



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

Case Reference : CHI/43UB/LDC/2018/0074

Property : The Old Manor House, Station Road,
Thames Ditton, Surrey KT7 0NU

Applicant : Northumberland & Durham Limited

Representative : Town & City Management Limited

Respondents : Mr C Robinson (Flat 21)

Representative :

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

Tribunal Member(s) : Mr D Banfield FRICS

Date of Decision 6 December 2018

DECISION

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

1. This is an application for dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985. (the 1985 Act)
2. The Applicant states that “The qualifying works are following a leak from the roof which has caused a lot of damage into the property. I have attached the email in relation to it. A surveyor is looking into the extent of the works.
3. In answer to the question regarding what consultation had been carried out the Applicant stated “The extent of the works is being carried out by a surveyor”
4. The reason for the application was said to be “Works need to be carried out as soon as possible as flooding was caused to the property via a leaking roof which caused water to enter the electrics so is a cause of concern over safety”
5. The email referred to in paragraph 2 was not included with the Application.
6. The Tribunal made Directions on 9 November 2018 which required the Applicant to send to each Respondent a copy of the application and the Directions together with a form to be returned to the Tribunal indicating whether the application was agreed with, whether a written statement was to be sent to the applicant and whether an oral hearing was required.
7. The Tribunal received an objection to the Application from one lessee who pointed out that, contrary to the Tribunal’s Directions the copy email referred to above had not been provided.
8. In accordance with Directions the remaining lessees have been removed as Respondents.
9. Following service of a Notice that the Tribunal was minded to strike out the application due to the failure to comply with the Tribunal’s Directions a copy of an email trail was received from the Applicant
10. This comprised an email from Mr Hentschel of Hallas & