

10484



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CHI/29UN/LDC/2014/0039**

Property : **Flats 1-7, 84 – 86 Queen Street,
Ramsgate, CT11 9ER**

Applicant : **Mr J Muscatt**

Representative : **Mr L Saunders, Absolute
Property Agents, (Managing
Agents)**

Respondents : **Mr & Mrs C Melin (Flats 1 - 5)
Mr J Muscatt (Flats 6 & 7)**

Representative : **None**

Type of Application : **Section 20ZA Landlord and Tenant
Act 1985
Application to dispense with
consultation procedure
Roof repair**

Tribunal Members : **R T Athow FRICS MIRPM - Valuer
Chair
P A Gammon MBE BA (Lay member)**

**Date and venue of
Hearing** : **None**

Date of Decision : **28th November 2014**

DECISION

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Background

1. This application was made on 15th August 2014 and relates to emergency repair works found to be needed as a result of water ingress into the block. The work was undertaken between 28th July and 8th August 2014 as an emergency operation. This work is listed as follows:
 - Break up existing concrete roof structure
 - Replace rotten roof timbers
 - Insulate roof void
 - Lay new roof boarding
 - Two layers of torch-on underfelt and one layer sanded cap sheet
 - Lay promenade tiles on roof terrace
 - Re-fix safety railings
 - Render and brick repairs to chimney stack
 - Apply two coats of silicon water sealer to affected masonry.
2. There still remains the making good to internal decorations which were damaged in flat 7 as a result of the water ingress. This cannot be done until the affected plasterwork has dried out.
3. The First-Tier Tribunal Property Chamber (Residential Property), hereafter referred to as "FTT", gave directions on 26th August 2014. In the Directions it was decided that the only matter for determination was whether or not it is reasonable to dispense with the statutory consultation requirements under Section 20 of the Landlord and Tenant Act 1985 as amended. The directions stated that the matter could be decided on the papers and could be determined without a Hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
4. The Tribunal office sent a form to the lessees and set a timetable for them to reply, giving them the opportunity to
 - a) support the application,
 - b) name a spokesperson or
 - c) request a Hearing.
5. Mr C Melin replied to the Tribunal in support of the application by returning the form dated 3rd November 2014.
6. The Applicants were also given a timetable to make full submissions, and send a full copy to the lessees and this was done.

Inspection

7. The Tribunal inspected the property on the morning of 28th November 2014 in the presence of Mr Saunders and the tenant of flat 7. This Victorian property spanning 4 floors occupies a site in the centre of Ramsgate commercial district. It has rendered external elevations with a mixture of pitched and flat roof areas. It is mixed use with the

ground floor being commercially let and the remainder in 7 self-contained flats, 5 are held by Mr Melin on long leases whilst the remaining flats are owned by the Applicants and let on Assured Shorthold tenancies.

8. The inspection was restricted to the exterior of the building at roof level. Access was available to this level via the top flat and its roof terrace, from which the extent of the repairs could be seen. Photographs of the damaged areas to the roof and chimney were included in the bundle. Mr Saunders and the tenant of flat 7 clarified which areas had been affected with the aid of the photographs and explained the various repairs undertaken.
9. The Tribunal were informed that the cost of the repair to date was £4,280 gross as supported by the invoice from Kent County Roofing dated 7th August 2014. This firm had undertaken the remedial work.

The Case for the Applicant

10. The tenant of the top flat had reported water ingress in mid-July and it was clear that emergency action was needed to make the building watertight.
11. Because the full extent of the work could not be fully assessed it was impossible to prepare a specification and obtain quotes as is the requirement under Section 20 of the Landlord & Tenant Act 1985.
12. The Applicants instructed Kent County Roofing immediately and work was started on 28th July 2014. The work was completed on 8th August 2014. No further water ingress has occurred since then.

The Case for the Respondents

13. Mr Melin supports this application for dispensation from full consultation in his reply dated 3rd November 2014.

The Law

14. The statutory provisions primarily relevant to these applications are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act).
15. Section 20ZA (1) of the Act states:
16. '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 agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.'

