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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: CHI/29UC/LDC/2014/0043**
Property	**: 1a and 1b Albert Street** **Whitstable** **Kent** **CT5 1HP**
Applicants	**:Mr. and Mrs. Challinor**
Representative	**: Unrepresented**
Respondent	**: Ms C. Feraday**
Representative	**: Unrepresented**
Type of Application	**: Liability to pay service charges:** **Section 27A Landlord and Tenant Act 1985** **Dispensation from consultation:** **Section 20ZA Landlord and Tenant Act 1985**
Tribunal Members	**: Judge R. Norman (Chairman)** **Mr. R.A. Athow FRICS MIRPM**
Date of inspection And Consideration	**: 6th January 2015**
Date of Decision	**: 27th January 2015**

DECISION

Decision

1. The Tribunal made the following determinations:

(a) Service charges in the sum of £2,500 were reasonably incurred in respect of the works of decorating and sealing the exterior of 1a and 1b Albert Road, Whitstable, Kent CT5 1HP ("the subject property").

(b) A dispensation from the consultation provisions of Section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") is granted in respect of the works of decorating and sealing the exterior of the subject property on condition that Mr. and Mrs. Challinor ("the Applicants") do not claim from Ms Feraday ("the Respondent") more than £1,250 in respect of the works or any costs or fees in respect of these applications. As the Respondent has paid £250 towards the cost of the works the extent of her remaining liability is £1,000, once the service charges have been properly demanded in accordance with the terms of the lease and statutory requirements.

(c) No order is made as to costs of either party or the reimbursement of fees paid by the Applicants in respect of these applications.

Background

2. The subject property is an end of terraced property which has been converted into two self contained flats. The freehold is held by the Applicants and the Respondent holds a lease of Flat 1b (the upper flat).

3. The Applicants have carried out works of decoration and sealing to the exterior of the subject property and have applied for a dispensation from the consultation provisions of Section 20 of the 1985 Act and a determination as to the liability to pay and reasonableness of the service charges in respect of the works.

4. Directions were issued which included that the application was to be determined on the papers without a hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected in writing to the Tribunal within 28 days of the receipt of those directions. No written objection to dealing with the application in that way has been received.

5. The directions required the parties to supply statements of their cases and for the Applicants to prepare a bundle of relevant documents for consideration by the Tribunal. A bundle has been received which includes the statements of the parties' cases and relevant documents

Inspection

6. On 6th January 2015, the Tribunal inspected the exterior of the subject property.

7. It could be seen that the exterior had been decorated recently. It was apparent that the gate to the rear garden of Flat 1a had been painted and there

appeared to be a new handle on the gate. A barge board on the East side of the rear extension had not been painted.

Consideration

8. All the documents included in the bundle have been considered and the Tribunal made findings of fact on a balance of probabilities.

9. The Respondent is not resident at the subject property and, as far as the Tribunal is aware, is living in the United States of America. The letting of her flat was dealt with by her agents Miles & Barr ("the Respondent's agents").

10. Both parties referred to the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.

11. The Applicants' case

(a) The Respondent and the Respondent's agents were given prior written notice as to the necessity of the works. Three competitive quotations for the cost of the works were obtained and shared with the Respondent and the Respondent's agents prior to the works commencing and the Respondent and the Respondent's agents were notified in writing as to whom the contract had been awarded. Referring to the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14 the Applicants argue that the Respondent has not been prejudiced in any way by any minor or slight deviation that may have occurred in the actual consultation process to that envisaged by Section 20 of the 1985 Act and is not being asked to pay for any inappropriate works or to pay more than would be appropriate either in terms of the actual cost of the works or the Respondent's liability to contribute towards the same under the terms of the lease.

(b) The Applicants ask that a dispensation be granted even if the Applicants have unwittingly deviated from the precise protocol set out for consultation by Section 20 of the 1985 Act on the basis that three competitive quotations were obtained prior to the works commencing and the Respondent had full prior knowledge as to both the need for the works and the Applicants' intentions to schedule them for the benefit of maintaining and protecting the building and both the Applicants' and the Respondent's respective interests in the subject property. Also that if the Tribunal determines that a minor deviation from the consultation procedure occurred and notwithstanding any alleged non-compliance by the Applicants, the Respondent is left in precisely the position she would have been in had the Applicants complied in full with the consultation requirements.

