



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

Case Reference : CHI/18UL/LDC/2018/0093

Property : Chapel Heights, Barley Market Street,
Tavistock PL19 0FG

Applicant : Chapel Heights Tavistock RTM Company
Ltd

Representative : Drew Pearce 1748 Limited

Respondent :

Representative :

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

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision : 23 January 2019

DECISION

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

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

Background

1. An application was received from SDL property Management Ltd on behalf of Simarc Limited seeking dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the Landlord by Section 20 of the Act in respect of works to the lift.
2. The Tribunal made Directions setting out a timetable leading to the Tribunal's determination of the matter. The Applicant was required to serve copies of the application and the Tribunal's Directions on the Lessees. This was not done and subsequently the RTM Company assumed responsibility for management of the property and their agent Drew Pearce 1748 Ltd applied to take over the application.
3. SDL confirmed that they were no longer instructed and Directions were made on 29 November 2018 updating those previously made.
4. Drew Pearce then advised the Tribunal that the works for which dispensation was originally applied had proved to be insufficient and wished to include the installation of the main board and potentially further additional works.
5. The Application before the Tribunal is therefore for 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 in respect of works to repair the only lift in the apartment block which comprises 14 apartments over 4 levels.
6. Further Directions were made on 12 December 2018 requiring the Applicant to send copies of the application and the Directions to each of the Respondents. Attached to the Directions was a form to be completed by the Respondents and returned to the Tribunal indicating whether they agreed or disagreed with the application and whether they required an oral hearing.
7. The Directions indicated that any lessee agreeing to the application or not returning the form to the Tribunal would be removed as a Respondent.
8. One lessee returned the form indicating that the application was agreed and that an oral hearing was not required.
9. In accordance with paragraph 7 above the Lessees have been removed as Respondents.
10. The application is therefore determined on the papers without an oral hearing in accordance with Rule 31 of the Tribunal procedural rules.
11. The only issue for the Tribunal is if 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

12. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

- a. (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.

13. 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

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

Evidence

14. In a bundle provided by the RTM company's representative is a time line highlighting the dates relevant to this application. The lift was reported out of action on 1 November 2018 and two estimates subsequently obtained. Lessees were advised of the position on 15 November 2018 and were asked to sign a letter agreeing to the proposal the majority of which were returned as agreed.
15. The initial repair works proved insufficient and lessees' agreement was obtained for the expenditure on additional works which have now proved sufficient.

Determination

16. 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.
17. The early reinstatement of the lift to working order was essential and it is accepted that following the full consultation process would have caused unacceptable delays. The lessees have been kept informed throughout and the prior agreement of a large number of them obtained.
18. There have been no objections from any of the lessees and no prejudice as referred to in paragraph 13 above has been identified.
- 19. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of works to reinstate the lift.**
- 20. In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

D Banfield FRICS
23 January 2019

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 appeal is seeking.