

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



S.20ZA Landlord & Tenant Act 1985

DECISION & REASONS

Case Number: CHI/21UC/LDC/2010/0014

Property: Grand Court
King Edwards Parade
EASTBOURNE
East Sussex
BN21 4BU

Applicant: Grand Court (Eastbourne) Ltd

Represented by: Mr & Mrs Hodgson
(At the inspection by Mr Vellner)

Respondent: Lessees at the property (not represented).

Date of Application: 21 May 2010

Date of Hearing: 6 July 2010

Date of Oral Decision: 6 July 2010

Date of These Reasons 19 July 2010

Tribunal Members: B H R Simms FRICS MCI Arb (Chairman)
Mr R A Wilkey FRICS FICPD (Surveyor Member)
Mr T W Sennett MA MCIEH (Professional Member)

CONFIRMATION OF DECISION

1. The Tribunal determines not to dispense with all or any of the consultation requirements in relation to the qualifying works, the subject of this application described as roof repairs.

REASONS

INTRODUCTION

2. This is an application by Labyrinth Properties, managing agents for the Landlord Grand Court (Eastbourne) Ltd, in accordance with S.20ZA of the Landlord & Tenant Act 1985, for dispensation of all or any of the consultation requirements in respect of qualifying works. The managing agents did not attend the inspection or the hearing. The qualifying works in the application relate to the repair and renewal of the flat roof structure and coverings.

THE LAW

3. The statutory provisions primarily relevant to these applications are to be found in S.20ZA of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard to the whole of the relevant sections of the Act and the appropriate regulations or statutory instruments when making its decision, but here sets out a sufficient extract or summary from each to assist the parties in reading this decision.
4. S.20 of the Act provides that where there are qualifying works, the relevant contributions of tenants are limited unless the consultation requirements have been either complied with or dispensed with by the determination of a Leasehold Valuation Tribunal.
5. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
6. In order for the specified consultation requirements to be necessary, the relevant costs of the qualifying work have to exceed an appropriate amount which is set by Regulation and at the date of the application is £250 per lessee.
7. Details of the consultation requirements are contained within a statutory instrument entitled Service Charges (Consultation Requirements)(England) Regulations 2003, SI2003/1987. These requirements include, amongst

other things, a formal notice procedure, obtaining complete estimates and/or the provision whereby a lessee may make comments about the work and nominate a contractor to provide a quotation for the work.

8. S.20ZA provides for a Leasehold Valuation Tribunal to dispense with all or any of the consultation requirements if it is satisfied that it is reasonable to dispense with them. There is no specific requirement for the work to be identified as urgent or special in any way. It is simply the test of reasonableness for dispensation that has to be applied (subsection (1)).

THE LEASE

9. The Tribunal was provided with a copy of the lease of flat 32 and it expected that all leases are in a similar form.
10. Although the Tribunal had regard to the full lease, little turned on its interpretation during the course of representations made prior to and during the hearing.
11. There are provisions for the landlord to keep the property in good repair and decoration and for the costs to be recovered by way of a service charge.
12. There were no matters raised by the parties in respect of the interpretation of the lease.

BACKGROUND

13. On 26 May 2010 the Tribunal issued directions for the conduct of the case. In view of the urgency expressed in the application, the matter was listed to be dealt with on the fast track and a hearing date set for 6 July 2010.
14. Various matters including the preparation of a bundle of documents and a timetable for the presentation of representations and statements was set out in the Directions.
15. It was allowed that any Respondent should attend the hearing and, if they wished to produce any documents then these should be brought with them to the hearing.

16. Following the issue of the directions, various documents including estimates, photographs and minutes were produced.

INSPECTION

17. The Tribunal members inspected the property prior to the hearing on 6 July 2010. Mr Hodgson attended briefly and left the caretaker, Mr Vellner, to show the Tribunal members around the building.
18. The property comprises a multi-storey, purpose-built block of flats located on the sea-front road. Access is by way of several shared entrances and lifts.
19. The tribunal inspected two of the entrances, staircases and lifts and were given access to the interior of flats 40 & 55. These two 'penthouse' flats are on the top floor of the building below the flat roof to the eastern part of the block. In flat 40 there was evidence of serious dampness (now dry) in the entrance lobby ceiling and damp staining in the lounge and bedroom ceilings. In flat 55 there was damp staining above and around the window in the bedroom to the rear.
20. The members also had access to the roof surface. The re-covering work was almost complete.

HEARING

21. Mr & Mrs Hodgson attended the hearing on behalf of the Applicant, Grand Court (Eastbourne) Ltd. No Lessees attended the hearing and the Respondent was not represented.
22. The Tribunal had received no written representations from the lessees but a note had been left in flat 40 for the attention of the Tribunal. This letter comprised a list of "...recorded amounts of water which have dripped onto our hallway floor", signed by Peter Hough. The list started on 3 December 2009 at 4 fl oz and continued to 28 May 2010 at 3 fl oz. Mr Hodgson was shown the note and confirmed that he had no objection to the Tribunal taking account of its contents.