(c) The Applicants seek also that the Respondent be directed to pay to the Applicants within 14 days £1,338.64 being 50% of the cost of the works less £250 already paid by the Respondent which she is claiming to be her maximum liability.

(d) The Applicants also seek an award as to the Applicants' costs in this matter against the Respondent.

12. The Respondent's case

(a) The Applicants failed to comply with their obligations to the Respondent under Section 20 of the 1985 Act and there are no extraordinary circumstances which could possibly deem the Applicants exempt from the 1985 Act.

(b) To disregard the 1985 Act in its entirety for a failure that has not been caused by an emergency repair would drive a coach and horses through the statute. Parliament had intended that individuals in the Respondent's position would be protected from the type of situation as in this case.

(c) The Applicants did not give to the Respondent any of the required notices ahead of undertaking cosmetic works to the exterior of the property in August 2014. The works did not arise out of any urgency or complaint and, had they been then they were certainly not responded to with any urgency by the Applicants. An email invoice was provided to the Respondent in September 2014 after the works, which detailed painting and scaffolding as the main costs; making it clear that they were non-urgent cosmetic works.

(d) The Applicants' lackadaisical attitude towards property management is not only demonstrated by his lack of compliance with Section 20 of the 1985 Act but he also sent a bill for three years' service charges in one go and roof works dating back nearly a year. The Respondent paid those costs as requested apart from the cosmetic works to which she contributed £250. This was a large and unexpected amount of money to be expected to suddenly find to pay someone from her budget. The situation was compounded by the Applicants' failure to collect ground rent at the appropriate times so it added up over three years.

(e) The Respondent refers to the emails which passed between her and the Applicants and in particular the email dated 25 October 2013 from the Applicants from which the Respondent considers that it was absolutely clear that they were discussing minor repairs and that she was referring to them and nothing else and nothing to do with the future works that the Applicants later authorised without proper consultation. She argues that it was clearly incorrect for the Applicants to suggest the Applicants and the Respondent were talking about anything else at that point.

(f) On 9 September 2014 she was presented with a bill for the following:
Rent for 3 years from 2011 to 2014 totalling £300
Buildings insurance £182.75
Repairs to flat roof November 2013 £147.50
External decorations and repairs August 2014 £1,588.64
Total £2,218.89 to be paid immediately.

(g) The Respondent argues that she cannot suddenly find £2,218.89 in her budget because the Applicants have made the decision to go ahead with cosmetic works without proper consultation with her and she would certainly

have explained that to the Applicants before the cosmetic works took place had the Applicants consulted her properly using correct legal process.

(h) It is unreasonable to ask for three years service charges in one hit. Also the annual charge should go towards minor upkeep and repairs.

(i) The 25 October 2013 email from the Applicants refers to "a small damp patch" so how can the Applicants later suggest such major works were required?

(j) The works were done without the Respondent's consent to pay half the cost.

(k) The Respondent accepts that the Applicants emailed the Respondent's agents on 16 June 2014 but considered that the Applicants should have contacted her direct rather than via the Respondent's agents. The Applicants asked the Respondent's Agents to forward the email to her and they replied that they would do so. The Respondent presumed the email was sent out of courtesy. There was no request for her permission, or any suggestion that she would have to pay 50% of the cost.

(l) At no point did she agree to the large cosmetic August 2014 works at her shared expense, nor is there any evidence provided to the Tribunal that suggests that she was aware of this and agreed. Why should she object to a neighbour doing works at no expense to her?

(m) If consulted she would have made it clear she could not afford the works.

(n) The Respondent states that she has no idea what work has been done, whether it was necessitated by the Applicants' inordinate delay, whether the cost was incurred at all and whether it even applies to the Respondent's property.

(o) She should have been given a choice as to whether and how her money was spent.

