



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

Case Reference : CHI/ 40UB/LDC/2020/0026

Property : 27 High Street, Glastonbury, Somerset BA6 9DR

Applicant : Greywall Estates Limited

Representative :

Respondent : Gary Woodhouse (27D)

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 : 22 April 2020

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the roof carried out by Avalon Property Services.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable and in particular it makes no determination as to whether the cost of the ceiling repairs is recoverable by way of service charge.

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. The Applicant explains that the lessee of Flat 27B contacted them regarding a leaking roof in August 2019 following which they obtained 3 quotations one of which was from a company suggested by the lessee. An insurance claim was investigated but proved unavailable. The work was urgent and an order was therefore placed with Avalon Property Services and completed on 9 February 2020.
3. The Tribunal made Directions on 18 March 2020 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. The Tribunal sent a copy of the Directions to the parties notified as Respondents together with a form for the Respondents to indicate whether they agreed with or objected to the application.
4. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
5. Due to the current closure of the Tribunal offices due to the Covid 19 emergency it is not possible to establish whether responses were received at the Tribunal offices and references to such responses refers to those copies which have been included within the Applicant's bundle.
6. No forms have been received, however there is correspondence from Stephen Rogers the Lessee of the ground floor retail unit who considers the Applicant should pay all of the costs and from Gary Woodhouse the Lessee of 27D who considers that the costs should be covered by insurance and should not include repairs to a ceiling in a flat.
7. The Landlord and Tenant Act 1985 is restricted to residential property and the protection provided by Section 20 is not therefore available to lessees of commercial premises.
8. The shop unit is clearly commercial and the Lessee cannot therefore be a party to these proceedings.
9. With regard to 27D the position is less clear. The Applicant refers to it as an "office unit" whereas Mr Woodhouse refers to a "flat". Whilst the lease under which the property is held is on commercial terms its Authorised Use is "for residential purposes or such other use as the Landlord may consent to". It is also noted that the insurance policy schedule refers to "Shops with Flats Above"

10. No other evidence has been provided by either party and on the balance of probability I accept that the Lessee of 27D does have the protection of S.20 and in view of his objection remains as a Respondent.
11. All other lessees have been removed as Respondents as referred to above.
12. No requests for an oral hearing have been received and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal Procedural Rules 2013.
- 13. The only issue for the Tribunal is whether 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

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

20ZA Consultation requirements:

- a. 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.
15. 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
 - i. 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.
 - ii. 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.
 - iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.

- iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- v. 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).
- vi. 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.
- vii. 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.
- viii. 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.
- ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

- 16. In accordance with Directions a determination bundle has been provided by the Applicant. In their statement of case they set out the time line of events leading to the repairs the subject of this application. Photographs of both the exterior of the roof and its underside show the need for repairs to prevent further damage to the interior.
- 17. The objection from Mr Woodhouse relates mainly as to whether the cost of replacing the ceiling should be included and the lack of communication with the lessees.
- 18. The Applicant has objected to the inclusion of Mr Woodhouse's statement as it was not received until 10 April 2020 which he considered was after the Tribunal's specified date. However paragraph 7 of Directions states that the statement must be **sent** by 8 April 2020 and as such its receipt on 10 April complies.

19. Mr Roger's correspondence has not been considered as referred to above.

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 only issue for the Tribunal is whether the lack of consultation has prejudiced the residential lessees in that if it had taken place the landlord may have done something different when arranging for the repairs to be carried out.
22. It is clear that the works to prevent further water damage should be carried out without the delay that Section 20 consultation inevitably involves. Quotations were sought and alternative contractors considered.
23. No evidence of relevant prejudice as considered in the Daejan case referred to above has been identified.
- 24. In view of the above the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the repairs to the roof carried out by Avalon Property Services.**
- 25. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable and in particular it makes no determination as to whether the cost of the ceiling repairs is recoverable by way of service charge.**

D Banfield FRICS

22 April 2020

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.