



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CHI/24UG/LDC/2014/0052

**Property** : 36-39 West Green, Yateley, Hants GU46  
7RW

**Applicant** : Sentinel Housing Association

**Representative** :

**Respondent** : Peter Morris

**Representative** :

**Type of Application** : To dispense with the requirements to  
consult lessees about major works

**Tribunal Member** : Mr D Banfield FRICS

**Date of Decision** : 22 January 2015

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**DECISION**

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## Summary of Decision

### **The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.**

#### **Background**

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 (The Act) from the consultation requirements imposed on the landlord by Section 20 of the Act.
2. The application concerns works already completed to prevent water ingress into a first floor flat.
3. This is a block of 4 flats 3 of which are subject to tenancies with the Applicant the fourth being held on lease by the Respondent
4. Directions were made on 10 November 2014 setting out a timetable for the resolution of the matter and requiring the Respondent to complete a form stating whether he supported the application, whether he wished to make representations to the Tribunal and whether a hearing was required.
5. The form referred to above was returned to the Tribunal on 28 November 2014 indicating that the application was supported and that the Tribunal may determine the matter on the basis of written representations.

#### **The Law**

6. The relevant section of the Act reads as follows:  
**20ZA Consultation requirements:**  
(1)Where an application is made to a Leasehold Valuation Tribunal for a determination to dispense with all or any of the 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 the requirements.
7. The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson*. In summary the Supreme Court noted the following
  - The main question for the Tribunal when considering how to exercise its jurisdiction in accordance with section 20ZA (1) is the real prejudice to the tenants flowing from the landlord's breach of the consultation requirements.
  - The financial consequences to the landlord of not granting a dispensation is not a relevant factor. The nature of the landlord is not a relevant factor.
  - Dispensation should not be refused solely because the landlord

- seriously breached, or departed from, the consultation requirements.
- The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- The Tribunal has power to impose a condition that the landlord pays the tenants' reasonable costs (including surveyor and/or legal fees) incurred in connection with the landlord's application under section 20ZA(1).
- The legal burden of proof in relation to dispensation applications is on the landlord. The factual burden of identifying some "relevant" prejudice that they would or might have suffered is on the tenants.
- The court considered that "relevant" prejudice should be given a narrow definition; it means whether non-compliance with the consultation requirements has led the landlord to incur costs in an unreasonable amount or to incur them in the provision of services, or in the carrying out of works, which fell below a reasonable standard, in other words whether the non-compliance has in that sense caused prejudice to the tenant.
- The more serious and/or deliberate the landlord's failure, the more readily a Tribunal would be likely to accept that the tenants had suffered prejudice.
- Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

### **The Evidence and Decision**

8. Amongst the loose collection of papers that the Applicant submitted to the Tribunal as the hearing bundle was a letter dated 29 October 2014 referred to as "Notice of statement of estimate in relation to proposed works." Accompanying the letter were photographs of the roof showing a number of the tiles removed exposing the felt beneath. The letter indicated that the cost was £5,053.51 inclusive of VAT and that his proportion would be £1,263.38 and that monthly payments of £105.28 would be accepted.
9. From page 7 of the application form the reasons for not complying with S.20 was said to be that the roof was leaking and during a temporary repair it was discovered that the felt and battens required renewal, 9 ridge tiles had failed and the roof tiles required to be replaced.
10. In an email dated 4 November 2014 to the Respondent the Applicant provided a print out of the repair history of the property and a copy of the quotation from their contractor totalling £3,761.25. It was explained that this was from the contractor used for their repair and planned maintenance procedure and that the contract was competitively tendered.

11. Also enclosed was copy of an invoice dated 26 November 2014 in the sum of £15,775.82 which indicated that it was in accordance with a quotation dated 17 November 2014.
12. The Tribunal applying the legal principles cited above, notes that nothing has been received from the Respondent that purports to identify any prejudice to him.
13. The Tribunal is satisfied that this is an uncontested application in respect of the factual burden of identifying prejudice. However the Tribunal will still apply the relevant legal principles to the evidence before it, mindful that Parliament has intended dispensation to be an exception to consultation.
14. The Tribunal is satisfied that the water ingress to the first floor flat required urgent attention before the onset of winter and that this urgency precluded the Applicant from following the S20 consultation.
15. It is not clear from the evidence whether the reference to a competitively tendered contract refers to the planned maintenance contract or to that for replacing this roof. However, the Respondent makes no complaint and we remind ourselves that the only issue to be determined is whether or not it is reasonable to dispense with the statutory consultation requirements.
16. Tribunal makes no findings as to whether the sum is in due course payable or indeed reasonable but confines itself solely to the issue of dispensation.
17. The Tribunal makes no further order.

D Banfield FRICS

22 January 2015

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
2. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
3. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking