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

**Case Reference** : **CHI/00HN/LDC/2013/0046**

**Property** : **Melrose Court, 14 Crescent Road,  
Bournemouth Dorset BH2 5SS**

**Applicant** : **Melrose Court RTM Company Limited**

**Representative** : **Mrs Sarah Simmons & Miss Samantha Simpson  
Countrywide Estate Management**

**Respondents** : **Babylon Investments Limited (Flat 1)  
Spectrum Housing Group Limited (Flats 2 and 5)  
Mrs B Clements (Flat 3)  
Ms S Peck (Flat 4)  
GWB Finance Limited (Flat 6)  
Inna Chorley (Flat 7)**

**Representatives** : **Mrs Alice Smith Spectrum Housing Group  
Limited (Mrs Smith did not attend the afternoon  
session)**

**Type of Application** : **Dispensation from consultation:  
Section 20ZA Landlord and Tenant Act 1985**

**Tribunal Members** : **Mr K M Lyons Chairman  
Mr R T Dumont**

**Date and venue of  
Hearing** : **26/09/2013 Court 8 Bournemouth County Court  
Deansleigh Road Bournemouth BH7 7DS**

**Date of Directions** : **27<sup>th</sup> August 2013**

**Date of Decision** : **2 October 2013**

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## DECISION

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### INTRODUCTION

- 1 The Applicant applies under Section 20ZA Landlord and Tenant Act 1985 for dispensation from the requirements of Section 20ZA in respect of the works which it is proposed to carry out in regard to damp penetration into the structure forming part of Flat 3 Melrose Court.

### INSPECTION

- 2 The Tribunal inspected the exterior of the property and the interior of Flat 3 on the morning of 26/09/2013, at which time the weather was dry and overcast. Melrose Court comprises the right hand portion of a pair of semi detached 3 storey houses on a gently sloping site. The property is constructed of cavity brick walls under a pitched roof which has been recovered with modern concrete tiles. A substantial extension had been constructed some years ago on the rear of the property. Flat 3 is on the ground floor on the right hand side of the building. Mr. Jason Lemon the representative of Mrs B Clements, the lessee of Flat 3 showed the Tribunal the areas within Flat 3 which had been affected. This comprised the external wall of the bedroom and the wall dividing the bedroom from the lounge together with the extension of this wall in the hall and the kitchen. The bedroom had been mainly cleared of furniture and the fittings in the kitchen had been removed thereby affording adequate facility for the Tribunal to inspect the areas of the walls concerned. The dividing wall between the bedroom and the lounge and the extension of this wall had originally formed the exterior wall of the original building. The construction of this wall and the right hand wall of the bedroom is therefore the same being a cavity wall incorporating what is believed to be a slate damp proof course. The side wall of the bedroom which abuts the drive has a cement rendered plinth which extends down to the surface of the driveway and extends up the brickwork to a level above the damp proof course.

## **THE LAW**

- 3 S20ZA (1) Landlord and Tenant Act 1985 provides that where an application is made to a Leasehold Valuation Tribunal First-Tier Tribunal (Property Chamber) 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.
- 4 The consultation requirements require the landlord to serve a notice of intention to carry out works and a statement of estimates in relation to proposed works. A third notice is required to be served where the lowest quotation is not accepted.
- 5 The notice of intention requires the following information to be provided:
  - notice of the intention to carry out the works;
  - a description of the works;
  - a place and time where the description of the works can be identified;
  - the reason why the works are required to be carried out;
  - an invitation to make observations within 30 days;
  - an invitation to give the name and address of a contractor that the landlord should try to get an estimate from;The notice must be signed by the landlord or the landlord's authorised agent.
- 6 The statement of estimates must:
  - refer to the date of the notice of intention and the date on which the notice period ended;
  - give details of the estimates received;
  - invite the lessee to make observations and the place where observations can be made within 30 days;
  - details of any observations which have been made;The notice must be signed by the landlord or the landlord's agent.

## **THE LEASE**

- 7 The Tribunal has seen a copy of the lease of Flat 4 Melrose and understands that all the leases are in like form. The Tribunal identified the following provisions to be relevant:
- Clause 4.2 requires the Tenant to pay the service charge calculated in accordance with the Fifth Schedule on the dates stated there;
- Fifth Schedule – Service charge – “Service costs” means the amount the Landlord spends in carrying out all the obligations imposed by this lease .....
- Sixth Schedule – services to be provided - Clause 1 - Repairing the roof including supporting structures, outside.....main walls, structure and foundations of the building.....

