

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
AN APPLICATION UNDER SECTION 20ZA OF THE LANDLORD  
AND TENANT ACT 1985 (AS AMENDED)**

Case Number:	CHI/00ML/LDC/2007/0015
Property:	1-9 Lyndhurst Court Lyndhurst Road Hove BN3 6FZ
Applicant:	Solitaire Property Management Company Limited
Respondents:	The Lessees of Flats 1 to 9 of the Property
Date of Application:	5 <sup>th</sup> April 2007
Date of Hearing:	2 <sup>nd</sup> May 2007
Venue:	Maritime House, Basin Road North, Hove BN41 1WR
Appearances:	
For the Applicant:	Myron Green Surveyor
Tribunal Members:	Mr Robert Wilson LLB Chairman Mr R A Wilkey FRICS FICPD Valuer
Date of Decision:	20 <sup>th</sup> May 2007

## THE TRIBUNAL'S DECISION

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### 1. BACKGROUND

- 1.1 This is an application made by the Applicant pursuant to section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements contained in Section 20 of the Act. The lessees in the subject property are joined as Respondents to the application.
- 1.2 The work covered by this application is to excavate, expose and replace the defective section of sewerage pipe serving the property and to reinstate the ground work, and to test and ensure the clear running of the system and clear the raw surface sewage from the rear of the building "The Works".

### 2. INSPECTION

- 2.1 The Tribunal inspected the subject property on the 2<sup>nd</sup> May 2007 prior to the hearing. It is a detached three storey post war block of nine purpose built flats, part of an in-filling development in an established residential area adjoining the railway and within easy reach of Hove Town centre amenities.
- 2.2 The Tribunal noted that the Works had been carried out.

### 3. LAW

- 3.1 Section 20 of the Act limits the contribution that Lessees have to make towards "qualifying works" if the relevant consultation requirements have not been complied with or dispensed with by a Leasehold Valuation Tribunal.
- 3.2 Section 20ZA (2) of the Act defines "qualifying works" as works on a building or any other premises. Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 1987 ("the Regulations") provide that if a lessee has to contribute more than £250 towards any qualifying works then consultation in accordance with Section 20 of the Act must take place before those works commence.
- 3.3 The consultation requirements are set out in the Regulations and it is not proposed to set these out here.
- 3.4 Under section 20ZA (1) of the Act, the Tribunal is given discretion to dispense with the consultation requirements. This section provides:

*Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any consultation requirements in relation to any qualifying works or qualified long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with those requirements.*

- 3.5 The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements?

#### **4. HEARING**

- 4.1 The hearing took place at the Maritime House, Basin Road North, Hove, East Sussex on the 2<sup>nd</sup> May 2007.

#### **5. THE EVIDENCE PRESENTED AT THE HEARING**

- 5.1 Mr Green for the Applicant ran through a chronology of events relating to the incident. His Company held management instructions and on the 1<sup>st</sup> February and the 26<sup>th</sup> March 2007 they were notified of a blocked drain to the rear of the premises. On these two occasions drains clearance work was carried out. On the 2<sup>nd</sup> April they were again notified of a blockage and as this was the third incident in a short period of time they considered that there may be more significant problems. A CCTV survey was commissioned which revealed that part of the underground drains had collapsed. The result was the existence of raw sewage overflowing onto the grounds to the rear of the block accompanied by an overpowering stench and an infestation of flies.
- 5.2 In view of the obvious health and safety risks, Mr Green decided to treat the incident as an emergency. His office contacted two specialist drain companies with a view to providing a quotation to carry out the necessary repairs. Mr Green also contacted the Tribunal office for an application form to obtain an order dispensing with the usual consultation procedures. Mr Green further wrote to all the lessees informing them of the action being taken. This letter informed the lessees of the likely cost of the work, and their intention to seek an order dispensing with consultation.
- 5.3 Mr Green stated that two quotations were received to carry out the work one for £3,348.75 inclusive of vat and the other for £3, 400 exclusive of vat. He checked that the cheaper contractor was able to carry out the work quickly and placed the contract with that contractor on receiving confirmation that the work could be carried out within a week.
- 5.4 The decision to carry out the work was made on the 20<sup>th</sup> April 2007 and the work was completed by the 25<sup>th</sup> April 2007. The problems appear to have been satisfactorily resolved.

## 6. CONSIDERATION

- 6.1 In the opinion of the Tribunal the Works do constitute, “qualifying” works within the meaning of the Act. As the contribution required from each of the Respondents pursuant to the service charge provisions of their leases will exceed the threshold of £250 there is an obligation by the Applicant under Regulation 6 to consult the Respondents in accordance with the procedures set out in the Regulations.
- 6.2 In our view the evidence put before us establishes :-
- (i) There is no option other than to carry out the work forthwith as failure to do so would have posed an obvious health and safety risk.
  - (ii) The lessees were all informed and no lessee objected to the repair work being carried out without instituting the full consultation procedure.
  - (iii) Bearing in mind the nature of the problem it was not possible to carry out a temporary repair and then go out to consultation for a permanent repair.
- 6.3 In the opinion of the Tribunal the current consultation legislation was enacted for a purpose, namely to grant greater involvement in the tender process to those who will ultimately be paying the bill. The consultation procedure is intended to provide leaseholders with more information than was previously the case, and a greater opportunity to make their views known. These rights should not be taken away unless there are compelling reasons to do so.
- 6.4 In this case the Tribunal can identify compelling reasons to do so. It is satisfied that the delay that would have ensued had full consultation been carried out would have caused the lessees untold misery and could have constituted a serious health and safety hazard. We are satisfied that the Applicants did all they could to keep the lessees informed of the situation and the Applicants also tested the market by obtaining two quotes for the work.

## 7. THE DECISION

- 7.1 Having considered all the evidence put forth by the Applicants the Tribunal determines that this is a case where it is reasonable to dispense with all of the consultation requirements in relation to the Works. The application is therefore granted.

CHAIRMAN.....  
Mr Robert Wilson LL.B

Date..... 20<sup>th</sup> May 2027