

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION
TRIBUNAL

Case No: CHI/00MR/LDC/2009/0002

In the matter of an application under Sections 20 and 20ZA of the Landlord and
Tenant Act 1985 [as amended] [“the Act”]

Property: 6 Shaftesbury Road, Southsea, Portsmouth, Hampshire, PO5 3JR

Applicant: Southsea Bubble Co. Ltd.

Respondents: The Lessees

Application dated 9th. January 2010

Tribunal Mr. J.S. McAllister F.R.I.C.S. [Valuer Chairman]
Mrs. M. Phillips [Lay Member]

Hearing and Decision issued: 1st. March 2010

DETERMINATION AND REASONS

SUMMARY DECISION

1. For the reasons set out below, the Tribunal determines that it is satisfied that it is reasonable to dispense with the consultation requirements of section 20 of the Act in respect of the specific qualifying works which are the subject of this application.

REASONS

THE APPLICATION

2. On the 9th. January 2010 the Applicants, the landlords, applied to the Tribunal under section 20ZA of the Act for the dispensation of all of the consultation requirements in section 20 of the Act and in the Service Charges [Consultation Requirements] [England] Regulations 2003 [“the Regulations”] in respect of qualifying works being specified repairs to the property.

3. The Tribunal issued directions dated 12th. January 2010 for the matter to be the subject of an oral hearing on the 22nd. February 2010, immediately following their inspection of the property and for the Applicant to submit a written statement of case etc. and the Respondents to produce any written statements etc. at the hearing. [At the

request of one of the lessees the hearing and inspection was rearranged and took place on the 1st. March 2010.]

THE LAW

4. Subsection 1 of Section 20 of the Act, as amended provides:

“ Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection [6] or [7] [or both] unless the consultation requirements have been either- [a] complied with in relation to the works or agreement, or [b] dispensed with in relation to the works or agreement by [or on appeal from] a leasehold valuation tribunal.”

5. The effect of Subsections 2 and 6 of Section 20 is that the consultation requirements apply where the contribution which each tenant/lessee has to pay towards the cost of qualifying works by way of service charge exceeds £250.

6. Subsection 1 of Section 20ZA of the Act provides:

“Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.”

INSPECTION

7. The Tribunal inspected the property on 1st. March 2010 in the presence of Mr M. Salter representing the Applicant and the Respondent Lessees of Flat 3 Mrs. Johnson and Mr. Kombe.

8. Briefly the property comprises a mid terrace 4 storey former town house converted into 2 flats [1 and 2] and a maisonette [3] built around 1850 to 1900. It is of traditional construction with mainly brick walls under a concrete tile covered roof. The roof construction incorporates a central valley gutter which is parallel to the front elevation. This gutter connects to valley gutters over no. 4 and 8 Shaftesbury Road, the other 2 properties in the terrace, on either side of no. 6, which discharge into plastic downpipes on the gables of 4 and 8. The Tribunal inspected externally from ground level. They also inspected the inside of flat 3, where they were shown damp staining in places to the supporting beam etc. beneath the main valley gutter to the roof.

THE HEARING

9. This was held at the Tribunal office in Chichester following the inspection where the above Parties at the inspection attended.

APPLICANT'S EVIDENCE

10. Mr. Salter for the Applicant, in accordance with the Directions. produced a bundle of documents with a covering letter dated 15th. February 2010. The bundle contained a surveyor's report dated 7th. January 2010, quotations from companies that had

tendered for the proposed repairs and copies of certain letters that were sent to the Respondents in flats 1 and 3. etc. [Mr. Salter was the lessee of flat 2].

Mr. Salter stated that he was made aware of a roof/valley gutter leak by Mrs. Johnson and Mr. Kombe on the 25th. November 2009. He asked a builder to inspect the property who gave some initial advice including that the proposed solution to the problem was beyond his expertise. In December 2009 Mr. Salter arranged for scaffolding to be erected in the rear garden to enable complete and proper access to the roof as there is no means to do so from within the property.

