



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

Case Reference : CHI/00ML/LDC/2020/0060

Property : 13 Third Avenue, Hove BN3 2PB

Applicant : Tulipwood Limited
(ben@propertyfusion.co.uk)

Representative :

Respondent :

Representative :

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

Tribunal Member(s) : D Banfield FRICS
Regional Surveyor

Date of Decision :
Made on the papers without a hearing
(rule 6A of the Tribunal Procedure Rules
2013 as amended by The Tribunal
Procedure (Coronavirus) Amendment
Rules 2020 SI 2020 No 406 L11 on 17
September 2020

DECISION

The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works of replacement of the boiler.

In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.

The Applicant is required to send copies of this determination to the Lessees of the flats concerned.

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 1985 Act.
2. The Applicant explains that the boiler serving the block is not working and requires replacement. Notices have been served but the expiry for the second notice is 16 September 2020 and the boiler has now failed completely. There is currently no hot water being provided.
3. The Tribunal made Directions on 20 August 2020 indicating that the Tribunal was satisfied that the matter is urgent, it is not practicable for there to be a hearing and it is in the interests of justice to make a decision disposing of the proceedings without a hearing (Rule 6A of the Tribunal Procedure Rules 2013 as amended by The Tribunal Procedure (Coronavirus) Amendment Rules 2020 SI 2020 No 406 L11).
4. The Applicant was required to send a copy of the Directions to the parties notified as Respondents together with a form for the Respondents to indicate whether they agreed with or objected to the application and if they objected to send their reasons to the Applicant.
5. It was indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
6. One Lessee responded agreeing to the proposals and as such the Lessees have been removed as Respondents in accordance with the above paragraph.
7. The only issue for the Tribunal is whether 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:

S.20 ZA Consultation requirements:

 - i. 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

- i. The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
- ii. 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.
- iii. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- iv. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- v. 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).
- vi. 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.
- vii. 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.
- viii. 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.
- ix. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

10. The Applicant explains that the boiler has failed and no hot water is being provided.

Determination

11. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.
12. Clearly it is unreasonable to delay the restoration of hot water longer than necessary. No objections have been received from the lessees and no evidence of relevant prejudice as considered in the Daejan case referred to above has been identified.
13. In view of the above the Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the works of replacement of the boiler.
14. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
15. The Applicant is required to send copies of this determination to the Lessees of the flats concerned.

D Banfield FRICS

17 September 2020

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 RPSouthern@justice.gov.uk. 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.