

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



S.20ZA Landlord & Tenant Act 1985 (as amended)

DECISION

Case Number: CHI/00ML/LDC/2007/0031

Property: 24 York Road
Hove
East Sussex BN3 1DL

Applicant: Westleigh Properties Limited (landlord)

Respondents: Ms R Emmett (Flat A)
Ms Millner (Flat B)
Ms S-J Cossou (Flat C)
Ms L Roberts (Flat D)
(tenants)

Application: 25 October 2007

Directions: 29 October 2007

Hearing: 03 December 2007

Appearances: For the Applicant:
Ms L Scott of Conway & Co, Solicitors
Mr A D Bansil (observing)

For the Respondents:
Ms Cossou in person
No attendance for the other tenants

Decision: 19 December 2007

Members of the Tribunal

Ms J A Talbot MA, Chairman
Mr A O Mackay FRICS
Mr N J Cleverton FRICS

Case No. CHI/00ML/LDC/2007/0031

Property: 24 York Road, Hove, East Sussex BN3 1DL

Application

1. This was an Application dated 25 October 2007, made by Westleigh Properties Ltd pursuant to Section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”), for the Tribunal to dispense with all or any of the statutory consultation requirements in relation to roof works at the property.
2. Directions were issued on 29 October 2007 and provided for the Applicant to prepare a bundle of all relevant documents in support of the Application and to bring these to the hearing. Only one of the tenants responded to the Application, Ms Emmett, who wrote on 13 November 2007 that she agreed the scope of the works was reasonable and that the “consultation fees [*sic*] should be dispensed with”. It was not clear whether or not she meant the consultation procedures.

Jurisdiction

3. S.20ZA of the 1985 Act provides that the Tribunal may dispense with all or any of the consultation requirements in relation to any qualifying works if satisfied that it is reasonable to do so. Those requirements are to be found in S.20 of that Act (as amended) and in the Service Charge (Consultation Requirements) (England) Regulations 2003 which supplement it.

Inspection

4. The members of the Tribunal inspected the exterior of the property before the hearing and were met by Ms Cossou, tenant of Flat C. No representative attended for the landlord. The property consists of a mid-terraced house built in the 19th century of brick construction with painted rendered front elevations, now converted into four flats arranged over basement, ground and two upper floors.
5. The roof is not visible from the front, as it lies behind a parapet, but is likely to be pitched and tiled or slated. The Tribunal members viewed the rear of the property from an adjoining twitten, but the main roof is not visible from there either.

Hearing

6. A hearing took place in Hove on 3 December 2007. It was attended by Ms L Scott, for the landlord, accompanied by Mr A D Bansil, who was observing. Ms Cossou attended in person. She was not representing the other tenants but wished to see what would happen at the Tribunal.
7. In a letter dated 19 October 2007 accompanying the Application, Ms Scott also requested a determination as to whether the cost of the works indicated on the Application form were payable by the Respondents. It was put to Ms Scott by the Tribunal that this was outside scope of its jurisdiction under S.20ZA, and that it

was open to the landlord to make a separate Application under S.27A, which gives a Tribunal power to make a determination on liability to pay service charges.

8. Ms Scott submitted that the notes on the S.20ZA Application form indicated that the Tribunal was able to make such a determination and drew the Tribunal's attention to the completed Form at page 33 of the bundle. It is headed: "Application Form, Section 20ZA of the Landlord and Tenant Act 1985". Under this appear the words: "Application for the dispensation of all or any of the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985, followed by the words: "This is the correct form to use if you want the Leasehold Valuation Tribunal to determine the liability to pay any service charge. This includes the question of whether or not the service charge is reasonable".
9. In response to the Tribunal suggesting that this was clearly an error, in that the latter wording obviously referred to S.27A of the 1985 Act, and not to S.20ZA, Ms Scott said that she had downloaded and saved this form from the RPTS website about 18 months previously, and that other Tribunals had agreed to make determinations on liability to pay service charges within a S.20ZA application. She gave as an example the case of 69 Northchurch Road, London N1.
10. Ms Cossou said that she believed the Application was about the consultation procedure. She had telephoned the Tribunal office for clarification and been advised that the Application did not deal with the question of how much money was payable but just with the dispensation of the consultation requirements. She was not therefore expecting to have to deal with the question of liability, though she did indicate that she would wish to challenge the costs and raise issues of failure to carry out earlier roof repairs and administration charges.
11. Ms Scott brought to the hearing a bundle of documents running to 95 pages. In addition to the Application form, Directions, and lease, these papers contained copies of correspondence between BLR Management and the lessees. In particular there was a Notice of Intention to carry out works dated 27 September 2007. The works were stated to be roof repairs, and observations were invited by 27 October 2007. A Statement of Estimates was sent on 5 November 2007 together with two estimates and details of costs including BLR's administration fees. Observations were invited by 5 December 2007. Ms Cossou responded with queries about the estimates, and Ms Roberts, the tenant of Flat D, was in regular email contact with BLR because of the leaking roof.
12. The Tribunal noted that the S.20ZA Application was made one month after the Notice of Intention was served, and that by the hearing date the second stage consultation period was about to expire, on 5 December 2007. It was therefore not clear why the landlord thought it necessary to make the Application rather than simply to continue to follow and complete the statutory consultation process. Ms Scott indicated that she had hoped an earlier determination could be made on the papers to allow the works to go ahead earlier.

Decision

13. The Tribunal indicated to the parties at the hearing that the evidence showed the statutory consultation procedure had in fact been properly followed and indeed was about to end, hence no dispensation under S.20ZA was considered necessary.
14. The Tribunal also indicated that it did not have jurisdiction within the S.20ZA Application to make any determination as to the liability to pay service charges or the reasonableness of the costs. The wording on the Application form was clearly an error and did not confer any additional jurisdiction. The Tribunal had an overriding duty to ensure a fair hearing to all the parties, and considered that the tenants would be at an unfair disadvantage if the Tribunal were to make a determination on liability. It took into account that Ms Cossou had not expected to make representations on liability at this hearing. It was open to any party to make a separate application under S.27A if they so wished.
15. A subsequent search of the RPTS website shows that the forms currently available to download contain the correct headings and notes for both S.20ZA and S.27A applications, and it is to be hoped that these will be used in the future to avoid confusion. A search of the Lease Advisory Service database of LVT decisions (publicly available) in relation to 69 Northchurch Road, London, N1, shows that there were in fact two separate applications (made by Ms Scott for the landlord) under S.27A and S.20ZA, dealt with by differently constituted Tribunals in May and November 2006 respectively.

Determination

16. For the reasons stated above it was not necessary for the Tribunal to dispense with all or any of the consultation requirements under S.20 of the Landlord and Tenant Act 1985, as by the date of the hearing these had been complied with.
17. For the reasons stated above the Tribunal had no jurisdiction within this Application to make any determination regarding liability to pay or reasonableness of service charges in relation to the roof works or administration fees.

Dated 19 December 2007

Ms J A Talbot
Chairman

