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**HM COURTS & TRIBUNALS SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

**S. 20ZA of The Landlord and Tenant Act 1985 (as amended)
(Application to dispense with consultation requirements)**

Case Number:	CHI/21 UC/LDC/2012/0023
Property:	Spencer House Spencer Road Eastbourne East Sussex BN21 4PA
Applicant:	Spencer House Management (Eastbourne) Limited
Respondent:	The lessees of the Property
Landlord :	Galmerrow Securities Limited
Dates of Hearing:	31st July & 4th September 2012
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr N Robinson FRICS (Surveyor Member)
Date of the Tribunal's Decision:	18th September 2012

BACKGROUND

1. This is an application made by the Applicant pursuant to S.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") to dispense with the consultation requirements contained in S.20 of the Act.
2. The work covered by this application is the work necessary to eradicate the dry rot to the building emanating from Flats 1 & 2 together with the necessary works to make good the affected areas but only in so far as they are the management company's responsibility under the lease ("The Works").
3. On the 9th July 2012 the Tribunal gave directions for the Applicant to serve on the Respondents a statement of case with copies of documents in support and if any of the Respondents or the Landlord objected to the application then they should attend the hearing and would be given the opportunity to be heard.
4. The Applicant filed a written statement of case and attended the hearing to develop their case in more detail. The Landlord did not attend the hearing and submitted no written evidence.

INSPECTION

5. Spencer House is a double fronted late Victorian property on four storeys including dormers. It has painted and rendered elevations under a slate roof. Initially, the building was constructed as a single house but it is now arranged as six self-contained flats. The front of the building was noted to be in good decorative order whereas the rear was in need of some repair and decoration. There were holes where pipes had been removed with no making good. Making good was also outstanding in respect of the replacement window to the bathroom of Flat 4. The Tribunal noted that a down pipe joint had pulled away outside of flat one and some cubing was noted to areas of the timber under the external stairs, possibly indicative of the spread of dry rot.
6. The Tribunal inspected Flat 2 and noted that the bathroom was in poor condition. There were signs of dry rot underneath the bath and dry rot was also seen within the timber partition wall separating Flats 1 & 2. Attention was also drawn to rising or penetrating damp in the living room.
7. Access was also granted to Flat 1 which was noted to be generally in good condition, but there were signs of dry rot to the doorframe leading into the bathroom. Flat 3, above Flat 1 was also inspected and the Tribunal could detect no signs of dry rot within this flat. Flat 4 was also inspected and the Tribunal noted that this flat was in the process of being refurbished. The Tribunal was told that this flat had previously suffered from an attack of dry rot and whilst it was understood that the walls had in the past been treated and re-plastered, no further details were available.

THE LAW

8. S.20 of the Act limits the service charge 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.
9. 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 if the landlord wishes to collect the entire costs of those works the landlord must either carry out consultation in accordance with S. 20 of the Act before those works are commenced, or obtain an order from the Tribunal dispensing with the consultation requirements.

10. The consultation requirements are set out in the Regulations and it is not proposed to recite these. However in summary they include the need for the landlord to state why they consider the works necessary and for further statements setting out their response to observations received, and their reasons for the selection of the successful contractor. A tenant has the right to nominate an alternative contractor and the landlord must try to obtain an estimate from such a nominee.

11. Under S. 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 qualifying long term agreement, the Tribunal may make the determination if satisfied that it is reasonable to dispense with those requirements.

12. The test is one of reasonableness. Is it reasonable in the circumstances of the case to dispense with all or any of the requirements? The decided cases have established that it is not necessarily the conduct of the landlord that has to be reasonable rather it is the outcome of making the order which has to be reasonable taking into account all the circumstances of the case. The Tribunal should also have regard to any prejudice that a lessee might suffer in the event of dispensation being granted.

THE EVIDENCE

13. The relevant evidence submitted to the Tribunal on behalf of the Applicant consisted of the following documents:

- i. The application
- ii. Statement of case
- iii. Specialist contractors report from Poultons Remedial dated 27th June 2012
- iv. Copy correspondence with lessees.
- v. Report from Cavity Tech Systems Limited dated 21st August 2012
- vi. Estimate from Archer Specialist Treatments Limited
- vii. Trial bundle
- viii. Supplemental trial bundle.

HEARING

14. Mr Rowe the secretary of the management company began his evidence by summarising the background to the application. He told the Tribunal that in the final quarter of last year a program of works was commissioned to carry out external repairs and redecoration. During the course of these works the Applicant was advised of the existence of dry rot affecting Flat 2.

