

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**Southern Rent Assessment Panel
Leasehold Valuation Tribunal**

Section 20ZA, Landlord and Tenant Act 1985

Case Number: CHI/45UE/LDC/2009/0022
Property: 17 & 18 Lancing Close, Crawley RH10 5NN
Applicant: Crawley Borough Council
Respondents: (1) Mr.B.T.Wines and Mrs.I.D.Wines
(2) Miss S.M.Graham

Appearances

For the Applicant: Mr.M.Kendall, principal property lawyer of the Applicant's
Legal and Democratic Services Division.
Witness for the Applicant: Mr Langford, of the Applicant's Surveying Division
For the Respondents: The Respondents did not appear.
Date of inspection: 30th July 2009
Date of Hearing: 30th July 2009
Date of Decision: (Delivered orally at the hearing on 30th July 2009 and recorded
24th August 2009)

Members of the Tribunal

C.H.Harrison Chairman
R.Potter FRICS

Background and Law

1. The Applicant, Crawley Borough Council, is the landlord of 17 and 18 Lancing Close, Crawley which are, respectively, the ground and first floor flats comprising a post war, two storey building.
2. Number 17 is let on a lease, for a term of 125 years from 1982, dated 27th March 2000 made between (1) the Applicant and (2) the first Respondents in this case.
3. Number 18 is let on a lease, for a term of 125 years from 1982, dated 2nd March 1982 made between (1) the Applicant and (2) Alfred Ferguson and another. The lease is now owned by Miss S.M.Graham who is the second Respondent in this case.

4. The Applicant is obliged, by paragraph 1 of the eighth schedule to the leases:

to keep in good and substantial repair and condition (and whenever necessary rebuild and reinstate and renew and replace all worn or damaged parts) ... the main structure of the Property [meaning numbers 17 and 18] including all foundations thereof all exterior and all party walls and structures and including all roofs and chimneys and every part of the Property above the level of the top floor ceilings.

5. Each of the first and second Respondents is obliged, by clause 3 of their respective leases, to pay one half of the landlord's expenditure on, among other costs, complying with the obligation referred to in paragraph 4 above. In fact, the due proportion intended to be specified in clause 3(B) of the lease of number 18 has been left, no doubt unintentionally, blank. However, the application to the tribunal states, and the tribunal has no reason to doubt, that number 18's proportion is one half which is in line with the other one half which is expressly referred to in the lease of number 17. Those proportional payments by the first and second Respondents are service charges for the purposes of sections 18 to 30 of the Landlord and Tenant Act 1985.
6. The effect of section 20 of the 1985 Act in the context of this case is that each of the first and second Respondents' respective service charge contribution, towards the cost of any work to the property which exceeds £500, is limited to £250 unless certain consultation requirements have been either complied with by the Applicant or dispensed with by (or on appeal from) a leasehold valuation tribunal.
7. Section 20ZA of the 1985 Act enables a leasehold valuation tribunal to dispense with the need to comply with all or any of the section 20 consultation requirements, but only if it is satisfied that it is reasonable to dispense with them. A common reason which often justifies dispensation is that there is no time for the consultation procedures, which generally take between two and three months, because the work needs to be done urgently.
8. On 21st July 2009, the Applicant applied to the tribunal for its determination to dispense with the need to comply with the section 20 consultation requirements in respect of intended work which involves *repairs to the chimney flashing and erection of scaffold to the rear elevation and renew lead flashing to chimney stack and the relay loose tiles to [the roof] valley*. The application stated that rainwater penetration is occurring around the chimney stack and that the work needs to be completed as soon as possible. The application also pointed out that each of the first and second Respondents respectively would be required to pay half the cost of the work.

Inspection

9. The tribunal inspected the property during the morning of 30th July 2009 when the weather was dry. The inspection was made in the presence of Mr Kendall, principal property lawyer of the Applicant's Legal and Democratic Services Division, and Mr Langford, of the Applicant's Surveying Division. The first Respondents were not present but the second Respondent was. The chimney stack is located towards the rear corner elevation of the property. A glass conservatory is located beneath. The tribunal inspected the interior of the number 18 first floor flat. There was slight bubbling of plaster just below the ceiling line on the chimney breast. The tribunal inspected the chimney stack within the roof void and saw evidence of water ingress on the problem side and minor staining to the adjacent timbers. The tribunal has no reason to doubt the Applicant's opinion that water penetration is occurring through defective flashings and/or brickwork joints.

Evidence

10. Mr Langford gave evidence on the Applicant's behalf. He said he had first become aware of the water penetration in April 2009 when he inspected the property. Mr Langford stated that he had sought, at that time, two quotations for appropriate repair work but neither contractor gave a quotation. Nevertheless, a sub-contractor engaged by one of the two contractors advised that the valley gutters needed renewing, an opinion not shared, Mr Langford reported, by the second Respondent or by himself.
11. The Applicant produced a copy of Mr Langford's letter to the second Respondent dated 12th June 2009, drawing to her attention the problems he had experienced in obtaining quotations, his reluctance to proceed without them and his willingness to discuss the matter. The tribunal was not shown a similar letter to the first Respondents.
12. Mr Langford, whom the tribunal found a helpful and constructive witness, anticipated that the cost of appropriate repairs might possibly be contained within the region of about £1,500 excluding VAT although he could not bind the Applicant to any amount in the absence of formal quotations which, despite the difficulties of obtaining them earlier, he considered it ought to prove possible to obtain. He also described the need for repair as not stretchingly urgent, as he put it.

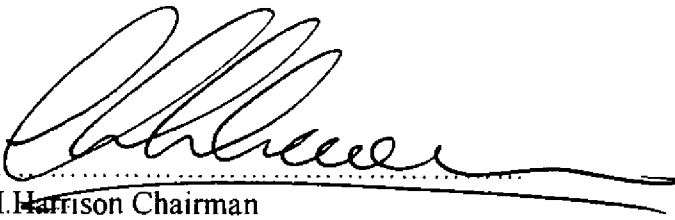
The Tribunal's determination

13. What the tribunal has to determine is whether it is reasonable to dispense with the consultation requirements, and the reasonableness of dispensation is to be judged in the light of the purpose for which the consultation requirements were imposed. The material consideration is most likely to be the degree of prejudice that would be suffered by the Respondents in respect of their ability to respond to the consultation. That is because the primary purpose of the statutory consultation is to give some measure of protection tenants.
14. The tribunal finds that there is no material risk of prejudice to the Respondents in relation to the Applicant's intention to carry out what the tribunal considers is the fairly and reasonably limited scope of work proposed in the application to the tribunal and repeated in paragraph 8 above. However, having regard to the Applicant's evidence concerning

future quotations, the tribunal considers it would not be reasonable to dispense with the need to obtain, and to consult about, them. The tribunal nevertheless recognises that the Applicant, through Mr Langford, may be able to agree matters with the Respondents.

15. In those circumstances (and as the tribunal stated at the end of the hearing), the tribunal determines that it would be reasonable to dispense with all the section 20 consultation requirements in respect of the works referred to in this decision, apart from the duty to obtain estimates and the Applicant's duty to have regard to any observations made by the first and/or second Respondents to the estimates. Consequently:
- a) the tribunal determines that it is reasonable to dispense with all the consultation requirements set out in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003, except only the consultation requirements set out in the undermentioned paragraphs of that part of that schedule, which requirements shall continue to apply;
 - b) those paragraphs are:
 - i) paragraph 11 (5) to (7) inclusive;
 - ii) paragraph 11 (9) to (11) inclusive; and
 - iii) paragraph 12.

Dated 24th August 2009


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C.H. Harrison Chairman

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