(p) The Respondent submits that the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14 is not applicable. In that case there was just a minor technical breach not as in this case a complete lack of notices.

(q) The Respondent had no opportunity to inspect or challenge estimates, she does not know which work relates to her flat and has no evidence of how much was actually paid. There is no indication of what damage may have occurred as a result of the Applicants' admitted eleven month delay in undertaking the work which the Applicants say was necessary but was not so necessary for it to be undertaken with any speed. She has paid all undisputed service charges and extended sums and contributed towards the cost of the August 2014 works totalling nearly £900 in September 2014.

(r) Flat 1a is on the ground and first floors and has a private garden which is not shared with Flat 1b and therefore the Respondent should not have to contribute to painting the fence and carrying out work to the garden gate

Reasons

13. It was clear from the documents supplied that the full consultation procedure under Section 20 of the 1985 Act had not been carried out.

14. Such consultation as was carried out was contained in a number of emails. The sequence of events was as follows and included those emails.

15. It was the Respondent's agents who, by an email dated 16 September 2013 reported to the Applicants that there was damp penetration to the Respondent's flat and that the exterior wall needed painting/sealing. That email was copied by the Respondent's agents to the Respondent.

16. By an email dated 16 September 2013, the Applicants informed the Respondent's agents that they would inspect the subject property.

17. The Respondent's agents on 24 October 2013, emailed the Applicants asking if the damp patch repair had been resolved as the Respondent wanted an update.

18. On 24 October 2013 the Applicants emailed the Respondent's agents stating that "...awaiting quotes back on this. Will let you know when received." Adding "I did take the opportunity to inspect a couple of weeks ago and discuss with Liz and I do not think that this is causing too much concern at the moment but clearly needs remedial action to arrest." Liz is the Respondent's tenant.

19. On 25 October 2013 the Respondent emailed the Applicants stating that "We need to get the leaking roof fixed at Albert Street, do you have a plan for this? I can ask my property manager to arrange something if it's easier."

20. On 25 October 2013 the Applicants replied by email to the Respondent in the following terms:
"Caroline – this is the first that I have heard about any roof leak! As you will be aware roof repairs were carried out this time last year (including the flat roof) and to the best of my knowledge this satisfactorily resolved all issues.

Your managing agent got in touch with me a short while ago regarding a small damp patch that Liz had reported and I inspected a couple of weeks ago and think this is probably due to the fact that the gable wall needs redecorating at high level (in respect of which I am presently seeking quotations).

Melissa at Miles & Barr is aware of this (see attached email).

If you would like to discuss please do not hesitate to give me a call."

21. By an email dated 25 October 2013, the Respondent replied:

"Ah I thought it was a roof leak. Good news on quotes, keep me posted A many thanks, C".

22. There were emails dated 31 October 2013 and 7 December 2013 from the Respondent's agents to the Applicants asking for an update.

23. In November 2013 two independent local contractors were asked to quote for the works but neither submitted a quotation.

24. By an email dated 9 December 2013, the Applicants informed the Respondent's agents of this and asked if they were able to recommend any reliable local firms.

25. By an email dated 9 December 2013 the Respondent's agents recommended J & K Decorating Services and R. Mayhew Carpentry & Maintenance.

26. By an email dated 14 January 2014, from the Respondent's agents to the Applicants and copied to the Respondent, the Respondent's agents asked if the Applicants had got any further with the quotes or resolving the issues.

27. By an email dated 14 January 2014, from the Applicants to the Respondent's agents and copied to the Respondent, the Applicants stated that they were anticipating receiving quotes that week.

28. The quote from J & K Decorating Services is contained in an email dated 22 January 2014 and is in the sum of "Quote total £2840.00 inc".

29. The quote from R. Mayhew General Maintenance & Carpentry is dated 27 January 2014 and is in the sum of "£2890 + VAT".

30. The Applicants refer to the quotes as being exclusive of VAT and being almost identical. This was incorrect as one was inclusive of VAT and the other was excluding VAT.

