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

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| **Case Reference** | **:** | CHI/ 45UH/LDC/2018/0095 |
| **Property** | **:** | 122a Becket Road, Worthing, West Sussex BN14 7ET |
| **Applicant** | **:** | William Heselton |
| **Representative** | **:** | Wannops LLP |
| **Respondents** | **:** | Ann Costin |
| **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** | **:** | 18 March 2019 |

## DECISION

**The Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the major works, including exterior redecoration carried out in 2017 subject to the payment of £350 to Mrs Costin.**

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

## Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.

2. Major works, including exterior redecoration, were carried out in 2017. In Case No CHI/45UH/LSC/2017/0093 the Tribunal decided that the costs of £7992.50 which the Applicant landlord sought to recover from the Respondent tenant were recoverable only to the extent of £250.00, due to a failure to comply with the consultation requirements.

3. The Applicant now seeks retrospective dispensation from those requirements.

4. Directions were made on 21 November 2018 and 19 December 2018 indicating that the application would be determined on the papers in accordance with rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. No objection has been received and this determination is therefore made reliant on the application and subsequent documents received from the parties.

5. 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

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

   20ZA Consultation requirements:
   a. (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.

7. 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

   b. 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.
   c. 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.

d. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
e. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
f. 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).
g. 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.
h. 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.
i. 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.
j. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

**Evidence**

**Applicant**

8. In their application the Applicant explains that;
    - external works had been identified in a survey report dated 31 August 2016
    - A s.20 notice (on the incorrect form) was served on or around 6 January 2017
    - By a letter dated 22 February 2017 two estimates were provided and the lessee was invited to make observations
    - The works were completed by Built4U on or around August 2017 and are as described in the invoice dated 10 August 2017.
    - The previous Tribunal decided that the quality of the workmanship did not give rise to any concerns
    - The lessee's main complaint is that the exterior was painted a vibrant yellow although the tribunal found that the lease did not require the landlord to consult on the colour to be used.

**Respondents**

**9.** In her statement of case objecting to the application Mrs Costin states that;
    - She has suffered prejudice on points (a) and (c) of the application

- Maintenance works had been planned for 2013 but due to her concerns she was informed that a section 20 was required
- One of the estimates was dated 5 February 2017, the other 2 June 2016. The latter being eight months prior to the former and not therefore a viable comparison.
- Why a correct form had not been submitted after the tribunal's decision of 16 April 2018
- That reason 14 of the Tribunal decision of 16 April 2018 refers to no provision in the lease allowing the landlord to recover the charge
- That the lease needs rewriting
- The landlord has made no efforts to comply with the Tribunal's recommendations.
- The estimate states the property was to be repainted in its original magnolia colour and as such they were happy for the works to go ahead. If, however, the use of vibrant yellow paint had been made clear they would have objected.
- A previous Tribunal has advised that monies for admin purposes should not be taken from the maintenance fund
- Her costs of seeking legal advice amounted to £1,500

**Applicant's Reply**

10. The Respondent has not suffered prejudice and is in the same position as had the consultation requirements been fully complied with.

11. The respondent does not set out what prejudice has been suffered in respect of points (a) and (c).

12. From the legal advice received in 2013 and 2015 the Respondent should have been aware of her right to provide a separate estimate.

13. The respondent could have proposed a contractor within the 30 days provided to make observations.

14. The use of the incorrect form has not prejudiced the respondent.

15. The reference to reason 14 of the tribunal's decision was in respect of an application under S.20C and was due to the lease not containing provision for such recovery.

16. The Respondent was happy for the work to go ahead the only issue being the colour which is not a quality issue. Even if the Respondent had made observations the same works would have been carried out.

17. Regarding costs, no invoice or receipt has been provided and the statement appears to have been prepared without legal assistance. Following contact with Coole Bevis LLP on 14 December 2018 the

Applicant was advised on 11 January 2019 that they were no longer acting.

18. The Respondent's other points are not relevant to this application.

19. The witness statement of Mark James Robertson confirms the applicant's submissions and concludes that "*the "spirit" of the statutory regulations was satisfied and that there was no serious or flagrant breach"* and *"it is common ground that the extent, quality and cost of the works were in no way affected by the Applicant's apparent failure to comply with the statutory regulations. The Respondent is in the same position as had the consultation requirements been carried out"*

## Determination

20. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.

21. The Applicant says that the "spirit" of the regulations was satisfied and that the Respondent could have nominated a contractor if she had wished to.

22. Whether the Respondent was aware of the regulations is not however the issue. By the use of the wrong form the applicant failed to invite the nomination of a contractor thus infringing the lessee's rights.

23. The test the Tribunal must apply is whether this loss of rights has caused the lessee prejudice by not consulting fully in accordance with S.20.

24. The determination of this application solely relates to dispensing with consultation and specifically makes no determination as to whether the amounts charged are reasonable or properly demanded. The only question I must ask is whether, if consultations had been correctly carried out, the outcome would have been any different.

25. A previous Tribunal has already determined that the lease does not require the landlord to consult the lessee regarding the colour to be used and the loss of consultation cannot therefore cause the lessee prejudice.

26. No evidence has been put forward suggesting that by obtaining a quotation from a third (lessee nominated) contractor a lower price could be obtained hence there is no evidence of prejudice.

27. In the absence of evidence, the Tribunal finds that the lessee has not demonstrated the type of prejudice referred to in the Daejan case referred to above save that it was reasonable for her to consult a solicitor in respect of the consultation notice received.

28. Mrs Costin refers to incurring £1,500 in legal costs but does not exhibit the invoices or provide details as to when and why these costs were incurred. In assessing a reasonable cost involved for the recipient of a section 20 notice to seek the advice as to its significance the Tribunal considers that little time would have been taken to determine the notice's invalidity. The cost of such advice from a solicitor should not therefore exceed £350.00

**29. In view of the above the Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the major works, including exterior redecoration carried out in 2017 subject to the payment of £350 to Mrs Costin.**

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

D Banfield FRICS
18 March 2019

1. 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.

2. 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.

3. 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.