

10419



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

**Case reference** : LON/00AX/LDC/2014/0101

**Property** : Flat 1, 52 Cambridge Road, New Malden, KT3 3QL

**Applicant** : Mr Virendra Patel

**Representative** : Mr Zaiwalla of Counsel

**Respondent** : Mr Andrew Dooley

**Representative** : In person

**Type of application** : (1) for dispensation under section 20ZA of the Landlord & Tenant Act 1985  
(2) For the determination of the reasonableness of and the liability to pay a service charge

**Tribunal members** : (1) Judge I Mohabir  
(2) Mr N Martindale FRICS

**Date and venue of hearing** : 12 November 2014  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 12 November 2014

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**DECISION**

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## ***Introduction***

1. The Applicant makes two applications in this matter. These are:
  - (1) under section 20Za of the Landlord and Tenant Act 1985 (as amended) ("the Act") for retrospective dispensation from the consultation requirements imposed by section 20 of the Act.
  - (2) Under section 27A of the Act for a determination that service charges are reasonable.

## ***Section 20 ZA Application***

2. This application relates to urgent roof works carried out by the Applicant in August 2013.
3. By a letter dated 5 August 2013, the Respondent put the Applicant on notice that there had been water ingress to his flat on three recent occasions and made a request for him to carry out urgent roof repairs.
4. It is the Applicant's case that he made attempts to obtain estimates from roofing contractors on or about 6 August 2013. However, on 26 August 2013, a ceiling in the bedroom of the Respondent's flat collapsed.
5. Initial emergency roof repairs were carried out by a firm of contractors known as Ray Jones Roofing at a cost of £180. Subsequently, the same firm carried out more extensive roof repairs identified which was greater in scope than was originally envisaged but done in an attempt to prevent future roof leaks occurring.
6. The cost of this additional work was £3,184.80. The roof repairs were completed by 21 October 2013 at a total cost of £3,364.80 and it is in respect of this expenditure that the Applicant seeks retrospective dispensation from the consultation requirements imposed by section 20 of the Act. It was accepted by the Respondent that although the roofing expenditure is comprised of 3 invoices, they are to be regarded as part of the same contract of works and had been reasonably incurred were reasonable in amount.
7. It should be noted that this expenditure was the subject matter of an insurance claim made by the Applicant in the sum of £2,611.25. The Applicant then sought a service charge contribution of £251.18 from the Respondent, being a one third contribution for the remaining balance of the costs.

## ***Section 27A Application***

8. Subject to the application for dispensation being granted, the Applicant made this application for a determination that the cost of the roof repairs is reasonable.

9. In addition, this application also concerns the cost incurred separately by the Applicant by carrying out repairs for capping stones and bargeboard and the window sills to the front windows of the Respondent's flat. This was done by a Mr Hitchcock. It was common ground that this expenditure was a separate contract of works and was not caught by the provisions of section 20 of the Act.
10. The total cost of this work was £575, for which the Applicant conceded at the hearing that the Respondent's liability should be a one third contribution of £191.67. In the light of this concession, the Respondent conceded that these costs had been reasonably incurred and is reasonable in amount. As they are now agreed, the Tribunal no longer had jurisdiction to make any determination in relation to this item of expenditure.

### **Relevant Law**

11. This is set out in the Appendix annexed hereto.

### **Decision**

12. The hearing in this matter took place on 12 November 2014. The Applicant was represented by Mr Zaiwalla of Counsel. The Respondent appeared in person.

### **Section 20Za Application**

13. The only objection made by the Respondent in opposition to this application was that the required roofing works had taken too long to be commenced by the Applicant. It should have in fact been carried out some 3 weeks earlier. This would have prevented the ceiling in the bedroom from collapsing and the need for him and his family to seek alternative accommodation in the interim. As stated earlier, the Respondent accepted that the roofing repairs had been reasonably incurred and were reasonable in amount.
14. The relevant test to be applied in application such as this has been set out in the Supreme Court decision in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
15. Given that the Respondent did not contend the roofing repairs had not been reasonably incurred or the cost unreasonable, the Tribunal was bound to conclude that the Respondent had not been prejudiced by the failure to consult by the Applicant. Therefore, the application for retrospective dispensation in relation to the roof works is granted.

***Section 27A Application***

16. As stated above, this application now only concerned the cost of the roof repairs. Again, as the Respondent did not complain about the need to have the work carried out, the scope or cost, the Tribunal was bound to conclude that the expenditure was reasonable and that the service charge contribution of £251.18 is payable by him.

***Section 20c & Fees***

17. Mr Zaiwalla, for the Respondent, told the Tribunal that the Applicant would not be seeking to recover any of the costs and fees he had incurred in these proceedings through the service charge account. Nevertheless, the Tribunal considers it appropriate to make an order under this section and under Regulation 9 of the fees regulations preventing the Applicant from recovering any such costs.

***Rule 13 Application for Costs***

18. The Applicant had made this application in his statement of case. However, on reflection, it was withdrawn at the hearing.

**Name:** Judge I Mohabir

**Date:** 12 November 2014

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### **Section 27A**

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and

- (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

### **Section 20ZA**

- (1) 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.
- (2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.