31. In April 2014 the Applicants sought a further quotation from PP Eyre Property Care.

32. The quotation is dated 14 May 2014 and was in the sum of "£2,500 inc."

33. On 16 June 2014, the Applicants emailed the Respondent's agents. The subject was "RE: 1A & 1B Albert Street, Whitstable – External Maintenance and Redecoration". The email was in the following terms:

"Melissa – referring to our previous email exchanges on the above pleased be advised that I have now instructed Paul Eyre Property Care to undertake a full external redecoration of the above property following tendering of these works earlier this year.

As you know I sought quotations for these works from 3 firms including also J & K Decorating Services and R Mayhew Carpentry & Maintenance who quoted £2,840 + VAT and £2,890 + VAT respectively.

Paul Eyre Property Care quote was £2,500 for the primary redecoration of the property, albeit we have also made a provisional sum allowance of a further £250 to cover unforeseen small repairs which may be discovered once the scaffolding is up.

I anticipate that works will commence this week, weather permitting and will take approx. 2 weeks to complete.

I have advised Liz, the tenant of 1B that the works are about to begin and have passed Liz's contact details on to the contractor in order that they may liaise directly regarding the painting of the upper floor windows.

I should be grateful if you would please advise your client as to the above.

I will of course let you know once the works have been completed."

34. By an email dated 16 June 2014 the Respondent's agents replied:

"Thank you for your email. I will forward this on to Miss Caroline Feraday. Thank you.

Her email for future correspondence is:...." An fsnet email address was provided.

35. There then followed an email dated 30 July 2014 from PP Eyre Property Care to the Applicants giving details of additional works and costs prior to invoice in the sum of £677.28.

36. By an email dated 15 August 2014 the Applicants informed the Respondent's agents that the works had been successfully completed and attached a copy of the invoice dated 2 August 2014 from PP Eyre Property Care for the cost of the external decoration and repair in the sum of £3,177.28. The Applicants confirmed that they had paid the contractor in full and asked the Respondent's agents to liaise with the Respondent to arrange for reimbursement in the sum of £1,588.64. There was also a request for payment of £147.50 in relation to a flat roof repair in November 2012.

37. On 29 August 2014 and 9 September 2014 the Applicants sent chasing emails to the Respondent's agents who replied by email on 9 September 2014 stating that:

"We have asked accounts to pay the roofing invoice for £147.50 asap.

In regards to the insurance fee's, Ms Feraday has advised she wishes to check her accounts for the previous years but unable to do this at the moment as she is travelling. All invoices regarding freeholder costs need to be sent directly to Ms Feraday to agree before we can arrange the payment. Thank you.

Please email Ms Feraday at:..." An fsnet email address was provided. On 9 September 2014 the Applicants emailed the Respondent stating that Mr. Challinor thought the Respondent's agents were instructed to act on the Respondent's behalf as managing agent, representing her in relation to her leasehold ownership of 1b Albert Street and all matters arising as a consequence thereof. The amounts the Applicants considered to be due were set out totalling £2,218.89 and payment was requested.

38. By an email dated 10 September 2014 the Respondent informed the Applicants that she was surprised to have received a whacking great bill without consultation and that the large works came as a complete surprise. On 10 September 2014 the Applicants replied detailing the sums claimed.

39. On 14 September 2014 the Respondent (using her googlemail address rather than the address provided by the Respondent's agents) emailed the Applicants dealing with a number of matters and in relation to the works which are the subject of these applications she stated "And the £250 is my full liability on the roofing works which you undertook without consultation." The email was copied to the Respondent's agents.

40. On the basis that there had not been compliance with the consultation requirements, the Respondent paid £250 leaving the sum of £1,338.64 in dispute.

41. The Tribunal found that there were the following misunderstandings by the parties:

(a) The case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14 has not done away with the requirement to consult but has clarified how the granting or refusal of dispensation should be dealt with by the Tribunal and made clear that the Tribunal has the discretion not just to grant or refuse a dispensation but to grant a dispensation on terms.

