

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



Re: 53 Salterton Road Exmouth EX8 2EQ (the "Premises")

Application under Section 20ZA Landlord and Tenant Act 1985

(Application for dispensation from consultation requirements)

DECISION AND REASONS

Case Number: CHI/18UB/LDC/2010/0016

Applicant: Sarum Properties Limited.

Respondent: Mr and Mrs Stewart (Flat 3)
Mr and Mrs Hough (Flat 1)
Mr and Mrs Fulcher (Flat 2)
Mr T. Carter (Flat 4)

Appearances: Christine Watson Regional Manager Remus
Management Limited
Fiona Barnett Head of Property Management Remus
Management Limited
Mr Hough
Mr Fulcher
Mrs Stewart

Tribunal Members: Ms C A Rai LLB (Solicitor) Chairman
Mr W Gater FRICS IRRV (Chartered Surveyor) Valuer
Member

Hearing Date: 11th June 2010

Decision Date: 28th June 2010

DECISION

1. The Tribunal is asked to exercise its jurisdiction under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") to dispense with the consultation requirements of section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations").
2. The Tribunal grants the Applicant dispensation from compliance with the consultation requirements in relation to the repair works to the roof of the first floor gable window situate to the left side of the Premises (viewed from Salterton Road) and referred to in the estimate provided by DJH Roofing Ltd dated 10th June 2010.
3. The full reasons for the decision of the Tribunal are set out below.

The Application and the proceedings

4. The application dated the 28th May 2010 was made, by Remus Property Management Limited ("Remus"), managing agents, on behalf of the freeholder, named in the application as Sarum Properties Limited, by Christine Watson who, together with Fiona Barnett, represented the Applicant at the Hearing.
5. Directions were issued by Donald Agnew, a member of the tribunal appointed by the Lord Chancellor on the 3rd June 2010. Following the decision of the Tribunal office to dispense with the usual 21 day notice period, on account of the apparently urgent nature of the proposed works, a hearing, ("the Hearing") took place on the 11th June 2010 at the Exmouth Town Council Town Hall.

The Inspection

6. Prior to the Hearing the Tribunal members inspected the exterior of the Premises gaining access through what appeared to be the garden of Flat 1. They were met by Mr Hough who attempted, albeit unsuccessfully, to enable them to gain access to Flat 3. On their way out via a path situate on the right hand side of the Premises and which provided pedestrian access to and from Salterton Road to the other three flats, they met Mr Fulcher. No-one representing the Applicant was in attendance at the Premises at the same

time as the Tribunal members. However at the Hearing Christine Watson told the Tribunal that she and Fiona Barnett had inspected the Premises prior to the Hearing, but that they had arrived later than the appointed time.

7. The building comprising the Premises is a substantial building which fronts Salterton Road. The left hand bay gable roof could be seen from the front of the building and was most clearly viewed from the opposite side of Salterton Road, but it was not possible for the Tribunal to examine the condition of the gable roof. As the Tribunal did not view the interior of Flat 3 they were unable to visually inspect any damage to the internal decor resulting from the alleged deficiencies in the gable roof which had prompted the Applicant to make this application.

The Hearing

8. Christine Watson presented the Applicant's case. She had sent the tribunal one estimate from DJH Roofing Ltd dated 10th June 2010, (the DJH Estimate), for the cost of repairs to the gable roof, on the day before the Hearing and she produced a second estimate from Rich Turner of RGT Plumbing and Property Management dated 7th June 2010 at the Hearing. Copies were given to the three Respondents present at the Hearing, prior to its commencement. Each confirmed that they had also received a copy of the DJH Estimate.
9. The Respondents did not understand the reason that the application had been made. Mr Hough said that no similar application had ever been made before by the current freeholder. Furthermore they did not now believe that the Applicant owned the freehold. Christine Watson confirmed that the reference in the application to Sarum Properties Limited as being the freeholder was an error; in fact the freeholder was CA Church Limited. She apologised to the Tribunal and the Respondent for the error.
10. Mr Hough said with the agreement of those Respondents who were present that they would not object to the application merely because it was made in the name of the wrong Applicant and not the freeholder. The Respondents had only discovered the actual identity of the freeholder whilst investigating the possible purchase of the freehold, and in subsequently making a Right to

Manage application. The Applicant had not objected to the wrong freeholder being named in that application because apparently the invoices for ground rent were issued by Sarum Properties Limited who managed the Premises as part of a portfolio of properties owned by that company.