15. The Applicant commissioned Poultons Remedial to conduct a survey of the building to assess the nature and extent of the damage. They delivered their findings by way of a report dated 27th June 2012. This report concluded that dry rot was currently affecting Flats 1 & 2 and listed recommendations and the work necessary to eradicate the fungus. In summary the work involves removing the affected bathroom fittings and plaster to Flat 2 and removing the affected plaster and door linings to Flat 1. Once the affected areas have been striped out a DPC chemical treatment will be injected into the exposed areas. The report also recommends that the damp areas should be investigated to ensure that there are no plumbing leaks. Thereafter the main contractor should carry out the reinstatement work.
16. Mr Rowe contended that in view of the serious nature of the repair work it was necessary to proceed as a matter of urgency even though statutory consultation had not taken place. In view of the urgency of the situation and the risk of the dry rot moving to other areas of the building he invited the Tribunal to make an order dispensing with the consultation requirements in relation to the remedial works so that the chosen contractor, Poultons Remedial, could start the work as soon as possible.
17. Mr Rowe contended that it was in the best interests of all the lessees that the work should go ahead as soon as could be arranged and without waiting for the three month period that would elapse if statutory consultation had to take place before the works could be commissioned.
18. After the Applicant had concluded giving their evidence and submissions, the Tribunal adjourned the hearing so that it could carry out a preliminary review of the documents supplied and consider the evidence. Having carried out this exercise the Tribunal reconvened and raised with the Applicant its concerns. In summary these were that the Tribunal was not satisfied that the specification of works from Poultons necessarily fully addressed the problems affecting the building.
19. The concern of the Tribunal was that if the Applicant proceeded with the limited work as identified by Poultons Remedial then they would be committed to the existing company and it would no longer be possible to use another firm if the infestation proved to be more extensive. Furthermore the existing estimate contained no details of a daily rate that would be charged for any additional work. The Tribunal was also concerned that only one specialist company had been approached.
20. Based on its very limited inspection the Tribunal considered there was the real prospect that the dry rot was more extensive than had been reported. In these circumstances there was a significant risk that the Respondents would be prejudiced if a dispensation order were to be made on the limited evidence currently before the Tribunal. The Tribunal considered that the extent of the attack should be investigated more thoroughly and that other specialist companies should be approached. This was especially the case if the leaseholders consultation rights were to be curtailed.
21. Mr Rowe accepted the above points and by consent the hearing was adjourned to allow time for further exploratory work to be carried out and for the Applicant to obtain further estimates from specialist dry rot companies.
22. Directions were given by the Tribunal to accommodate the above and for supplemental documentation to be filed with the Tribunal and served on each lessee, with the lessees having the opportunity to make further representations if so advised. The hearing was rescheduled to continue on the 4th September 2012.
23. The Tribunal reconvened on the 4th September 2012 and was pleased to note that the Applicant had complied with the above directions. A supplemental bundle of documents had been filed with the Tribunal and copies served on each lessee. The

bundle of documents included an estimate from Cavity Tech Systems Limited a specialist dry rot company and also an estimate from Archer Specialist Treatments Limited.

CONSIDERATION

24. In the opinion of the Tribunal the Works do constitute "qualifying works" within the meaning of the Act. As the contribution required from the Respondent pursuant to the service charge provisions in the leases will exceed the threshold of £250, there is an obligation on the Applicant under Regulation 6 to consult in accordance with the procedures set out in the Regulations.
25. The evidence put before us establishes: -
- (i) Dry rot is affecting Flats 1 & 2 and possibly other areas of the building.
 - (ii) Urgent and extensive work is necessary to treat the affected areas.
 - (iii) The work should be carried out urgently to reduce the risk of the dry rot spreading to areas that are currently unaffected.
 - (iv) A remedial report has been commissioned by a specialist contractor which confirms the existence of dry rot and sets out the work necessary to deal with the identified affected area. An estimate has also been obtained by another specialist firm to treat the fungus.
26. The Tribunal first considered the terms of the lease and in particular the repairing covenants contained therein. The lease places an obligation on the management company to maintain the exterior of the property subject to receiving contributions from the Respondents. The Tribunal was thus satisfied that the Applicant is obliged to carry out the structural elements of the Works and the Respondents are obliged to contribute towards the cost of the Works.
27. In the Applicant's statement of case it is contended that the Works are of an urgent nature and the delay that will result if the statutory consultation procedure takes place will result in further damage to the building and represent a health and safety hazard.
28. The Applicant seeks dispensation on the grounds that further delay is not in the interests of the Respondents and that dispensation is reasonable in all the circumstances of the case.
29. The Tribunal is satisfied that the dry rot needs to be attended to urgently and that the delay that will result if consultation has to take place will be prejudicial to the lessees who are the paying parties. At least two flats in the building are directly affected and if the infestation is not arrested quickly then it is highly likely that the attack will spread to other areas of the building with a consequent increase in the costs of repairs.
30. The Applicant now has the benefit of two reports from specialist contractors both of whom confirm the existence of dry rot and both reports detail the required remedial work in respect of the attack as currently identified. It is the nature of dry rot that the full extent of the problem is not always known until all the affected areas are exposed and to this end the Applicants have obtained daily work rates from the contractors should further works be necessary.

31. The Tribunal is in no doubt that it is in the best interests of the Respondents that the Works are carried out without delay and The Tribunal considers that this is a case were the three month minimum delay that would ensue if statutory consultation had to take place would be prejudicial to the Respondents.
32. Taking all the circumstances into account and for the reasons stated above, the Tribunal is satisfied that it is reasonable for it to grant dispensation from all the requirements of S. 20 (1) of the Act in respect of the Works and it so determines.
33. The Tribunal makes it clear that this dispensation relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with S. 20 of the Act. It does not prevent an application being made by the Respondents under S.27A of the Act to deal with the resultant service charges. It simply removes the cap on the recoverable service charges that S. 20 would otherwise have placed upon them.

Signed _____


Mr. RTA Wilson LLB

Dated 18th September 2012