



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

Case Reference : CHI/00HB/LDC/2014/0031

Property : 24 Belmont Road, St Andrews, Bristol,
BS6 5AS

Applicant : Mr Andrew Baird

Representative : Mr Ben Hudnott
HML Andertons (Managing Agents)

Respondent : Nicola Milliner, Farid D A Brooks, Andrew
and Hilary Baird and Michael O'Sullivan

Representative : None

Type of Application : Dispensation with Consultation, Section
20ZA Landlord and Tenant Act 1985 (as
amended)

Tribunal Members : Mr I R Perry FRICS (Chairman)
Mr M Ayres FRICS (Member)

**Date and venue of
Inspection** : 18th August 2014
Vintry House (3rd Floor), Wine Street,
Bristol, BS1 2BZ

Date of Decision : 18th August 2014

REASONS FOR DECISION

DECISION

For the reasons set out below, the Tribunal:

- 1. Pursuant to Section 20ZA (1) of the Landlord and Tenant Act 1985 (as amended), dispenses with the consultation requirements set out in Part II of Schedule 4 to the service charges (consultation requirements) (England) Regulations 2003 (SI2003/1987) in respect of the following qualifying works to be carried out by the Applicant at 24 Belmont Road.
 - a) erection of scaffolding to the front elevation of the property**
 - b) replace damaged tiles as necessary and replace area of damaged guttering as necessary. The estimated total cost is £1,476 including VAT.****
- 2. Except in so far as stated in paragraph 1 above, determines not to dispense with the consultation requirements in respect of additional works outlined in a letter sent to the Tribunal by HML Andertons on the 14th August 2014 and contained within a letter from CS2 Chartered Surveyors dated 14th August 2014.**
- 3. Pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) orders that the cost incurred by the Applicant in connection with this determination may be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents.**

REASONS

Background

1. 24 Belmont Road, St Andrews, Bristol, BS6 5AS (“the property”) is a terraced house probably dating from the early 1900s which has been converted to provide 4 flats over 4 floors. The freehold interest is owned by Mr Andrew Baird who occupies the first floor flat. The Tribunal was informed that each of the other flats is let on 999 year lease from the 29th September 1871.
2. The Tribunal was shown a sample lease for the ground floor flat. In Section 4 of the lease the tenant covenants with the landlord “(b) contribute and pay one equal fourth part of the costs, expenses, outgoing and matters mentioned in the fourth schedule hereto.”
3. The fourth schedule above includes “1. The expenses of maintaining, repairing, redecorating and renewing (a) the main structure and in particular the roofs, foundations, external walls, chimney stacks, gutters and rain water pipes of the property”.

4. On or about the 9th July 2014 a neighbour reported to the managing agents that a tile had fallen from the roof of the property. The agent instructed a contractor Elite Carpentry & Maintenance Ltd to inspect the property and provide an estimate for necessary repair works.
5. Elite Carpentry & Maintenance Ltd provided an estimate dated 15th July 2014 to repair damage to guttering and roof tiles at the property including the erection of scaffolding to the front elevation in a total sum of £1,476 including VAT.
6. On the 17th July 2014 HML Andertons posted an emergency Section 20 Notices and letters to all four lessees detailing works required.
7. HML Andertons made an application to the First Tier Tribunal Property Chamber (Residential Property) on the 21st July 2014 seeking special dispensation under Section 20ZA. The works proposed in the application were for the erection of scaffolding at a cost of £1,000 + VAT which would then allow builders to assess work required.
8. The Tribunal issued Directions on the 23rd July 2014 specifically stating that “if they oppose the application they (the leaseholders) must attend a hearing to explain why they oppose the application and be prepared to give evidence of the prejudice they claim they would suffer if the dispensation were to be granted.”
9. On the 8th August Mr Andrew Baird (first floor flat) wrote to Mr Hudnott agreeing to the proposed works. Miss Milliner had written on 30th July 2014 in support of the original application. Mr O’Sullivan had written to the Tribunal on 30th July declining to support the application, subject to a number of conditions, and objecting to the application. He also said he wanted to attend the hearing. He wrote again on 13th August to say he would not be at the hearing, asking that the hearing be adjourned, that scaffolding be erected and a further hearing be held after a detailed inspection had been carried out. He also asked that there be no order for costs made against the leaseholders.
10. HML Andertons wrote to the Tribunal on the 14th August 2014 enclosing a report from CS2 Chartered Surveyors who made further recommendations for work to be carried out to the property “subject to a detailed inspection”.
11. This included a recommendation that the hung tiles on the front elevation of the property be taken off completely and replaced with render; that the gutter and fascia boards be overhauled; that external timbers at third floor level be decorated; and the window at third floor level be replaced with modern pvc equivalent.
12. The letter also included quotations for the majority of this work in the sum of £3,576 + VAT, from Elite Carpentry & Maintenance Ltd, although this excluded replacement of the third floor window. The letter also included an additional quotation from PTC Roofing & Maintenance in the sum of

£4,160. This made no reference to VAT and did not include replacement of the third floor window.

