.
5. The Lessees were advised that if they agreed to the application or did not return the form they would not remain as Respondents.
6. Responses were received from 3 lessees all of whom agreed to the application and have therefore been removed as Respondents in accordance with the Directions.
7. There have been no calls for an oral hearing and the matter is therefore determined on the papers already received and without an oral hearing in accordance with Rule 31 of the Tribunal procedural rules.
8. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

9. The relevant section of the Act reads as follows:

20ZA Consultation requirements:
 - (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.
10. The matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson. In summary the Supreme Court noted the following

- The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
- The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
- The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

11. In their application the Applicant explains that following an alert from a lessee investigations were carried out and dry rot was discovered in Flat 3 and spreading rapidly. A report from Poulton Remedial Services Ltd contained a specification of works to be undertaken in Flats 2 and 3.
12. The hearing bundle contained copies of Poulton's reports and a Specification of Works for the remedy of Dry Rot prepared by a Chartered Building Surveyor, Adam Jordan of SHW which will be the subject of a tender.

Determination

13. The eradication of dry rot requires speedy action and it is accepted

that the time taken to undertake the full section 20 consultation is undesirable.

14. No lessee has sent an objection to the Tribunal and no evidence of the type of prejudice referred to in paragraph 10 above has been identified. In these circumstances, I am prepared to grant the dispensation required.

15. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the eradication of Dry Rot as identified in the report of Poulton Remedial Services Ltd.

16. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

D Banfield FRICS
3 December 2018

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the appeal is seeking.