

IN THE LEASEHOLD VALUATION TRIBUNAL

S20ZA LANDLORD & TENANT ACT 1985

Case No	CHI/21UD/LDC/2007/0030
Property Address	15 Cornwallis Terrace Hastings East Sussex
Applicant	Ms P Rayner, Landlord & Flat 2
Respondents	Mr & Mrs S Hill (Flat 1) Mr & Mrs D Street (Flat 3) Miss E Hadingham (Flat 4) Miss J Eaglen (Flat 5)
Tribunal members	Ms H Clarke Barrister (Chair) Mr R Athow FRICS
Date of hearing	29 November 2007
Date of decision	5 December 2007

1. DETERMINATION

The Tribunal determined that it was reasonable to dispense with the requirements for consultation set out in paragraphs 8 - 11(8) of the 4th Schedule (Part 2) to the Service Charges (Consultation etc) (England) Regulations 2003.

2. In practical terms this has the effect that the Applicant must provide the Lessees of the flats with copies of the estimates already obtained, and must invite their observations on those estimates during a 30 day period and must comply with the further requirements of paragraphs 11(9) - 13 of the Schedule (unless those provisions are later dispensed with by any subsequent determination of the Tribunal).

3. THE APPLICATION

The Applicant asked the Tribunal to dispense with any or all of the statutory requirements to consult the Lessees before commencing works to the property to the cost of which the Lessees would be asked to contribute in accordance with their Leases.

4. THE BACKGROUND

The property contains 5 flats, each let on a long lease which are thought to be in identical terms. The Applicant owns the freehold. In April 2007 the bathroom ceiling in Flat 4 collapsed, apparently as a result of water penetration from the

roof above. Works to remedy the cause of the water penetration appear to be qualifying works subject to the consultation procedure laid out by s20 Landlord & Tenant Act 1985.

5. Directions were given on 29 October 2007 for a hearing and for the parties to bring to the hearing sufficient bundles of documents for the Tribunal and all parties.

6. THE INSPECTION

The Tribunal inspected the property immediately prior to the hearing. It comprised a converted 5 storey terraced house converted into flats, in generally reasonable condition. At the rear of the building was a back addition 4 storeys in height. The top storey of the back addition contained Flat 4's bathroom. Directly above the bathroom was a small pitched tiled roof. No access was obtained to Flat 4. The Tribunal was able to inspect the common staircase and to see through a small window the condition and extent of the roof over Flat 4's bathroom. Some moss growth was present on the tiles. One tile appeared to have been wrapped in a plastic bag and replaced. The guttering serving the small back addition roof and the guttering directly above it serving the main roof had a substantial amount of plant growth in it (as did the guttering at the front of the building). There were no other visible defects which appeared to relate to water penetration nor signs of dampness externally or internally.

7. THE HEARING

The hearing was attended by Ms Rayburn the Applicant and by Mr Street, the tenant of Flat 3. The Tribunal had received a letter from Miss Hadenham the tenant of Flat 4 expressing her refusal to participate in the proceedings.

8. THE SUBMISSIONS

Ms Rayburn provided a bundle of documents at the hearing. The documents included 3 estimates from different firms of builders for repairing the roof; and 2 of the estimates also provided for the internal repairs to the bathroom. One of the estimates had been obtained from a firm nominated by Flat 4's lessee. Ms Rayburn had obtained the third at the prompting of Flat 5's lessee, although this was dated 15 November and had not yet been circulated to the lessees.

