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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	CHI/21UC/LDC/2016/0037
Property	:	330-334 Seaside, Eastbourne, East Sussex BN22 7RH
Applicant	:	Harlow Investments Ltd
Applicant's Representative	:	Carlton Property Management
Respondents	:	1.M Aghabala & M Darabi (330A) 2. A&V Whisker (332a) 3. E A Wilson (334a)
Tribunal member	:	Mr D Banfield FRICS
Date of Directions	:	13 October 2016

Summary of decision

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

The Tribunal makes no findings as to whether the sum is in due course payable or reasonable

Background

1. This is an application received on 24 August 2016 for dispensation from the consultation requirements provided by section 20 Landlord and Tenant Act 1985. (the Act)

2. The Applicant refers to the urgent need to prevent further water ingress into the ground floor commercial units from the rear balcony.

3. A Notice of Intention was served on the three residential lessees on 23 August 2016 but due to the perceived urgency in carrying out the works dispensation from further consultation was requested. The Notice listed the works as

    a. Replacement of asphalt surface to rear balcony
    b. Fitting of promenade tiles or similar to protect the asphalt material due to the use of this balcony area

4. In response to the Notice, on 31 August 2016 the lessees of 330A requested copies of the three prices received and nominated Mr Danny Bloomfield Ltd as a suitable contractor.

5. The Tribunal made Directions on 31 August 2016 requiring the Applicant to send copies to each Respondent. The Applicant has confirmed that this has been done. The Directions provided a form for Lessees to state whether they objected to the proposals and if so whether they wished for the matter to be determined at an oral hearing.

6. In a letter of objection dated 5 September 2016 the lessees of 332a agreed that the proposed works were required but *challenged "the process of a hasty decision making process which inevitably leads to costly mistakes and expensive contractors who interpret "urgency" as a licence to charge much higher fees"*

7. There were no requests for the matter to be determined at an oral hearing and I have therefore made my determination on the application and bundle of documents received.

8. **The only issue for the Tribunal is whether or not it is reasonable to dispense with the statutory consultation requirements. This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**

The Law

9. 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.

10. 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 consequence 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.

Evidence

11. The bundle contains;

    a. A statement of case from the Applicants
    b. Photographs of the rear balcony access which in two photographs shows extensive ponding
    c. A copy of the Notice of Intention and response from the lessees of 330A.
    d. Correspondence from Mr Whisker
    e. An invitation to tender dated 19 September 2016 prepared by Southdown Chartered Surveyors and Building Consultants
    f. A Tender Report dated 30 September giving details of the three quotations received.

Decision

12. The necessity for the work has not been disputed and the only objection has been on the grounds that costs may be increased by contractors due to the perceived urgency.

13. The Tribunal's decision is not however in respect of the costs incurred it is simply whether dispensation to the consultation requirements may be given.

14. The only prejudice to the lessees suggested is that contractors will quote higher prices where urgency is involved. No evidence has been provided to support this suggestion and I am not satisfied that the type of prejudice referred to in the Daejan case referred to in paragraph 10 above has been shown.

15. On the basis of the evidence before me the **Tribunal therefore grants Dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.**

16. **The 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.**

D Banfield FRICS
13 October 2016

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.