## **THE EVIDENCE**

- 8 Mrs. Simmons referred to the report that had been prepared by Bennington Green associates dated 31/08/2011 and explained that this referred to the previous works which had been carried out to deal with the defects in the flooring in Flat 3 and which required replacement of the flooring materials. Mrs Simmons confirmed that these works did not have a direct relation to the works currently proposed although it was anticipated at the time those works were carried out that any defects relevant to the structure were dealt with at that time.
- 9 Subsequently the appearance of damp staining on the base of the walls in the affected areas had identified that further works were required. A further report by Bennington Green was referred to in an e-mail dated 24/05/2013. It was not clear, however, as to the date of origination of the report or its place in the sequence of events.
- 10 Mrs. Simmons referred to a report dated 11/06/2013 from MacLennan, Surveyors and Contractors which set out their proposals for the application of a chemical damp proof course indicated on a sketch plan and which identified the walls described in item 2 of this decision. Their quotation was £1,821.00 plus VAT. They quoted a sum of £92.00 plus VAT to provide a 20 year guarantee.
- 11 On 19/06/2013 Frazer Garner, Chartered Building Surveyors, stated that in their opinion the slate damp proof course had failed and that the works proposed by MacLennan should resolve the problems in conjunction with the builders works which they would specify. They would prepare specifications for the works and get them priced by two or three contractors.

- 12 On 09/08/2013 Frazer Garner by e-mail set out the 3 quotations which they had obtained as follows:

Pinecliffe Construction £6,853.00

W E Cox & Sons Ltd £7,461.00

Henleys Response Ltd £9,594.00

All figures excluded VAT

- 13 On 20/08/2013 Mrs Simmons wrote to all lessees – the letter submitted was to Signpost Care Partnership referring to the damp penetration in Flat 3. The quotations which had been supplied by Frazer Garner were set out but there was no reference to VAT being additional. There was also no indication as to whether the cost of the Maclennan works were included.
- 14 It was acknowledged that the cost of the work exceeded the S20 limit but that complying with the notice requirements would incur a time delay of 60 days minimum. Melrose Court RTM Ltd had been informed and an application for dispensation was made to the Tribunal. Lessees were advised that £670.43 would be payable imminently and it is understood that 2 lessee had paid.
- 15 Mrs Simmons acknowledged that the letter stated the incorrect sums. She advised that it had not been intended that the letter would constitute any part of the S20 procedure.

### **DECISION**

- 16 The Tribunal accepts that the terms of the lease require the landlord to carry out the repairs specified and entitle the landlord to recover the cost of the works from the lessees.
- 17 The Tribunal considered the urgency required to have the works carried out. Mrs Simmons said that in her opinion, bearing in mind that the onset of winter was imminent the structure would deteriorate significantly if the works were delayed until the S20 procedure could be completed if dispensation was not granted.
- 18 The Tribunal accepted that there would be an element of commercial loss due to the flat not being able to be occupied until the works were completed but considered that there would be no significant deterioration in the short timescale involved.

- 19 The Tribunal were concerned that the correspondence which the lessees had received had misled them albeit unintentionally as to the cost of the works. They were also concerned that the Applicant had not submitted details of the specification produced by Frazer Garner or copies of the 3 quotations. The Tribunal also took account of the fact that at the time the letter of the 20/08/2013 was circulated the opportunity should have been taken to attach the notice of intention.
- 20 The Tribunal considered, however, that the lessees had been given an indication of the intention to carry out the damp proofing work in the letter dated 20/08/2013. The Tribunal determined that in view of the mis-information given to lessees and the lack of significant urgency it would be prejudicial to the lessees to dispense with the requirements of S20. It decided that it would be appropriate to shorten the period given to lessees to respond to the notice of intention. It therefore determines that the period be reduced to 14 days (instead of 30 days) for the Notice of Intention and that the full procedure be complied with in regard to the Statement of Estimates.
- 21 The Tribunal requested the Applicant to set out in writing the misinformation involved in failing to add VAT to the estimated sums quoted.
- 22 In view of the timescale the Tribunal gave its decision verbally to the Applicants at the end of the hearing pending the decision being given in writing.

Signed.....

Karl Lyons

### **APPEALS**

1. 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.
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.