



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

Case Reference	:	BIR/47UG/LDC/2019/0015
Property	:	Windermere Court, Calder Road, Stourport-on-Severn, Worcestershire, DY13 8QD
Applicant	:	Mr J.L. Carver
Representative	:	Principle Estate Management
Respondent	:	The Leaseholders of 12 properties at Windermere Court/ Calder Road, Stourport-on-Severn
Type of Application	:	An application to dispense with the consultation requirements provided by s.20 of the Landlord & Tenant Act 1985 ('the Act') under s.20ZA of the Act.
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman) Judge M. Gandham Judge D. Barlow
Date of Hearing	:	None. Paper determination.
Date of Decision	:	19 th March 2020

DECISION

Introduction

- 1 The Applicant applied to the First-tier Tribunal (Property Chamber) on 21st November 2019 for an order to dispense with the consultation requirements in Section 20 of the Landlord & Tenant Act 1985. The section requires a landlord to consult tenants before placing a contract to undertake any 'qualifying works' that would cost each tenant more than £250 and there are Regulations setting out a timetable and procedure to be followed for consultation.
- 2 However, the Act envisages that there may be occasions where for various reasons a landlord may be unable to consult, for example in cases of emergency, and there is provision in section 20ZA for a landlord to apply to the Tribunal for 'dispensation' to over-ride the consultation requirements. An application can be made before or after works are carried out.
- 3 In this case, the Applicant applied for dispensation on the ground that works were needed urgently as there was a broken water main and a property had no water supply. The Respondents are the Lessees.
- 4 The Applicant obtained a quotation for repairs from Hardyman Group Limited in the sum of £5,969.23 plus VAT and the work was carried out.
- 5 The only issue for the Tribunal is whether or not it is reasonable to dispense with the consultation requirements. Consenting to the application for dispensation does not preclude a subsequent application to the Tribunal for a determination that the costs of the work are unreasonable.
- 6 The Tribunal issued Directions to the parties on 22nd November 2019, and further Directions on 4th December 2019, directing the Applicant to send to the Respondents a copy of the application form and the quotation from Hardyman Group Limited.

Facts Found

- 7 The Tribunal inspected the exterior of the property on 10th March 2020 which comprises a detached three storey block of shops on the ground floor with flats above, located on a 1960s housing estate in Stourport.
- 8 The Applicant had provided a photograph showing part of the paving outside 'Abstracts Hair Studio' enclosed by barriers and a pile of rubble, but there was no sign of any ongoing work when the Tribunal inspected other than an area of uneven paving where it had been relaid.

Relevant Law

- 9 The Applicant provided the Tribunal with the lease of Flat 12 and the others are assumed to be in similar form. It had been granted for a term of 99 years from 25th March 1974, subject to a ground rent and service charge.
- 10 Clause 1(ii) requires the Lessee to pay a proportion of the Lessor's expenses and clause 1(iii) specifies that the Lessee must also pay such other sum or sums in respect of the Flat which the Lessor from time to time during the term shall properly be called upon to pay.

- 11 The Third Schedule Part II paragraph 2(i) specifies the Lessee's proportion of the Lessor's costs at 1/12th.
- 12 The Third Schedule Part II paragraph 4 requires the Lessee to pay 'a fair share of the cost of the upkeep of any party fences walls sewers drains pipes passages footpaths entrances or garage access surface as apportioned by the Lessor'.
- 13 The Sixth Schedule paragraph (4)(i) requires the Lessor to 'maintain repair redecorate and renew (a) the main structure roof gutters and rainwater pipes of the building, subject to payment by the Lessee of their share of the cost.
- 14 The Eighth Schedule Part I paragraph 1(c) specifies the works subject to reimbursement by the Lessee to include the cost of maintaining, repairing, redecorating and renewing 'the water pipes drains and electric cables and wires in or under the Building to be enjoyed or used by the Lessee in common with the owners or lessees of the other flats in the Building.'
- 15 As the contractor's quote was for £5,969.23 plus VAT at 20%, the cost would have been £596.92 per Lessee which would have exceeded the £250 limit for expenditure without consultation in the normal course of events.
- 16 The dispensation provision in section 20ZA of the Act (as amended) states: 'Where an application is made to the appropriate tribunal (a jurisdiction transferred to the 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.' (Our bracket and italics).
- 17 Furthermore, there has been case law on the subject in the Supreme Court, *Daejan Investments Ltd. v Benson et al.* [2013] UKSC 14, which establishes the matters to be taken into account by a Tribunal when considering an application such as this.

Submissions

- 18 The Applicant submitted the Application form together with a photograph of the barriers on the paving and a note that Severn Trent had been approached and advised that the repairs were the Applicant's responsibility.
- 19 No objections were received from any of the Respondents.

Decision

- 20 The Tribunal reached its decision based on the Application and quote provided.
- 21 The approach taken by the Tribunal when considering an application for dispensation is set out in the Supreme Court's judgment in *Daejan* above. In summary, this is as follows:
- 1 The Tribunal should identify the extent to which tenants would be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the regulations;
 - 2 No distinction should be drawn between 'a serious failing' and 'technical error or minor or excusable oversight' save in relation to the prejudice it causes;

- 3 The financial consequences to the landlord of not granting a dispensation are not relevant factors for the Tribunal to considering in exercising its discretion under section 20ZA and
- 4 The nature of the landlord is not relevant.
- 22 The Tribunal has power to grant dispensation on such terms and conditions as it thinks fit, provided any terms and conditions are appropriate in their nature and effect.
- 23 The Tribunal finds it would have been essential to have reinstated the water supply as a matter of urgency and that the required work was within the Lessor's repairing liability in the lease, subject to reimbursement by the Lessees.
- 24 Applying the tests above and the principles in *Daejan*, the Tribunal finds the Lessees are not prejudiced by granting dispensation of the consultation requirements in the Landlord & Tenant Act 1985 and it is reasonable to grant dispensation. Accordingly the application for dispensation is granted.

Schedule of Respondents

25	<u>Name</u>	<u>Unit</u>
	M.A. Parker	10 Windermere Court
	M.F. & D. Prescott	12 Windermere Court
	Messrs A & T Bains	14 Calder Road
	J.R. Bailey	16 Windermere Court
	W.L. Pienaar	18 Windermere Court
	A.C.C. & E.J.C. Winscom	2 Calder Road
	Messrs A & T Bains	20 Calder Road
	A. Wright	22 Windermere Court
	M.G. Perch	24 Windermere Court
	J. Carver	4 Windermere Court
	T.P. Fielding	6 Windermere Court
	J.A. Barber	8 Calder Road

Application to the Upper Tribunal

- 26 If any party is dissatisfied with this decision they may apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), within 28 days of the date this decision is sent to the parties. Any such request should identify the decision to which the appeal relates, stating the grounds on which the party intends to rely in the appeal and the result sought by the party making the application.

I.D. Humphries B.Sc.(Est.Man.) FRICS
 Chairman
 First-tier Tribunal Property Chamber (Residential Property)

Date: 19 March 2020