

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Section 20ZA of The Landlord and Tenant Act 1985 (as amended)
(Application to dispense with consultation requirements)**

Case Number:	CHI/00ML/LDC/2010/0003
Property:	14 Newton Road, Hove, East Sussex, BN3 6AB
Applicants :	M B Carter Investments
Respondents:	C Rutherford and A El- Alami
Date of Determination:	16th February 2010
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr R Wilkey FRICS (Valuer Member) Jan Morris Lay member
Date of the Tribunal's Decision:	26th February 2010

BACKGROUND

1. This is an application made by the applicants pursuant to section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements contained in Section 20 of the Act.
2. The work covered by this application is the repair of defective flashings at the junction of the dormer and the main roof covering; the repair of cracked rendering to the fire wall and the repair of the felt roof to the front bay and the flat roof to the dormer if this proves necessary on proper inspection ("The Works").
3. On 25th January 2010 the tribunal gave directions that if either respondent objected to the application then they must attend the hearing. The directions also provided for the applicants to file a statement of case.
4. Charlotte Rutherford, one of the respondents, had notified the tribunal in writing that she supported the application. The tribunal received no communication from A. El-Alami, the other respondent.
5. The applicant failed to file a written statement of case and none of the parties attended the hearing.

6. Accordingly the tribunal determined the matter on the basis of the written statements contained in the application and on the basis that one of the two respondents agreed the application and that the second respondent neither endorsed nor contested the application.

INSPECTION

7. The tribunal inspected the subject property on the day of the hearing. 14 Newton Road is a mid-terrace, three-storey building built circa 1900 of brick construction with a pitched concrete tiled roof. In recent years it has been converted into two self-contained flats. The tribunal was granted access to the first-floor flat and its internal inspection revealed water ingress on the lounge ceiling with large visible stains. External inspection from the bedroom window revealed the lead flashings below the windowsill to be defective. The detail where the flat roof meets the main roof is poor. The tribunal noted defective flashings at the junction of the dormer window and the main roof covering and also noted cracked and defective rendering to the firewall. The tribunal was not able to ascertain whether the roof to the dormer required repair.

THE LAW

8. Section 20 of the Act limits the service charge contribution that lessees have to make towards "qualifying works" if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal.
9. Section 20ZA (2) of the Act defines "qualifying works" as works on a building or any other premises.
10. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 1987 ("the Regulations") provide that if a lessee has to contribute more than £250 towards any qualifying works then if the landlord wishes to collect the entire costs of those works the landlord must either carry out consultation in accordance with Section 20 of the Act before those works are commenced, or obtain an order from the tribunal dispensing with the consultation requirements.
11. The consultation requirements are set out in the Regulations and it is not proposed to set these out here.
12. Under section 20ZA (1) of the Act, the tribunal is given discretion to dispense with the consultation requirements. This section provides:

Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works or qualified long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with those requirements.
13. The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements? The decided cases have established that it is not necessarily the conduct of the landlord that has to be reasonable rather it is the outcome of making the order which has to be reasonable taking into account all the circumstances of the case.

THE EVIDENCE

14. The evidence submitted to the tribunal consisted of the following documents:

- i. The application.
- ii. Surveyors report from Curry and Partners dated 4th January 2010
- iii. Estimate from Lansdowne
- iv. Estimate from Hill Bros Ltd.
- v. Estimate from C.R. Clark building Contractor.
- vi. Copy lease.

CONSIDERATION

15. In the opinion of the tribunal "the Works" do constitute "qualifying works" within the meaning of the Act. As the contribution required from the respondents pursuant to the service charge provisions of their leases will exceed the threshold of £250, there is an obligation on the applicant under Regulation 6 to consult in accordance with the procedures set out in the Regulations.

16. The evidence put before us establishes: -

- (i) There is clear evidence of water ingress to the lounge ceiling of the first floor flat.
- (ii) The cause of the water ingress is very likely to be the defective flashings at the junction of the dormer and the main roof covering, coupled with the cracked and defective rendering to the firewall.
- (iii) Whilst not of an urgent nature, repairs to the bay roof window can be conveniently carried out at the same time with costs savings, bearing in mind the need for scaffolding to rectify the urgent works.
- (iv) Urgent repair is necessary to avoid further damage to the first floor flat.

17. The tribunal first considered the terms of the lease and in particular the repairing covenants contained therein. The lease places an obligation on the landlord to maintain the exterior of the property subject to receiving contributions from each of the lessees. The tribunal was thus satisfied that the applicants are obliged to carry out the Works and the respondents are obliged to contribute towards the cost.

18. In the applicants' statement of case it is contended that the Works, or at least part of them, are of an urgent nature and the delay that will result if the statutory consultation procedure must be carried out will result in further damage to the first floor ceiling and internal decorations.

19. The applicants seek dispensation on the grounds that further delay is not in the interests of the respondents and that dispensation is reasonable in all the circumstances of the case.

20. The tribunal directed its attention as to how the water ingress might have occurred. It concluded that the situation is likely to have arisen because of a gradual deterioration over the years. There was no evidence before the tribunal of a failure on the part of the applicants to carry out timely repair work to the building.

THE DECISION

21. The tribunal is satisfied that the water ingress at the property is an incident which could not have reasonably been foreseen. It is aware from its collective knowledge and experience that properties of this type and age are prone to such incidents. In the tribunals' experience such outbreaks must be dealt with speedily and comprehensively rather than on a piecemeal basis because of the danger of more extensive damage and even the possibility of an attack of dry rot, which can be very expensive to rectify.
22. The tribunal noted that the applicants have obtained a report from a surveyor as to the cause and extent of the damage and they have also obtained three estimates from well-known local contactors to carry out the work recommended by the report. The tribunal takes no issue with the content of the report and neither apparently do the respondents.
23. The tribunal reminded itself that neither respondent contests the application and indeed one supports it. Secondly, and of particular importance, there is no evidence to suggest that the respondents will suffer prejudice as a result of the failure to consult. The tribunal also considers that the scope of work is clear and self-contained.
24. Taking all the circumstances into account and for the reasons stated above, the tribunal is satisfied that it is fair and reasonable in all the circumstances for it to grant dispensation from all the requirements of section 20 (1) of the Act in respect of all the Works.
25. The Tribunal makes it clear that this dispensation relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with section 20 of the Act. It does not prevent an application being made by the respondents under section 27A of the Act to deal with the resultant service charges. It simply removes the cap on the recoverable service charges that section 20 would otherwise have placed upon them.

Signed _____

RTA Wilson LLB

Dated 26th February 2010