



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

Case Reference : CHI/43UE/LDC/2020/0097

Property : Floral Court, Oakhill Road, Ashted,
Surrey KT21 2JL

Applicant : Floral Court Residents' Association
Limited

Representative : Patrick Gardner Management Company
Limited

Respondent : None

Representative :

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

Tribunal Member(s) : Judge D. Agnew

Date of Decision : 22 March 2021

DECISION

Summary of the Decision

The Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 to repair the roof at Floral Court, Oakhill Road, Ashread, Surrey KT21 2JL.

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

The Applicant is to send a copy of the Tribunal's determination to each lessee liable to pay service charges.

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 ("the Act").
2. The Applicant explains that works are required to repair the roof at Floral Court which has been allowing a serious ingress of water to the flat below.
3. The Tribunal made Directions on 17 December 2020 requiring the Applicant to send a copy of the application and the Tribunal's Directions to each lessee. Attached to the Directions was a form for the lessees to return to the Tribunal indicating whether an oral hearing was required, if the application was agreed to or opposed and if the latter a statement was to be sent to the Applicant.
4. The Directions noted that those parties not returning the form to the Tribunal and those agreeing to the application would be removed as Respondents.
5. The Applicant's representative complied with the Directions. No responses have been received from the lessees who have therefore been removed as Respondents.
6. No objections were received to the application being determined without an oral hearing. Having reviewed the papers I confirm that the case is suitable for a paper determination and it is therefore determined on the papers received in accordance with rule 31 of the Tribunal Procedure Rules 2013.
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:

20ZA Consultation requirements:

(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

- a. 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.
- b. 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.
- c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- e. 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).
- f. 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.
- g. 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.
- h. 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.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

The Applicant's case

10. This is set out in the application form. Clearly the disrepair of the roof was leading to a serious ingress of water into the flat below. This was a situation requiring an urgent response and is a suitable case for dispensation to be given from the consultation requirements of section 20 of the Act. Although no specification for the works or any estimate has been supplied to the Tribunal, this decision has no bearing on the cost of the works or the quality of them.
11. No objections to the application have been received from any of the lessees.

Determination

12. As indicated in the Tribunal's Directions the Tribunal's decision solely relates to whether, in the circumstances, it is reasonable to grant dispensation from the consultation requirements of Section 20.
13. The guidance given by the Daejan case referred to above provides that it is for the tenant to identify that they have suffered prejudice by not being consulted then it is up to the landlord to rebut it.
14. In this case no lessee has opposed the application for dispensation and so no prejudice to the lessees has been claimed if an order for dispensation were to be made. I am satisfied that the required works are sufficiently urgent to justify the dispensation requested so that the repair can be carried out without delay.
15. **Accordingly, the Tribunal grants dispensation from the consultation requirements of S.20 of the Landlord and Tenant Act 1985 to repair the roof at Floral Court.**
16. **In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**
17. **The Applicant is to send a copy of the Tribunal's determination to each lessee liable to pay service charges.**

APPEALS

- 1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application by email to rpsouthern@justice.gov.uk and quoting the Case number and address of the property.**
- 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 appeal is seeking.**