

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



S.20ZA & S.20C Landlord & Tenant Act 1985

**DECISION & REASONS**

**Case Number:** CHI/21ML/LDC/2009/0039

**Property:** Dorset Court  
211/213 Kingsway  
HOVE  
BN3 4FD

**Applicant:** Dorset Court (HOVE) Ltd

**Represented by:** Mr D Hurst and Mr D Wheeler of Austin Rees

**Respondent:** Lessees at the property (not represented).

**In Attendance:** Various Lessees  
Mr Wyatt of Heatcraft heating engineers

**Date of Application:** 14 December 2009

**Date of Hearing:** 22 December 2009

**Date of Oral Decision:** 22 December 2009

**Date of These Reasons** 14 January 2010

**Tribunal Members:** B H R Simms FRICS MCI Arb (Chairman)  
Mr T W Sennett MA MCIEH

**CONFIRMATION OF DECISION**

1. The Tribunal determines to dispense with all or any of the consultation requirements in relation to the qualifying works, the subject of this application described as the replacement of a defective heating boiler with associated plumbing and installation work.

## **REASONS**

### **INTRODUCTION**

2. This is an application by Managing Agents, Austin Rees, for the Landlord, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works.

### **THE LAW**

3. The statutory provisions primarily relevant to this application are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
4. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
5. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
6. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
7. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements)(England) Regulations 2003, SI2003/1987. These requirements include amongst other things a formal notice procedure obtaining complete estimates and/or the provision whereby a lessee may make comments about the work and nominate a contractor.

8. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

## **THE LEASE**

9. The Tribunal was provided with a copy of lease for flat 37 and it expected that all leases are in a similar form.
10. Although the Tribunal had regard to the full lease, little turned on its interpretation during the course of representations made prior to and during the hearing.
11. There are provisions for the landlord to keep the property in good repair and decoration and for the costs to be recovered by way of a service charge. The landlord also provides heating and hot water from a central system served by two boilers in the basement.
12. There were no matters raised by any of the parties in respect of the interpretation of the lease.

## **BACKGROUND**

13. On 15 December 2009 the Tribunal issued directions for the conduct of the case. In view of the urgency expressed in the application, the matter was listed to be dealt with on the fast track and a hearing date set for 22 December 2009.
14. Various matters including the preparation of a bundle of documents and a timetable for the presentation of representations and statements was set out in the Directions.
15. It was allowed that any Respondent should attend the hearing and if they wished to produce any documents then these should be brought with them to the hearing.

16. Following the issue of the directions, various documents including estimates were produced at the hearing.

## **INSPECTION**

17. The Tribunal members inspected the property prior to the hearing on 22 December 2009 and limited its inspection to the boiler room. Mr Hurst and Mr Wheeler were present from Austin Rees and Mr Wyatt of Heatcraft also attended.
18. The Chairman explained that the purpose of the visit was to identify the subject matter that would be referred to at the hearing later.
19. There are two boilers which together supply hot water and central heating to the block. One of the boilers had been stripped down and was not in use. There is also associated pipework, valves and tanks.
20. The property comprises a purpose-built block of 40 flats located just off the seafront at Hove.

## **HEARING**

21. The hearing commenced at about 10.30 as the Tribunal had been supplied with some papers which it had to peruse. Some lessees were also present but took no part in the principal proceedings.
22. The Chairman identified the details of the application and indicated the documents that were available to the Tribunal.

## **EVIDENCE**

### **The Applicant's Case**

23. The case stated in the application related to the urgency of replacing one of the two boilers at the property which had failed.
24. Mr Hurst explained that on 11 December 2009 one of the boilers failed. The heating engineers had examined the unit and reported that the only solution was to replace the boiler.

25. Estimates had been obtained and a S.20 Initial Notice had been issued. The lessees were aware of the problem and the likely cost of the solution. The Applicant freeholder had emailed Austin Rees to indicate that it would loan the service charge account £10,000 to allow the boiler replacement and associated work to proceed without delay.
26. The work needed to be undertaken urgently as the remaining boiler was now being overworked and this increased the likelihood of it failing also. If the remaining boiler failed the flats would be without heating and hot water.
27. Mr Wyatt for the heating engineers clarified issues raised by the Tribunal members. He stated that the boiler was probably installed when the block was built and that its failure involved the heat exchanger which was leaking water. As the boiler is obsolete spare parts are not available. The burner and valves can be re-used as far as possible.

### **The Respondent's Case**

28. The lessees were not represented but some were present. No objections to granting dispensation were raised.

### **CONSIDERATION**

29. From the Tribunal's inspection of the property it was clear that one of the boilers had failed. The Applicant had explained the need for urgency so that the occupiers were not without heating and hot water in the middle of winter. Funding was available for the work.
30. The S.20 consultation process would take at least 2 – 3 months and there is a strong possibility that the remaining boiler might fail in that time with no stand-by arrangements.
31. The Lessees were aware of the need for the work and the likely cost and although the matter had been fast tracked there had been time for objections to have been raised and none had been received.

32. Merely for the sake of clarification the Tribunal reminds the parties that either the landlord or any lessee may make an application to the Tribunal under section 27A of the 1985 Act for a determination as to the reasonableness of service charges either before or after any proposed works. The decision given in this document does not prevent any future application under section 27A of the 1985 Act.

Dated 14 January 2010

Signed

Brandon H R Simms FRICS MCI Arb  
Chairman