(b) The Respondent refers to the demand for £300 in respect of three years as service charges but in fact the sum of £300 was three years ground rent @ £100 per year. The Respondent appears to be under the impression that the Applicants should use the ground rent she has paid to them to carry out the works of decorating and sealing the exterior of the subject property. This is not correct. The Applicants have the liability to carry out repairs and decoration as required by the terms of the lease but the Applicants are then entitled to claim from the Respondent 50% of the reasonable cost of such works as service charges. The ground rent is not taken into account.

(c) The Respondent has stated that she cannot afford to pay for the works but that is not a factor the Tribunal can take into account.

(d) The Respondent appears to be under the impression that works cannot proceed without her agreement. That is not correct. The 1985 Act requires that the landlord, in this case the Applicants, consult the tenant, in this case the Respondent, but the works can still proceed if the tenant objects or does

not consent. The safeguard for the tenant is the opportunity to make an application to the Tribunal to challenge the works on the basis that the expense was not reasonably incurred or that the work was not carried out to a reasonable standard. Also, the tenant can refuse to pay more than £250 if there has not been substantial compliance with the consultation procedure and if there has not been compliance then the landlord can apply to the Tribunal for a dispensation.

(e) The Respondent appears to believe that the Tribunal can grant a dispensation only in cases of emergency. There is no such restriction on the Tribunal's discretion.

(f) Emails produced by the Respondent show that she is confusing the roof repairs carried out in November 2012 and the works the subject of these applications.

(i) In her statement of case the Respondent stated that on 9 September 2014 she was presented with a bill for the following:
Rent for 3 years from 2011 to 2014 totalling £300
Buildings insurance £182.75
Repairs to flat roof November 2013 £147.50
External decorations and repairs August 2014 £1,588.64
Total £2,218.89 to be paid immediately.

(ii) The Respondent misquotes the email and as a result there is confusion about the roof works. The email of 9 September 2014 refers to the "Repairs to Flat Roof Nov-2012 £147.50"

(iii) Also, it can be seen from the email dated 25 October 2013 when the Applicants replied by email to the Respondent referring to roof repairs "...carried out this time last year..."

(iv) On 14 September 2014 the Respondent emailed the Applicants dealing with a number of matters and in relation to the works which are the subject of these applications she stated "And the £250 is my full liability on the roofing works which you undertook without consultation."

(v) These were not roofing works and it was quite clear that they were not.

(vi) The Respondent has provided a copy of an invoice in respect of roof and gutter repairs in the sum of £295. The invoice is dated 15 November 2012 but there is a handwritten note presumably made by the Respondent that she thinks the date is a mistake and that Mr. Challinor says it relates to 15 November 2013. However there is nothing to support that assertion. All the evidence points to roof works being in November 2012 which were not connected with the works the subject of these applications.

(g) On the basis of the evidence provided, the Applicants' requests for service charges have not been made in accordance with the statutory provisions as to the provision of a summary of tenants' rights and if that is correct then the

service charges are not payable until the demands are made in accordance with the terms of the lease and the statutory provisions.

42. According to the evidence produced, the only sums requested to be paid by the Respondent were:
Rent for 3 years from 2011 to 2014 totalling £300
Buildings insurance £182.75
Repairs to flat roof November 2012 £147.50
External decorations and repairs August 2014 £1,588.64

43. There was no evidence of any other requests for service charges.

44. It was understandable that the Applicants communicated with the Respondent's agents rather than the Respondent direct as it was the Respondent's agents who raised the need for decoration and sealing and apparently the Respondent was out of the country. Also, at some time, there was a change in her email address.

45. The following indicated that the Respondent's agents were aware of the works and it would be expected that they were keeping the Respondent informed.

(a) It was the Respondent's agents who, by an email dated 16 September 2013 reported to the Applicants that there was damp penetration to the Respondent's flat and that the exterior wall needed painting/sealing. That email was copied by the Respondent's agents to the Respondent. This gave the impression that the Respondent's agents had authority to deal with questions of repair. This was followed up by the Applicants asking the Respondent's agents to assist by providing the names of reliable contractors, which they did. The Respondent's agents were kept informed of the quotations and there was no reason to suppose that the Respondent was not being kept informed. It was when there was a request for money that the Respondent's agents gave the Respondent's email address for future correspondence.