11. The Respondents asked for an explanation as to why the application had been made. It was explained by the Applicant that the freeholder could not recover the costs of works to the Premises which would or might have exceeded the limit set out in the Regulations, without either complying with the consultation procedure or obtaining dispensation from the Tribunal. A consultation process with regard to roof repairs generally, had been commenced following a survey undertaken in 2007 but the consultation was put "on hold" when the Respondents had entered into negotiations to purchase the freehold. When those negotiations had faltered the Respondents made an application for the Right to Manage the Premises, which application, the Tribunal were told is ongoing. Therefore consultation with regard to necessary roof works had not been progressed. However when complaint was made to the Applicant by Mrs Turner, it had inspected the gable roof. Having concluded that a patch repair could not be carried out at an estimated cost which was likely to be below the limit of £250 per flat, it had made the application. Its decision that the roof could not be patched had been taken after a scaffolding tower had been erected by Rich Turner who had inspected the condition of the defective gable roof and provided the second estimate. The DJH Estimate had been produced without the benefit of a similar inspection by that contractor.
12. Evidence was given both by the Applicant and Mrs Turner as to the water ingress. She referred to discolouration to the ceiling in the kitchen but it became clear that this was a comment which apparently related to a previous leak in another part of the roof. The current leak has resulted in water damage to plasterwork in the living room and around the bay window and the Tribunal was told it was not possible to examine the effect of the water ingress fully on the ceilings and decoration fully because of the nature of the construction of the gable roof.
13. Mr Hough said that he would have preferred that the roof as a whole was repaired. He did not believe that replacement of the whole roof was

necessary. A survey undertaken in 2007 is referred to in the Application. The conclusions reached in that are different from those reported in the letter dated 15th March 2010. He said that the Respondents had seen a copy of the survey report referred to in that letter and had concluded that works could be carried out to preserve the integrity of the roof for a further period before its replacement became the most viable option. He conceded however that the location of the gable roof was such that separate scaffolding to enable its repair would always be required but contended that potential economies of scale could still be achieved by a "whole roof" repair. He questioned why the current process has been undertaken at all, when agreement could have easily been reached with the Respondents.

14. When pressed to express an opinion by the Applicant on the merits of the two quotes obtained, the majority view expressed by Mr Hough was that the DJH Estimate would be acceptable although it was less detailed. Mrs Stewart would have preferred to proceed on the basis of the other estimate because Rich Turner was located next door, but said she would endorse the acceptance of either estimate. She wants the work done before the problem is made worse by further rainfall. She said that the flat was let and that the tenant had experienced problems in the past with water ingress; and had previously expressed concern that the problems were not being satisfactorily dealt with .
15. Mr Hough said that if the RTM company was successful in taking over management it would resurrect the consultation procedure in September but it was accepted that if it was necessary to consult with all the leaseholders it was possible that works could not be started before the winter.
16. Mr Fulcher said that in principle he had no objection to the works quoted for being undertaken now. His objection (together with Mr Hough's) was that he did not know until the estimates were produced just prior to and at the Hearing, what works were proposed or the cost of those works. Neither had he understood the reason for current application for dispensation from compliance with the consultation procedure.

17. The statements made by individual Respondents at the Hearing suggested that some disagreement between the Respondents might exist in relation to the current Right to Manage application but no weight has been given by the Tribunal to that evidence in relation to its determination since it does not consider this evidence to be of any relevance to its decision.

Relevant law

18. Section 20ZA (1) of the Act states:-
“Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”
In section 20ZA (4) the consultation requirements are defined as being:
“Requirements prescribed by regulations made by the Secretary of State”.
These regulations are The Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”)
19. In section 20(3) of the Act “qualifying works” are defined as being “works” “to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge”.
20. If the costs of any tenant’s contribution exceed the sum set out in section 6 of the Regulations (which is currently £250) the Landlord must comply with the consultation requirements. The relevant requirements applicable to this application those set out in Part 2 of Schedule 4 of the Regulations.
21. In order to make a determination to dispense with some or all of the consultation requirements the Tribunal must be satisfied it is reasonable to do so.

Consideration of the facts and the law

22. The basis of the application seeking dispensation is set out in the grounds of the application.

23. The purpose of the Regulations is to ensure that there is proper and full consultation with the leaseholders of the Premises prior to expenditure on "qualifying works" the cost of which exceed the statutory limit of the contribution of any leaseholder of the Premises.
24. The Tribunal were told by the Applicant that it had made the application because of the alleged urgency of the works proposed to repair the gable roof.
25. Nevertheless, no evidence was produced at the Hearing, either by the Applicant or by Mrs Turner one of the leaseholders of Flat 3 as to why the proposed works were so urgent.
26. Notwithstanding this and the verbal suggestion that similar leaks had occurred in the past affecting other flats (particularly Flat 4) and had been dealt with differently neither Mr Hough or Mr Fulcher were against the application.

Findings of the Tribunal

27. The Tribunal cannot take any account of verbal statements about previous problems associated with the roof and therefore gives no weight to the statements about these past problems made at the Hearing.
28. On the basis of the evidence of the Applicant that it was satisfied that the problem resulting in water ingress in Flat 3 could not be dealt with on a patch repair basis.
29. In reliance on:-
 - the fact that no evidence as to why this assertion was not correct was provided by any of the Respondents who were present at the Hearing and
 - it taking into consideration the concerns expressed by Mrs Turner as to the consequential damage to the interior of flat 3 and the "well being" of her tenant as a consequence of the defective roof and
 - the likelihood that no formal consultation process or indeed any other process which might enable works to the roof as a whole to be carried out

could be undertaken in a reasonable time and not until the resolution of the ongoing Right to Manage application, and

- that it is reasonable for it to do so

the Tribunal grants the application to dispense with consultation requirements in relation to the proposed repair work to the gable roof as identified in the DJH Estimate.

Signed:

Cindy A. Rai LLB

Chairman

Dated: 28th June 2010