

CHI/21UD/LDC/2007/0028

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD
AND TENANT ACT 1985: SECTION 20ZA, AS AMENDED**

Address: 1 St Clements Place, St Leonards on Sea, East
Sussex, TN38 0DT

Applicant: Miss A Kinnis

Respondent: Miss C Hytner

Application: 15 October 2007

Inspection: 24 October 2007

Determination 24 October 2007

Appearances:

Landlord

Not applicable

Tenants

Not applicable

Members of the Tribunal: Mr I Mohabir LLB (Hons)
Mr N Cleverton FRICS
Mr T Wakelin

IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CHI/21UD/LDC/2007/0028

**IN THE MATTER OF SECTION 20ZA OF THE LANDLORD & TENANT
ACT 1985**

**AND IN THE MATTER OF 1 ST CLEMENTS PLACE, ST LEONARDS ON
SEA, EAST SUSSEX, TN38 0DT**

BETWEEN:

MISS ALISON KINNIS

Applicant

-and-

MISS CATHERINE HYTNER

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicant pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements of s.20 of the Act. The proposed works in relation to which the application is made is the re-rendering of the east elevation wall of the subject property ("the proposed work"). It is a matter of common ground that the proposed work falls within the definition of "qualifying works" within the meaning of s.20 and s.20ZA. Therefore, the Applicant, as landlord, is required to consult with the Respondent, as lessee. The estimated cost of the work is placed at £9,935 excluding VAT.

2. The Applicant is the freeholder of the subject property and occupies Flat 1. The Respondent is the only other lessee and occupies Flat 1A. The Tribunal was not provided with a copy of the Respondent's lease. It was only provided with a copy of the lease in relation to Flat 1. The Tribunal assumes that the Respondent's lease is granted in similar terms.
3. It is not necessary to set out the details of the relevant lease terms, as the Tribunal is not concerned with the estimated cost of the proposed work in this application. The Tribunal need only be satisfied that the proposed work are qualifying works (see above), fall within the landlord's repairing obligations under the leases and that the cost is payable by a tenant as a service charge contribution under the terms of his or her lease.
4. The proposed work, in this instance, appear to fall within the lessor's repairing obligations set out at clause 5(4) of the lease of Flat 1. The Fourth Schedule of the lease provides that any costs and expenses incurred by the lessor pursuant to clause 5(4) is recoverable from the lessee as a service charge contribution. By clause 4(2)(a) of the lease, the lessee covenants to pay a service charge contribution calculated in the manner set out therein.
5. On 28 August 2007, the Applicant obtained an estimate of £9,935 excluding VAT from Westoaks, general builders and decorators, for the proposed work. This was provided to the Respondent, who by a letter dated 1 September 2007, purports to agree to the proposed work being carried out.
6. On 15 October 2007, the Applicant made this application to the Tribunal to dispense with the relevant consultation requirements before the proposed work could commence. In the application, the stated reason for seeking to do so was that unless the work was carried out promptly, the building would be liable to water ingress and damp. This would in turn undermine the structure and fabric of the building.

Inspection

7. The Tribunal inspected the subject property on 24 October 2007. The property was an end of terrace property converted into two flats fully rendered on the two elevations the Tribunal was able to inspect . The property was constructed around 1850.

Decision

8. The Tribunal's determination also took place on 24 October 2007. It was based entirely on the documentary evidence before it. There was no oral hearing and the Tribunal heard no evidence from the parties.
9. When determining an application of this kind, s.20ZA of the Act affords the Tribunal with a discretion to dispense with the consultation requirements of s.20 where in the circumstances it is reasonable to do so. The discretion is, therefore, a wide one.
10. In the instant case, the Tribunal does grant the application to dispense with the requirement on the part of the Applicant to consult with the Respondent in accordance with s.20 of the Act regarding the proposed work. It does so for the following reasons:
 - (a) that at all material times, the Respondent has been informed by the Applicant of the requirement, extent and estimated cost of the proposed work.
 - (b) significantly, by a letter dated 1 September 2007, the Respondent purports to agree to having the work carried out in accordance with the estimate obtained and further agrees to pay a service charge contribution for it. An inference to be drawn from this latter is that, by consenting to the proposed work and estimated cost, the Respondent

also accepts that the work needs to be carried out sooner rather than later to prevent water and damp ingress to the building.

11. The Tribunal should make it clear to the parties that, in granting this application, it does not make a finding that the estimated cost of the proposed work is reasonable. The application is only made in relation to the requirement on the part of the Applicant to consult with the Respondent and nothing else. In the event that the Respondent subsequently objects to the actual cost of the work, when known, she may seek a determination from the Tribunal as to reasonableness.

Dated the 21 day of November 2007

CHAIRMAN.....



Mr I Mohabir LLB (Hons)