3012

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

In the matter of section 20 and section 20ZA of the Landlord & Tenant Act 1985 (as amended) ("the Act")

Case Number: CHI/24UD/LDC/2006/0027

Re: 11-12A The Drive, West End, Eastleigh, Hampshire ("the property")

Between:

Atlantic Housing Limited — Applicant

and

Mrs L J Rood, Mrs K M Rawlins and Mr R Young — Respondents

The matter was dealt with on short notice following consideration of the papers, an inspection and a short hearing on 21st December 2006, but in view of the fact that the work had by then been carried out the Tribunal directed that the Respondent leaseholders may submit written representations if they so wished by 15th January 2007

Decision issued 26 January 2007

Tribunal:

Mr R P Long (Chairman)
Mr D M Nesbit JP FRICS FCIArb

Decision

1. The Applicant, Atlantic Housing Limited, applied to the Tribunal under section 20ZA of the Act for a determination to dispense with the remaining consultation requirements imposed by section 20 of the Act and by the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the regulations") in respect of works that it wished to carry out at the property.

2. The Tribunal has determined for the reasons that appear below that such dispensation may be granted.

Reasons

3. In February 2006, the leaseholder of 11a The Drive, Mrs Rawlins, noticed that the wall in the hall of her maisonette had become wet following rain. She took steps to deal with the matter within her maisonette, and reported the matter to the Applicant, which agreed that work would be necessary to deal with the water penetration. There followed a period of unusually dry weather, and little more seems to have happened until further rain fell in late May, and Mrs Rawlins reported the ingress of water once more. Inspections were carried out, and it was determined that the roofing felt had perished, and required to be replaced.

4. When the Tribunal inspected the property on 21st December 2006 in the presence of Mrs Rawlins and of Messrs Jones and Clarke from the Applicant, it saw that the work of stripping the roof and replacement of the roofing felt with Tycho lining had already been carried out. It was told that the work had just been completed and had become very urgent because the water penetration had become very severe in the months of October and November when the prolonged dry summer had come to an end.

5. Short notice of the hearing had been given, the urgency of dealing with the water ingress having been the reason for doing so. The Tribunal was able to speak briefly to each of the leaseholders in the presence of Messrs Jones and Clarke during its inspection. It understood from them that their primary concern was not with the fact of the need to carry out the work, which they accepted, but with its cost.

6. A short hearing was subsequently held at Eastleigh that was attended by Messrs Jones & Clarke. They readily accepted the Tribunal's suggestion that a suitable period might be given to the leaseholders to make any written representations that they wished in case the combination of the short notice and the fact that the immediate pre Christmas period can sometimes present problems had precluded them from attending the hearing and making any comments there that they might wish. Accordingly the Tribunal wrote to the leaseholders inviting comments in writing by 15th January.

7. Mrs Rood wrote in response to that invitation. She did not express opposition to the application before the Tribunal, but said that she considered the fact that

it had taken the landlord nine months to repair the roof after the rain penetration had first been reported to be evidence of maladministration by the landlord. She was concerned that there may have been water accumulation above her ceiling as a result of the water ingress. These are not matters that fall within the tribunal's considerations in the case of an application of the sort that is presently before it. That is because it is at present being asked simply whether or not it will grant dispensation from the procedural requirements of Section 20 of the Act in respect of the repair work to the roof. However we have set out a summary of Mrs Rood's concerns so that they come to the attention of the landlord, and it could be that the points that she makes might be of greater relevance in the case of other applications that may be made to the tribunal in the future.

8. The Tribunal understands that this is a case in which public notice of the works was not required. Accordingly, the appropriate consultation procedure to be adopted was that under Part 2 of Schedule 4 of the regulations. The Applicant wrote to each of the leaseholders on 3 August 2006 to give notice of intention to carry out works to the roof, as paragraph 8 of that part of the Schedule requires. By 2nd September 2006, the closing date in the notice, the leaseholders had all replied to say that none of them wanted to nominate a contractor to carryout the works. The usual tendering procedure followed. The work was then carried out during an available window when its urgency became particularly apparent towards the end of the year.

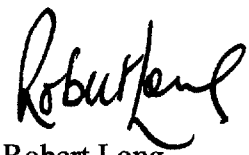
9. The Applicant has not responded very quickly to Mrs Rawlins' concerns. It was made aware of them in February, and caused an inspection to be made, so that it would have known by March or April that the work needed to be done. It might have been expected to put the appropriate consultation in hand then in order to try to get the work done in the summer when the weather is more suitable for roofing work, but it did not. It was apparently reminded by a further complaint from Mrs Rawlins when there was some rain in May, but does not seem to have taken any material steps in the matter until the initial notice was given on 3rd August.

10. The Tribunal reminded itself however that this is not a punitive jurisdiction, although the comparative inaction of a landlord might be an element that it may properly take into account in deciding whether, in all of the circumstances is it appropriate to grant the waiver sought. It bore in mind too that the past summer was an unusually dry one, so that matters of water penetration might possibly have been rather more easily overlooked. It was somewhat surprised, having been pressed to deal with the matter as one of urgency, and having dealt with it accordingly, to find on arrival that the work had been done and that there really was no urgency at all.

11. However, it was apparent to the Tribunal that the work had been necessary. The remaining strips of felt that had not been properly cleared from Mrs Rawlins' loft space showed how perished the original material had become. The leaseholders' concerns expressed during the inspection were with the cost of the work and not with the need for it. That aspect of course is not before the Tribunal for the purpose of the present application which deals merely with

the grant of a waiver from the requirements mentioned in paragraph 1 above. If any issue arises about the reasonableness of the cost or the adequacy of the work carried out it is of course open to the leaseholders, or any one or more of them, to make an application to the Tribunal to deal with those aspects under section 27A of the Act. This decision does not express any view about the cost aspect or the standard of the work.

12. It was apparent too that by the time that the work had become urgent it would no longer have been reasonable to go through the procedure laid down by section 20 of the Act and by the regulations. It was satisfied that the initial notice had made the leaseholders aware of the nature of the work required and that at that time they had raised no objection concerning the need for the work envisaged. It would be disproportionate in the Tribunal's judgement to deprive the Applicant of recovering the proper cost of the work in such manner as the leases may provide and to limit it to the sum of £250 per flat as the Act would otherwise require. The Tribunal accordingly determined that it should grant the Applicant the dispensation sought so that it need not now go through the remainder of the procedures otherwise required by the Act and by the regulations.



Robert Long
Chairman
24th January 2007