



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

Case Reference : LON/00AE/LDC/2015/0143

Property : 21 Dyne Road, London NW6 7XG

Applicant : Applecroft Properties Limited

Representative : Mayfield Asset and Property Management Company

Respondents : Ms G. Rowley (21A)
Ms Y. Archibald (21B)
Mr I. Patterson (21C)

Representative : None

Type of Application : For dispensation of the consultation requirements under section 20ZA

Tribunal members : Ms S O'Sullivan
Ms M Krisko FRICS

Date of Decision : 2 February 2016

DECISION

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) (“the 1985 Act”) for the dispensation of any or all of the consultation requirements. The property concerned is described in the application as converted block of flats containing three flats known as Flats A, B, and C, 21 Dyne Road, London NW6 7XG and the application is made against the various leaseholders set out in the front sheet to this application (the “Respondents”).
2. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with. The Applicant seeks dispensation in respect of emergency works undertaken during the week commencing 26 October 2015 to prevent water ingress into the Property which has resulted in damage to the internal parts. Works to both the interior and exterior have been carried out at a total cost of £6,850 plus Vat.

The background

3. The application was dated 5 September 2015 but received on 18 November 2015. Directions were made dated 9 December 2015 which provided for the Respondents to indicate whether they consented to the application and wished to have a hearing.
4. As none of the parties requested an oral hearing this matter was considered by way of a paper determination on 27 January 2016. The Tribunal did not consider that an inspection was necessary given the nature of the works in question and the fact that the works have now been completed.
5. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act. The tribunal does not make any ruling on whether the costs are reasonable in amount and the costs may subsequently be challenged by the leaseholders by making an application under section 27A of the Act if so advised.

The Applicant’s case

6. The Applicant says that there has been water ingress into the Property which has resulted in damage to the internal parts. The works undertaken include the repointing of external brickwork, clearing air vents, repairing rainwater pipes and reinstating decking. Internal works included the removal of plaster, making good of brickwork, fitting a damp proof barrier and reinstatement works. The total cost of the works was £6,850 plus Vat.

7. The Applicant says that remaining remedial works to make good the damage will be consulted upon under section 20 of the Act.

The Respondents' position

8. The directions provided for any Respondent who wished to oppose the application for dispensation to serve a statement of case.
9. A statement of objections has been received from Ms Rowley, the leaseholder of Flat 21A at the Property. She submits that the reason the works were of an emergency nature is due to a four month delay on the part of the Respondent in dealing with the problem. She exhibits correspondence to support her contention that the damp problem was clear some four months before works were commenced and some six months before the application was made to the tribunal. She submits that the freeholder could have consulted under section 20 during the summer months and avoided the need for this application.
10. In summary the application is challenged on the basis that there is no ability on the part of the leaseholders to legitimately challenge the charge for the works and also on the basis that;
 - a) The work should have been the subject of a claim under the buildings insurance policy;
 - b) The cost of the works should have been covered by existing service charge funds; and
 - c) The cost of the works should have been covered by the freeholder because the damage was caused by the freeholder's breaches under the lease.
11. Statements of objection were also received from Ms Higgins and Mr Paterson, the leaseholders of Flats B and C.
12. Mr Paterson's statement also raised issues in relation to how long the Applicant had been aware of the works and the fact that they could have applied for consultation under section 20 of the Act. Again similar concerns were raised in relation to the lack of explanation as to the costs and whether any attempt has been made to claim for buildings insurance.
13. Ms Higgins statement of objection was dated 4 January 2016. She was unhappy that she had not received notice of the works and that no clear breakdown had been provided of the cost. She also raised concerns in relation to liability and monies held in the service charge account. She

also echoed Ms Rowley's sentiments that the necessity for the works was known well in advance and certainly 6 weeks before.

The Tribunal's decision

14. The Tribunal determines that an order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the works outlined above.

Reasons for the Tribunal's decision

15. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
16. The tribunal is satisfied that the works were urgently required and that it is appropriate to grant an order for dispensation in these circumstances. Although the landlord may have been made aware of some disrepair for some time it appears to us that the works required were escalating and needed to be carried out urgently to prevent further damage at the property.
17. We would not expect that works of this nature would normally be covered by buildings insurance but in any event until such time as this is ascertained, an application under section 20ZA would be prudent. The issue of whether there were sufficient funds in the service charge account is not a matter the tribunal takes into account under this jurisdiction. Further the issue of whether the works were necessary due to the landlord's breaches is again not a matter for us on an application under section 20ZA. It may be a relevant issue on an application under section 27A of the Act when considering if the costs of the works are reasonable.
18. On an application under section 20ZA our jurisdiction is confined to whether to grant dispensation for the works. As referred to above we do not make any ruling on whether the costs are reasonable and/or whether the works were carried out to a good standard and the issues may be challenged subsequently under section 27A of the Act.

Application under s.20C

19. There was no application for any order under section 20C before the tribunal.

Name: S O'Sullivan

Date: 2 February 2016