11914

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AX/LDC/2016/0049**
Property	:	**7A & 7B Brighton Road, Surbiton, Surrey, KT6 5LX**
Applicant	:	**Madeline Bartley**
Representative	:	**In person**
Respondent	:	**Kate Woodruff (Flat 7B)**
Representative	:	**In person**
Type of application	:	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal members	:	**Judge I Mohabir**
Date and venue of determination	:	**15 June 2016** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**15 June 2016**

DECISION

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Introduction

1. The Applicant makes an application in this matter 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. This application relates to the replacement of a leaking box gutter and a GRP roofing system as a result of water ingress into Flat 7A at an estimated cost of £1,650. In her statement of case dated 6 June 2015, the Applicant states that the works have in fact been completed with the agreement of the Respondent who is the leaseholder of Flat 7B. Apparently, liability for the cost of the work is apportioned equally between the Applicant and the Respondent. The Tribunal was told that the leaseholder of Flat 7A, Mr Adam Jarvis-Norse, has no liability for the costs under the terms of that lease.

3. A Notice of Intention has been served on the leaseholders with the consultation period expiring on 27 May 2016. The Tribunal was told that no objections or responses had been received. However, on 11 May 2016, the Applicant made this application seeking retrospective dispensation from the requirement to carry out statutory consultation for the additional works. This was done on the basis that the parties wished to proceed with the work as soon as possible to prevent further damage and additional costs.

4. On 23 May 2016, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.

5. No objection to the application has been received from any of the Respondents. Indeed, by e-mails dated 11 May 2016, both leaseholders actively support the application.

Relevant Law

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

Decision

7. The determination of the application took place on 15 June 2016 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents.

8. The relevant test to the 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.

9. The Tribunal granted the application the following reasons:

   (a) the fact that each of the leaseholders had been informed of the need to carry out the proposed remedial works and the reasons why at the relevant time.

   (b) the fact that no leaseholder has objected to the proposed works and appear to support the application.

   (c) that carrying out the additional works at the same time provided a cost saving to the leaseholders by preventing further damage caused by the continued water ingress and the additional costs that may have been incurred.

   (d) importantly, any prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the estimated or actual costs incurred.

10. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.

11. It should be noted that in granting this part of the application, the Tribunal does not also find that the scope and estimated or actual cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act should they wish to do so.

Name: Judge I Mohabir **Date:** 15 June 2016

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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.