He spoke to "Lease" who advised that he obtained an independent expert report as to the problem. This he obtained from Mr. P.R. Chandler Bsc. FRICS who advised immediate renewal of the lead valley gutter and any rotten timbers affected by the ingress of water due to the leak. The report included 4 photographs showing a split in the lead gutter, temporary patch repairs and poor drainage to the gutter. Mr. Salter also produced at the hearing 3 photographs showing water ponding to the gutter and splits in the lead etc.

Mr. Salter stated that he informed Miss Link of flat 1 of the problem in November 2009 and to date she had not replied to him.

In conclusion Mr. Salter stated that after taking independent legal and expert advice, and after keeping the other lessees informed as to the problem it was right and proper to apply to the Tribunal for dispensation. The leak would worsen with time, the resultant water ingress into flat 3 would spread, risking an outbreak of dry rot in the roof timbers resulting in more costly repairs and possible disruption to the occupiers of the flats, particularly of flat 3.

RESPONDENTS' EVIDENCE

11. The Respondents did not produce any documents or witness statements at the hearing. Mrs. Johnson for the Respondents agreed that the application for dispensation was reasonable in view of the urgency and nature of the problem. However she questioned the surveyor's recommendation as to the renewal of the lead lining to the gutter, rather than further repairs which should be cheaper. She questioned the standard of the proposed works referring to a manual from the Lead Sheet Association that Mr. Salter produced at the hearing. She referred to delays by Mr. Salter in providing copy documents and did not think that the contractors approached by Mr. Salter for the proposed repairs were sufficiently independent of him to provide fair and reasonable quotations.

12. The Tribunal had just received from the Portsmouth County Court an Application from the landlords under Section 27A of the Act. [Court Order no.9PO03044 dated 15th. February 2010].

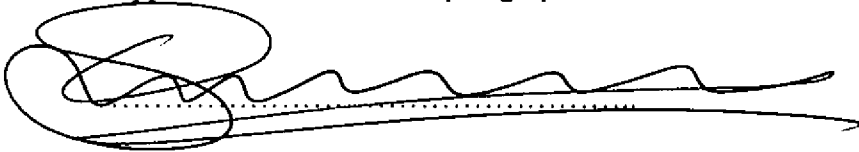
This relates to the same property and concerns the reasonableness of certain service charges. The Chairman informed the Parties that Directions in this case would be issued shortly and that some of the issues raised by Mrs. Johnson for the Respondents would be considered by another Tribunal in due course and were outside of the jurisdiction of this Tribunal which is referred to in paragraphs 4, 5 and 6 above.

CONSIDERATION AND DECISION

13. The Tribunal carefully considered all the written and verbal evidence submitted by the Parties. They particularly noted that there was no disagreement between the parties that the proposed works were qualifying works being works on a building or any other premises and that the necessary repairs were urgently required. They also noted that there were no issues between the parties as to the respective repairing, service charges, etc. covenants in the leases of the flats. The Applicant had provided a copy of the lease to flat 3 dated 13th. March 1987. The Tribunal did not have to decide if the landlord had acted reasonably, only if it is reasonable to grant dispensation. The Tribunal also considered the degree of prejudice, if any, to the lessees for any failure to comply with the consultation procedure. They also considered that any delay due to the consultation process would have an adverse affect on the owner of flat 3 in particular. They agreed with the parties that it would almost certainly be more cost effective to carry out the proposed works as quickly as possible.

Taking all factors into account the Tribunal concluded that, on balance, it is reasonable to dispense with the consultation requirements of Section 20 of the Act in relation to the proposed qualifying works. These are the renewal or repair of the lead lining to the valley gutter and any associated damaged or rotten timbers, ensuring that satisfactory provision is made for the drainage of rainwater for the valley over the adjoining properties.

14. The Tribunal gave the decision verbally to the Parties at the end of the hearing, indicating that this written decision and reasons would follow. They also informed them that this decision does not prevent the Applicants from making a future application to the Tribunal under Section 27A of the Act in respect of the reasonableness of the cost of the repair works, notwithstanding the Section 27A Application referred to in paragraph 12 above

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of loops and a long horizontal stroke.

J.S. McAllister F.R.I.C.S.
Chairman
Dated 8th. March 2010