FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/LSC/2018/0272**
Property	**:**	**Premier House, 112 Station Road, Edgware HA8 7BJ ("Premier House")**
Applicant	**:**	**Betterpride Limited ("the landlord")**
Representative	**:**	**Scott Cohen Solicitors**
Respondent:	**:**	**Various Leaseholders ("the tenants")**
Representative	**:**	**Axiom Stone Solicitors**
Type of applications	**:**	**Liability to pay service charges and dispensation from the statutory consultation requirements**
Tribunal members	**:**	**Judge Angus Andrew** **Luis Jarero BSc FRICS**
Date and venue of hearing	**:**	**8 & 9 April 2019** **10 Alfred Place, London WC1E 7LR**
Date of further decision	**:**	**27 June 2019**

FURTHER DECISIONS

Decisions

1. As a condition of granting dispensation, the landlord may not recover its costs incurred in the dispensation application through the service charge.

2. We decline to make an order limiting the landlord's ability to recover the costs of the proceedings under section 27A of the Landlord and Tenant Act 1985 through the service charge.

Background

3. This decision is by way of an addendum to our substantive decision of 14 May 2019 and it should be read in conjunction with it. In the concluding 3 paragraphs of that decision we gave further directions in respect of the following issues: -

    a. Whether as a condition of granting dispensation the landlord should be required to pay all or part of the tenants' costs incurred in obtaining advice on the dispensation application; and

    b. The tenants' applications for orders limiting the landlord's ability to recover the costs to these proceedings either through the service charge or as an administration charge under the terms of their leases.

4. The parties have complied with those directions and we have read their submissions relating to the above issues. The tenants put their costs incurred in the dispensation application at £4,785. Unsurprisingly the landlord does not take issue with the quantum: it is a modest enough sum for an application of this type.

5. Neither party in their submissions has dealt with the possibility of cost recovery as an administration charge. We assume therefore that it is not a live issue and we do not consider it in this decision.

Reasons for our decisions

As a condition of granting dispensation, the landlord may not recover its costs incurred in the dispensation application through the service charge.

6. As framed the original issue was whether as a condition of granting dispensation the landlord should be required to pay all or part of the tenants' costs. Both parties rely on Lord Neuberger's judgement in Daejan Investments Limited v Benson and others [2013] 1 W.L.R. 854. Mr Bates for the landlord points to paragraph 54 where Lord Neuberger said: -

"(the tribunal) has power to grant dispensation on such terms as it thinks fit- provided of course, that any such terms are appropriate in their nature and their effect".

7. Mr Bastin for the tenants points to paragraphs 59 and 64 in particular where Lord Neuberger said: -

   "Like a party seeking dispensation under section 20(1)(b), a party seeking relief from forfeiture is claiming what can be characterised as an indulgence from a tribunal at the expense of another party. Accordingly, in so far as the other party reasonably incurs costs in considering the claim, and arguing whether it should be granted, and, if so, on what terms, it seems appropriate that the first party should pay those costs as a term of being granted the indulgence".

8. There is however a fundamental difference between this case and both the Daejan case and hypothetical relief from forfeiture case considered by Lord Neuberger. In both those cases the party seeking the indulgence was or would be at fault. In Daejan the landlord cut short the consultation period without giving the tenants the opportunity to comment on the estimates. Any application for relief from forfeiture stems from a finding or an acknowledgement that the tenant has breached the terms of its lease.

9. However, in this case neither party was at fault. The landlord purchased Premier House after the cladding had been installed and it is self-evident that the tenants cannot be blamed for the faulty cladding.

10. It is apparent from Lord Neuberger's comments at paragraph 54 that the terms that may be imposed as a condition of granting dispensation are not closed. In this case the just and equitable outcome is that each party should bear its own costs incurred in the dispensation application: to put it another way that the costs should lie where they fall. That outcome may be achieved by imposing a condition preventing the landlord from recovering its costs incurred in the dispensation application through the service charge.

<u>We decline to make an order limiting the landlord's ability to recover the costs of the proceedings under section 27A of the Landlord and Tenant Act 1985 through the service charge.</u>

11. Given our first decision it is only necessary to consider the application under section 20C of the 1985 Act in the context of the proceedings under section 27A of the 1985 Act.

12. The right to recover costs under a lease is a property right that should not be lightly disregarded. Section 20C provides that a tribunal may *"make such order on the application as it considers just and equitable in the circumstances"*. Those words permit us to take into account the conduct of the parties in deciding whether to make an order.

13. In this case the landlord was substantially successful in the proceedings. It succeeded on 89% of the disputed costs. We can see no good reason to deprive the

landlord of its right to recover its costs and we decline to make the order sought by the tenants.

Name: Angus Andrew Date: 27 June 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).