The Law

13. The law relating to determination of the amount of service charges payable by a leaseholder is primarily set out in sections 18, 19, 20, 20ZA and 27A of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act"). In brief, if the parties to a lease cannot agree the amount of service charges payable, either the landlord or the tenant may apply to the Tribunal to make a determination. In making that determination, the Tribunal will consider whether the charge is recoverable under the terms of the lease and, if it is, whether the amount claimed has been reasonably incurred and whether the services or works were carried out to a reasonable standard. Where a service charge is payable before the costs are incurred, no greater amount than is reasonable is payable.
14. When the landlord wants to carry out qualifying works where the tenant's contribution is going to exceed £250, the landlord must comply with the consultation requirements which are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Consultation Regulations"). Alternatively, the landlord may apply to the Tribunal for dispensation from those requirements under section 20ZA.
15. In the case of *Daejan Investments Ltd V Benson [2013] UKSC 14* the Supreme Court gave guidance to tribunals as to how they should exercise the discretion given to them by section 20ZA. At paragraph 42 of the speech of Lord Neuberger, he says "*It seems clear that sections 19 to 20ZA are directed towards ensuring that tenants of flats are not required (i) to pay for unnecessary services or services which are provided to a defective standard, and (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. ... The following two sections, namely sections 20 and 20ZA appear to me to be intended to reinforce, and to give practical effect to, those two purposes.*" Then at paragraph 44 he says "*It seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under section 20ZA(1) 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.*"
16. When a landlord incurs legal or other costs in connection with court or tribunal proceedings, he may seek to recover those costs from tenants through the service charge if he is entitled to do so by the terms of the lease. Section 20C of the 1985 Act enables a tenant to apply to the Tribunal for an order preventing the landlord from recovering his costs through the service charge. The Tribunal may make such order as it considers just and equitable in the circumstances.

17. Section 29 of the Tribunals, Courts and Enforcement Act 2007 provides that the costs of all proceedings in the First-tier Tribunal shall be at the discretion of the tribunal in which the proceedings take place. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (SI 2013/1169) makes further provision for the award of costs in tribunal proceedings. The tribunal may make an order for costs if a person has acted unreasonably in bringing, defending or conducting proceedings.

Inspection

18. The Tribunal inspected the property in the presence of Mr Ben Hudnott of HML Andertons prior to the Hearing on 18th August 2014. None of the leaseholders were present.
19. The Tribunal noted a small number slipped or broken tiles on the third storey hung tile elevation and an area of gutter missing. The decorations were also noted to be in poor order.

The Hearing and Evidence

20. The Hearing took place at Vintry House, Wine Street, Bristol, BS1 2BZ on Monday 18th August 2014 at 11.00am. Mr Hudnott appeared on behalf of the Applicant. No Tenants appeared.
21. Mr Hudnott told the Tribunal that he had been initially notified of a broken tile falling on the 9th July 2014. He had instructed a contractor to inspect the property on the 15th July 2014 and it became apparent that further minor damage had occurred between his initial inspection and the visit of the contractor.
22. The contractor advised that a full scaffolding would be required to access the third storey and this would be at a price of £1,200 including VAT.
23. Mr Hudnott had arranged to issue emergency Section 20 Notices to all four tenants on the 17th July 2014 and an application under Section 20ZA was made to the Tribunal on the 21st July 2014.
24. Mr Hudnott re-visited the property during the week commencing 11th August 2014 and commissioned a report from CS2 Chartered Surveyors. This report together with the additional estimates were provided to the Tribunal on the 14th August 2014 some four days before the Tribunal met.
25. Mr Hudnott told the Tribunal that the tiles on the front elevation were no longer commercially available and only reclaimed tiles could be purchased at a cost of approximately £40 per tile. CS2 Chartered Surveyors had therefore advised that the hung tile elevation be removed completely and be replaced with render. He asserted that the existing tiles were a health and safety risk and therefore urgent works were required.

Conclusion

26. The Tribunal agreed that the present hung tile elevation was an urgent safety issue and decided to grant a Section 20 dispensation as requested in the original application. This decision was confirmed verbally at the end of the Hearing.
27. The Tribunal decided not to give dispensation for the further works suggested in the surveyor's letter dated 14th August 2014. Replacing the hung tile elevation with a render elevation would substantially alter the appearance of the front elevation and without a close inspection facilitated by scaffolding it was impossible to confirm whether complete replacement was necessary. To grant dispensation in respect of these additional works at a cost of more than double the original application would prejudice the Tenants' rights to make representations about the nature of the work and the cost of the proposed work, this being the rights that the legislation had been designed to protect.
28. This Decision was also related verbally to the Applicants' Agent at the conclusion of the Hearing.
29. Mr Hudnott made a verbal application at the Hearing in accordance with Section 20C of the Act for the costs incurred by the Landlord in connection with these proceedings to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Tenants.
30. The Tribunal is of the view that it has no power to entertain Mr Hunt's application because only a tenant can apply for an order under section 20C of the 1985 Act. The landlord will need to satisfy himself that he can recover such costs under the terms of lease. The Tribunal holds doubts about whether there is authority under the lease but did not make a determination on this issue. If the landlord decides to include the costs in the service charge. The tenants are entitled to challenge the recovery of such costs on the grounds that they are not payable by making an application to the Tribunal.

Right of Appeal

31. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
32. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. 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.

33. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.

Chairman: 
I R Perry FRICS

Dated: 