(b) By an email dated 14 January 2014, from the Respondent's agents to the Applicants and copied to the Respondent, the Respondent's agents asked if the Applicants had got any further with the quotes or resolving the issues.

(c) By an email dated 14 January 2014, from the Applicants to the Respondent's agents and copied to the Respondent, the Applicants stated that they were anticipating receiving quotes that week.

46. Ignorance of the consultation requirements is not an excuse for any landlord but where the landlord is a Chartered Surveyor it would be expected that either he would be fully aware of the requirements or, if his knowledge of residential property was limited, he would seek advice from a surveyor who was more familiar with residential property.

47. However, the Tribunal must approach the situation by considering whether or not the Respondent was prejudiced by the lack of compliance with the consultation provisions and if so, to what extent.

48. The Applicants refer to the quotes as being exclusive of VAT and being almost identical. This was incorrect as one was inclusive of VAT and the other was excluding VAT.

49. However, the Applicants obtained and accepted a lower quote so there is no suggestion that this prejudiced the Respondent. It is unlikely that she would have objected to the lowest quote being accepted.

50. The Respondent in her statement of case stated that she was puzzled why the Applicants should email the local letting agent rather than her when both the Respondent's agents and the Respondent had informed the Applicants on numerous occasions that correspondence should be with her direct on matters regarding the apartment and that the Applicants had her email address. However, there was no evidence to support that statement until the email dated 16 June 2014 from the Respondent's agents providing the Respondent's email address for future correspondence. It is also noted that although that was the same address as the email address given in an email dated 14 January 2014, it was different from the email address given by the Respondent in her email dated 25 October 2013. The email of 16 June 2014 from the Respondent's agents confirmed that the Applicants' email would be forwarded to the Respondent and in an earlier email from the Respondent dated 25 October 2013 the Respondent emailed the Applicants stating that "We need to get the leaking roof fixed at Albert Street, do you have a plan for this? I can ask my property manager to arrange something if it's easier." This indicated a willingness to have matters dealt with by the Respondent's agents. Again this was understandable as the Respondent was not resident in the UK.

51. The email dated 16 June 2014 from the Applicants to the Respondent's agents gives the figures from the three quotations which makes clear the scale of the works. In the email dated 16 June 2014 from the Respondent's agents to the Applicants, the Respondent's agents stated they would forward the email to the Respondent. The Respondent has not stated categorically whether or not the email was forwarded to her but presumably she received it as she has stated that she presumed it was sent out of courtesy. The email dated 16 June 2014 from the Applicants to the Respondent's agents gave the information that the lowest quote had been accepted. That email also contained the first mention by the Applicants of a contingency sum of £250 and by that time it was too late to obtain comments from the Respondent. The Tribunal considers it understandable that the Applicants assumed that the Respondent's agents had forwarded the email as they said they would.

52. There then followed an email from PP Eyre Property Care to the Applicants giving details of additional works and costs prior to invoice in the sum of £677.28, which was even more additional work beyond the £250 contingency. It is not clear that all the additional work was work in respect of which the Respondent was liable to contribute. In any event, there was no

consultation about the £250 contingency until 16 June 2014, which was too late, and no consultation at all about the further additional work.

53. The case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14 sets out the way in which Tribunals should approach the granting of a dispensation. It is necessary to consider whether the tenant was prejudiced by the lack of compliance with the consultation provisions.

54. The Respondent has stated that there was no request for her permission for the works to proceed and that if she had been consulted then she would have said that she could not afford to contribute and would not have given permission for the works to proceed. The Respondent does not have to consent; only to be consulted. Had the Respondent received all the Section 20 notices, she may have objected to the works on the basis that she could not afford the expense but that would not have prevented the works going ahead. Her consent to the works was not required. She could have suggested alternative contractors, but the Respondent's agents did that and quotes were obtained from them. The fact that the Applicants referred to them being identical and mis-stated the position as to VAT had no practical effect, as a lower quote was obtained and accepted. It is unlikely that the Respondent would have objected to the lowest quote and even if she had, the Applicants could have considered that objection but still proceeded with the work and demanded 50% of the cost from the Respondent. Therefore, had she received all the Section 20 notices and raised those arguments she would have been in no better position than she is now.

