



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

Case Reference : CHI/21UG/LDC/2019/0013

Property : 13 Cloudesley Road, St Leonards, East
Sussex TN37 6JW

Applicant : 13 Cloudesley Road, Right to Manage
Company Limited

Representative : Carlton Property Management

Respondents : Optivo (Flat 6)

Representative :

Type of Application : To dispense with the requirement to
consult lessees about major works

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 11 April 2019

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for the installation of emergency lighting and fire alarm systems carried out.

Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the Landlord and Tenant Act 1985 Act.
2. The Applicant explains that in May 2018 a full fire alarm system with emergency lighting was fitted to meet fire safety requirements without complying with the consultation requirements under section 20. One of the six lessees has refused to contribute to the cost of the works.
3. The Tribunal made Directions on 21 February 2019 and sent a copy to each Lessee. Attached to the Directions was a form for the lessees to return to the Tribunal indicating whether the application was agreed with, whether a written statement was to be sent to the applicant and whether an oral hearing was required.
4. The Directions noted that those parties not returning the form and those agreeing to the application would be removed as Respondents
5. One reply was received objecting to the application the remaining lessees have therefore been removed as Respondents s previously indicated.
6. No requests have been received for an oral hearing and the application is therefore determined on the papers received in accordance with Rule 31 of the Tribunal's procedural rules.
7. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

8. The relevant section of the Act reads as follows:

20ZA Consultation requirements:
 - a. (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.
9. The matter was examined in some detail by the Supreme Court in the case of Daejan Investments Ltd v Benson. In summary the Supreme Court noted the following
 - b. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.

- c. The financial consequence to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
- d. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- e. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- f. The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA (1).
- g. The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- h. The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- i. The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- j. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

Applicant

- 10. The Applicant explains that the property is a Victorian building converted into 6 self contained flats let on long term leases.
- 11. East Sussex Fire and Rescue raised concerns with Hastings Borough Council who, following an inspection advised that a fire alarm system and emergency lighting must be installed. Quotes were obtained and the installation work instructed.
- 12. The Applicant accepts that it had not made service charge requests in a formal manner but previous attempts to obtain payment had been unsuccessful. It was considered therefore that the Respondent would not contribute to the cost of the fire alarm.
- 13. The fire alarm system was installed on 22 May 2018. Carlton Property Management was appointed as managing agent at the end of September 2018 and on 2 October 2018 a service charge demand was sent to the Respondent who challenged its obligation to pay.
- 14. The Applicant accepts that it was an error not to carry out a Section 20 consultation prior to the installation of the fire alarm but they believed that

the Local Authority would issue an Improvement Notice if this work was not done as a matter of urgency.

15. It was submitted that the costs incurred in making this application are recoverable as if consultation had been carried out fees would have been incurred which would then have been recoverable through the service charge.

Respondent

16. "Preliminary Submissions" were received from the Respondent which referred to the demands not being made in accordance with the lease and a payment being made on 15 February 2019 of £867.15 by BACS which included a sum for major works. The payment made is said to have been without prejudice to their contention that the sums have not been correctly demanded.
17. Optivo are of the view that no demand has been made in accordance with the lease.
18. Any dispensation granted should be on condition that:
 - A correct demand for payment is made
 - Optivo do not incur any sums in connection with the application for dispensation and
 - Optivo do not incur any additional charges occasioned by the failure of the Applicant to demand payments correctly.
19. No further submissions have been received.

Determination

20. This is an application for dispensation from the requirement for the Applicant to consult with their lessees prior to undertaking works costing more than £250 per lessee.
21. Both parties have submitted evidence and made submissions on the manner in which service charge demands have been made in accordance with the terms of the lease. These issues are not however relevant to this application under S.20ZA and will not be considered.
22. What the Tribunal must determine is whether the Applicant's failure to consult in respect of major works has caused the lessees any financial prejudice.
23. The Respondent has not identified the type of prejudice referred to in the Daejan case at paragraph 9 above and, given the need to address the requirements of the local authority without undue delay I am satisfied that it is reasonable for dispensation to be given.

24. The Respondent has submitted that they should not bear the cost of this application whereas the Applicant suggests that costs would have been incurred if consultation had been carried out.
25. Neither party has provided an estimate of the costs that would have been incurred by carrying out a consultation procedure or the likely cost of this application.
26. Once the Tribunal accepts that the Applicant was justified in carrying out the works due to the urgency of the situation it must of necessity follow that the costs involved in seeking subsequent approval must be an allowable expense.
27. The other conditions referred to by the Respondent in paragraph 18 above are not relevant to an application under Section 20ZA.
- 28. In accordance with the above the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 for the installation of emergency lighting and fire alarm systems carried out.**
- 29. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
11 April 2019

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. 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.
2. 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.
3. 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 appeal is seeking.