9. Each estimate had provided for slightly different work to be done. The first from Booker & Best dated 9 July 2007 stated that the roof comprised a glass ceiling with boards fixed to the glazing bars then tiled externally. The glazing bars were said to be beyond repair. For £3305 + VAT Booker & Best proposed to remove and remake the roof, and do the internal works. The second estimate from SDS provided to strip tiles & battens, fit new felt, then re-fix tiles and battens, for £1200 +VAT. No provision was made for internal works. The third estimate from Paulcroft provided to resite and replace dislodged tiles to the rear addition and to the main roof, to re-fix the gutter, and to do the internal works, for a price of £3285 +VAT. Ms Rayburn added that Booker & Best were adamant that the glazing bars were defective and would not do the internal repairs unless they were attended to. SDS and Paulcroft, on the other hand, were not convinced that the glazing bars needed any attention and took the view that they would deal with

any problems they encountered once works had commenced. Paulcroft had recommended a different type of gutter, said to be less likely to block, but this was not mentioned in the estimate. Ms Rayburn told the Tribunal that the gutters were last cleared 2 years ago.

10. A letter dated 8 November 2007 had been received from the Environmental Health department of Hastings Borough Council which stated that a Category 2 hazard had been found in respect of the dampness. The matter would be reviewed after 2 months, at which time it was possible that a statutory notice would be served. No lessees had been sent a copy of this letter.
11. Ms Rayburn showed copies of letters and emails and told the Tribunal that she had been in contact with the other lessees throughout the process. She did not wish to avoid consulting them, but wanted to 'dispense with the time element' as she was anxious that the formal consultation process would be too drawn out, especially in the light of the letter from Hastings Borough Council.
12. In answer to questions from the Tribunal, Ms Rayburn stated that she had not been told whether the Building Control department of the local authority might need to be involved in the work. None of the builders' estimates made any reference to this nor to any fees which might apply.
13. Mr Street said that he would like to see another estimate to try to clarify what work ought to be done. He had received the letter from Ms Rayburn dated 29 October enclosing the two earlier estimates and summarising the position. He had not himself sought to obtain an estimate nor nominated any other firm.

14. CONSIDERATION AND REASONS

The Tribunal took the view that Ms Rayburn had acted in good faith and had done her best to deal with the matter. She produced letters evidencing her attempts to stay in contact with the lessees and advise them of the situation. Although the estimates had been obtained in a piecemeal manner, she had procured 3 estimates, had notified the lessees in correspondence of the problem which needed to be fixed, had invited them to comment, and had acted on the comments of two lessees. Specifically she obtained an estimate from SDS, nominated by Flat 4, and obtained a third estimate from Paulcroft at the request of Flat 5. The Tribunal considered that in substance, the Applicant had effectively met the requirements of paragraphs 8 - 11(8) of the Regulations.

15. The Tribunal took into consideration the fact that the Hastings Borough Council had given Ms Rayburn 2 months to take action. The occupant of Flat 4 who was the only occupier directly affected by the water ingress had decided not to give the Tribunal access to her premises nor to participate in the application, although she had nominated one of the builders, so it was not possible to ascertain whether there was an urgent need to repair.
16. The Tribunal considered the submission of Mr Street, that another estimate would

be useful, but concluded that Ms Rayburn had already taken the step of contacting the existing builders to try to reconcile their approaches, which had been unsuccessful. The Tribunal noted that it had been a lengthy and wearisome process already, according to Ms Rayburn, to get the existing estimates as builders did not return calls, missed appointments, and were difficult to get hold of. The Tribunal decided that the provision of another estimate was unlikely to conclusively answer the question of which of the work was necessary. The next stage of the consultation process would invite observations by the lessees on the estimates already obtained, and taking into account such observations, a decision would have to be taken.

17. The Tribunal noted that it could be very helpful to Ms Rayburn to liaise with Hastings Borough Council as regards the decision about what work to undertake as well as to satisfy the Council that no notice need be issued. The Tribunal observed that no specification had been drawn up by a surveyor, and merely the works described in the estimates were relied upon. In the experienced view of the Tribunal, such a specification might assist the parties in deciding how to proceed. The only relevant defect affecting the property which was visible on inspection was the presence of greenery in the gutters, suggesting they were blocked, and only one of the estimates specifically addressed the gutters.

18. The Tribunal accordingly made the determination as set out above.

Dated 5-12-14

Signed H M Clarke
H M Clarke Chair