23. The hearing commenced at about 11.05.
24. The Chairman identified the details of the application and indicated the documents that were available to the Tribunal.

EVIDENCE

The Applicant's Case

25. The application related to the urgency of replacing the roof covering as flats 40 and 55 had reported water ingress in March 2009. Decking & Felting Ltd submitted a quotation dated 29 March 2009 for various asphalt repairs and also investigation work to discover the construction of the roof covering. At that time it was intended that a quotation would then be provided for supplying and painting a solar reflective covering to the roof. When the invoice was submitted for this work in May 2010 the contractors reported a deficient thickness of asphalt on the roof. They also considered that the application of the solar reflective paint would be "a waste of money".
26. In April 2010 Messrs C A Fox Roofing submitted a quotation for a new roof covering. This would involve the removal of the old asphalt, the provision of new battens laid to a fall covered with 18mm OSB plywood. The surface would comprise the Firestone 060 EPDM roofing system bonded to the OSB ply. During the work 60mm insulation board would be installed. The quotation also included for new plastic fascia boards and guttering to the rear elevation.
27. Mr Hodgson explained that there was no specification prepared by an independent person as he had relied on the contractor to specify the work required. Apparently another estimate had been obtained but this was not available to the Tribunal.
28. The Tribunal questioned Mr Hodgson why the original contractor, Decking and Felting Ltd, was not asked to return to complete their work properly when it was found that their repairs had been ineffective. Mr Hodgson argued that poor weather conditions prevented further work being

undertaken at the time. He also implied that by then it was clear that a full re-roofing contract would be needed.

29. The Minutes of an EGM of the freehold company held in May 2010 reveal that a temporary repair would not be feasible as it "...would necessitate scaffolding and a contractor would only be able to fix down tin sheets". The Minutes also record that the quotation from the other contractor, Russell Asphalt Company, was refused because their price did not allow for the removal of the existing asphalt. The quoted price was not specified in the minutes. At the EGM Karen Gray, for Labyrinth, reported that if a lessees contribution would exceed £250 then the S.20 consultation procedure would have to be followed.
30. In the EGM Minutes and during the hearing Mr Hodgson reported on advice he had received from David Hyand when he had made enquiries of the RPTS. It transpired that Mr Hodgson had used the RPTS helpline and Labyrinth had also followed-up the advice given. Mr Hodgson explained to the Tribunal that work had started on the roof because he was assured by Mr Hyand that the Application to the LVT could be "fast-tracked". The Chairman confirmed that there was no-one at the Southern RPTS office of that name.
31. In conclusion Mr Hodgson confirmed that his application for dispensation of the requirements of S.20 was on the ground that the work to the roof was required as an emergency to safeguard the building structure and as water was entering flat 40 by way of a light fitting. In order to minimise the risk the electric lighting circuit had been disabled by disconnecting the affected lighting point. He further informed the Tribunal that the lessees had not been advised individually of the extent of work required; its cost or the quotations received other than as members of the landlord company. There had also been a notice placed on the Notice Board in the entrance lobbies but the Tribunal had not seen this and had not been provided with a copy.

The Respondents' Case

32. No case was put forward by the Respondents other than the list of water measurements supplied by Mr Hough.

CONSIDERATION

33. The new roof was almost complete when the Tribunal members inspected so the original state of it, before the work, was not visible. The Tribunal is satisfied from its inspection within the two flats and from the evidence provided that the roof had been leaking.
34. If it was urgent that roof repairs should be undertaken then these works should have been completed many months ago when the problem first became apparent. Indeed some repairs had been completed at the time but further minor work was not commissioned when the leak was not cured.
35. The delay may have allowed the extent of the damage to spread and much more extensive works were now needed. The need for emergency work had passed. The tribunal felt that the works for which dispensation was now sought went far beyond the minimal emergency repairs needed to reduce the effect of a leaking roof. It involved the complete replacement of the roof covering and substrate. The tribunal makes no comment on whether this extensive work is required or not. It is clearly not an emergency, which Mr Hodgson puts forward as his only ground for dispensation.
36. In any case it was apparent that the full works had almost been completed. Any time needed for the formal consultation procedure would not result in delay in the work proceeding, or further water penetration, and would be outweighed by the benefit to the lessees of them participating in the consultation process.

37. Merely for the sake of clarification the Tribunal reminds the parties that either the landlord or any lessee may make an application to the Tribunal under section 27A of the 1985 Act for a determination as to the reasonableness of service charges either before or after any proposed works. The decision given in this document does not prevent any future application under section 27A of the 1985 Act.

Dated 19 July 2010



Brandon H R Simme FRICS MCI Arb
Chairman