9699

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	: CHI/00ML/LDC/2013/0049
Property	: 52 Surrey Street, Brighton, East Sussex BN1 3PB
Applicant	: Elizabeth Partington
Respondent	: Amanda Falciola
Type of Application	: Section 20ZA of the Landlord and Tenant Act 1985 Application to dispense with consultation procedure
Tribunal Members	: Judge A Johns (Chairman) Mr N I Robinson FRICS (Surveyor Member)
Date of Decision	: 12 December 2013

DECISION

---

1. By a decision dated 29 July 2013 the Tribunal determined that the sum payable by Miss Falciola as tenant in respect of service charge for roof works carried out in 2012 to 52 Surrey Street, Brighton, East Sussex, BN1 3PB ("the Property") was capped at £250 in the absence of an order dispensing with the consultation requirements in s.20 of the Landlord and Tenant Act 1985 ("the Act"). This is Miss Falciola's application for that dispensation.

2. As recorded in the previous decision, if the consultation requirements are dispensed with, the sum sought by way of service charge for the roof works is £1028.16. We will not repeat the other background which is fully set out in the previous decision.

3. The application is made under s.20ZA of the Act which provides that the Tribunal may make the determination to dispense with all or any of the consultation requirements if satisfied that it is reasonable to dispense with them. The application is made by Ms Partington. It appears she is not the only person holding the freehold title to the Property and that Miss Falciola is another of the joint freeholders. But no objection has been made by Miss Falciola to this application on that basis.

4. Directions were given by the Tribunal on 18 September 2013. They included giving notice that it intended to determine the case on paper without a hearing. No objection to that course was received and so there was no hearing.

5. The directions also required Miss Falciola's statement of case to include "details of any alleged prejudice suffered as a result of the failure to comply with the regulations for example by being asked to pay for inappropriate works or for more work than was done or more than would be appropriate as a result of the failure to comply with the directions".

6. The importance of that direction is that the Supreme Court has recently made clear in *Daejan Investments Ltd v Benson* [2013] UKSC 14 that the purpose of the consultation requirements is to ensure that tenants are protected from (i) paying for inappropriate works or (ii) paying more than would be appropriate, and that the Tribunal's focus on an application under s.20ZA must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.

7. Both sides submitted statements of case in accordance with the directions. The Tribunal has had careful regard to each as well as to the material in the application form.

8. Ms Partington set out in her application form under the heading "No prejudice" her case that even if the s.20 consultation process had been followed, the end result would have been the same in terms of costs and the standard of services received.

9. Miss Falciola's statement criticised Ms Partington for her failure properly to consult. But despite the direction given by the Tribunal referred to at paragraph 4 above and the case set out by Ms Partington in the application form, that statement did not identify any prejudice. There is no indication that either the works or their cost would have been any different had the consultation requirements been met.

There is therefore nothing in the papers from which the Tribunal can conclude that Miss Falciola has been prejudiced in paying for inappropriate works or paying more than would be appropriate as a result of Ms Partington failing to follow the procedure in s.20 of the Act.

10. No prejudice being established, the Tribunal is satisfied that is reasonable to dispense with the consultation requirements.

11. For the reasons set out above, the decision of the Tribunal is that the consultation requirements are dispensed with.

12. 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.

13. 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.

14. 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.

15. 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.

Judge A Johns (Chairman)

Dated 12 December 2013