



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

Case Reference : CHI/21UD/LDC/2016/0009

Property : 28 Magdalen Road, St Leonards-on-Sea
TN37 6EG

Applicants : Barry Markham

Representative :

Respondent : Mr & Mrs Bailey (Top floor)
Mr Lilley (First floor)

Representative :

Type of Application : Application to dispense with consultation-
Section 20ZA Landlord and Tenant Act
1985

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 16 May 2017

DECISION

The Tribunal grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the Velux rooflight only, to include necessary access costs for this purpose.

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

Background

1. This is an application for dispensation from the consultation requirements provided by section 20 Landlord and Tenant Act 1985.
2. The Applicant advises that due to water coming through a skylight damage has been caused to ceilings and the basement flat.
3. Following a letter of complaint estimates were obtained from a number of contractors and reported to Mr Bailey's Solicitor but no response has been received.
4. Mr Lilley has given approval to the works.
5. Dispensation from the consultation procedures is now sought.
6. The Tribunal made Directions on 9 March 2017 and sent a copy together with a copy of the application and a form for the Respondents to indicate whether they opposed the application and if they required an oral hearing.
7. No objections have been received and the application is therefore determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
8. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

9. 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.

10. 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
 - 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.

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

Evidence

11. Despite a clear Direction to produce a hearing bundle the Applicant has failed to do so. In view of this failure the Tribunal has considered striking out the application in accordance with Rule 9 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 but has decided against.
12. As indicated to the Applicant on 4 May 2017 the Tribunal will make its determination on the application and the limited evidence subsequently received.

13. The Applicant has provided copies of two estimates; scaffolding to provide access for roofing works and a quote to replace the Velux rooflight which is described as "leaking badly".

Decision

14. 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.
15. In this case the work required attention and no prejudice of the type referred to in the Daejan case referred to in paragraph 4 above has been identified.
16. No objections to the application have been received from the Respondents.
- 17. The Tribunal therefore grants dispensation from all or any of the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the replacement of the Velux rooflight only, to include necessary access costs for this purpose.**
- 18. In granting dispensation the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
16 May 2017

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 the First-tier Tribunal at the Regional office, which has been dealing with the case. 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 application is seeking.