17. In Section 20ZA (4) the consultation requirements are defined as being:
 - i. 'Requirements prescribed by regulations made by the Secretary of State'. These regulations are The Service Charges (Consultation Requirements) (England) Regulations 2003 ('the Regulations').
18. In Section 20(2) of the Act 'qualifying works' in relation to a service charge, means 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.
19. 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 are those set out in Part 2 of Schedule 4 of the Regulations.
20. The Tribunal may make a determination to dispense with some or all of the consultation requirements but it must be satisfied it is reasonable to do so. The Tribunal has a complete discretion whether or not to grant the application for dispensation and makes its determination having heard all the evidence and written and oral representations from all parties and in accordance with any legal precedent.
21. The matter has been considered in the leading case of **Daejan Investments Ltd v Benson & Ors [2011] EWCA Civ 38, 2011** in which three main issues were identified namely (i) whether the financial consequences to the landlord were relevant to a grant of dispensation under S20ZA; (ii) whether the nature of the landlord was relevant; and (iii) the correct approach to prejudice allegedly suffered by a tenant as a consequence of a landlord's failure to comply with the Consultation Regulations.
22. In the above case it was held that the financial effect of refusing dispensation on the landlord is an irrelevant consideration when exercising discretion under S20ZA (1) [59 of the Judgment]. Although there is no "closed list" of situations in which dispensation might be granted, the following situations might commend a grant of dispensation: (i) the need to undertake emergency works; (ii) the availability of only a single specialist contractor; and, (iii) a minor breach of the procedure under the Consultation Regulations which causes no prejudice to the tenants [63].
23. In the above case it was noted that the nature of the landlord can be a relevant factor, e.g. where the landlord is a company owned or controlled by the leaseholders [67].
24. It was further noted that in considering whether to grant dispensation, the FTT should consider whether the breach of the

consultation regulations has caused significant prejudice to the leaseholders [72]. The landlord's failure to comply with the regulations, as ruled by the FTT, caused the respondents serious prejudice. The curtailment of the consultation exercise was a serious failing [73].

The Consideration

25. The Tribunal considered all of the evidence submitted and the clarifications made by Mr Saunders and the tenant of flat 7.
26. The Tribunal considered the extent of the work and the speed in which it was required to be undertaken.
27. The Tribunal considered the inconvenience to the tenant due to water ingress and the fact that they had to move much of their personal belongings away from the affected area until the premises were made watertight again.
28. The Tribunal considered the remaining additional works.

The Findings and Reasons

29. In most cases of water penetration the correct procedure is to make temporary repairs and then prepare a specification of works. Tenders are then obtained and the normal Section 20 Process takes place.
30. In this case the full extent of the defects could not readily be ascertained. It was only during the carrying out of the works that the full extent of the required repairs could be seen. The design of the roof area is such that it would not be cost effective to put a waterproof 'wrapping' around this area.
31. The applicant promptly made an application to the Tribunal for section 20ZA dispensation.
32. This situation is addressed in legislation by the inclusion of Section 20ZA of the Act and the landlord has sought to regularise the situation appropriately. It does not cause significant prejudice to the Respondents as the work was needed to be undertaken to protect the integrity of the property.
33. Under the terms of the lease the landlord has an obligation to maintain the structure of the building.
34. The Tribunal was satisfied that once the work was under way, the correct action was taken to mitigate the inconvenience to the lessees and that there was no prejudice to them. The works found during the course of the contract are deemed to be necessary to comply with the Applicants obligations under the lease.

35. The Tribunal orally informed the Applicants that the application to dispense with the consultation requirements in relation to these additional qualifying works was granted in full as sought by them.
36. The purpose of this decision is to formally record that the application was granted and the basis for doing so.
37. It should be noted the Tribunal has not considered whether any costs incurred in relation to the works carried out are reasonable or not. If and when those costs are known, they can be challenged by the Respondents if they are considered to be unreasonable.
38. It is important to distinguish between the reasonableness of dispensing with the notice requirements and the reasonableness of the works themselves.
39. The decision of the FTT cannot give or imply any judgement about the reasonableness of the quality and/or costs of the works themselves.

Signed

Richard Athow FRICS MIPRM Valuer Chair

Dated

28th November 2014

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber), which may be on a point of law only, must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.