55. The Respondent has stated that she did not know the work was done to her property. Her lease provides that it is the cost of work which the landlord is obliged to carry out to the part of the property retained by the landlord to which she has to contribute.

56. The Respondent has stated that she has paid all undisputed service charges and extended sums and contributed towards the cost of the August 2014 works totalling nearly £900 in September 2014. However, it must be remembered that £300 of that sum was ground rent, not service charges, and so irrelevant to these proceedings. Also included in the amount paid were the sums of £182.75 for building insurance and £147.50 for repairs to the flat roof in November 2012 which are not relevant to these proceedings.

57. In this case, as to the works quoted for in the sum of £2,500 the Tribunal finds on a balance of probabilities that the Respondent was not prejudiced. The Respondent's agents were aware of the need for the works. In fact it was they who drew to the attention of the Applicants the need for the works. The Respondent's agents were aware of the attempts made to obtain quotes and provided the names of possible contractors. The Applicants had no reason to suppose that the Respondent was not being kept informed by the Respondent's agents and it is clear that at least some of the emails were sent to the Respondent. When, in her email dated 10 September 2014, she stated that she was extremely surprised to have received a bill for her proportion of the cost of the works, it should not have been a surprise. Just how much information she received from the Respondent's agents is not clear but the

evidence from the Respondent's agents is that they were forwarding to her the Applicants' email with details of costs. Apparently she was aware of that email and has asked why should she comment or object to a neighbour carrying out work at its own expense. If she had read her lease she would have been aware of her obligations to contribute and in any event the question she should have asked was why should the Applicants inform her of the cost of the works unless they were expecting her to pay towards those costs. If there was to be no cost to her then they would have no reason to tell her anything about the quotes or the cost. On the contrary, she and/or the Respondent's agents were aware and concerned about quotes at an early stage. Clearly she should have been aware that she would have to pay towards the cost. To say that she assumed the Applicants were keeping her informed out of courtesy and without any suggestion that she would have to contribute is not accepted. Her lease deals with her liability to contribute and had the Applicants been going to pay for all the work then there would have been no need for them to inform her of the quotes.

58. However, as to the additional cost over the quotation of £2,500, on the evidence provided, it is by no means certain that the Respondent could be liable to contribute to all the additional work and there was no consultation about that at all and no opportunity for the Respondent or the Respondent's agents to make representations about that work.

59. On the basis of the evidence provided by the parties, the Tribunal is satisfied on a balance of probabilities that:

(a) The cost of £2,500 for carrying out the works of decorating and sealing the exterior of the subject property was reasonably incurred.

(b) A dispensation should be granted in respect of the work of decorating and sealing the exterior of the subject property costing £2,500, but not in respect of the additional work.

(c) A dispensation should be granted on condition that the Applicants do not claim from the Respondent more than £1,250 in respect of the works or any costs or fees in respect of these applications. As the Respondent has paid £250 towards the cost of the works the extent of her remaining liability is £1,000, once the service charges have been properly demanded in accordance with the terms of the lease and statutory requirements.

60. Both parties have applied for costs to be awarded but have provided no evidence of the amount of any such costs. The only expenses of which the Tribunal is aware are the fees paid by the Applicants in respect of these proceedings. It is possible that the Applicants were referring to those fees as costs. The Tribunal has therefore considered the question of costs and has treated the Applicants' request for costs to include an application for the Respondent to reimburse those fees. The Applicants should have complied with the consultation procedure and by failing to do so they were responsible for the need for these applications. The Tribunal finds that it is just and equitable that each party should bear its own costs and that there should be no reimbursement of fees.

Appeals

61. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) 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.

62. 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.

63. 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.

64. 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.

Judge R. Norman (Chairman)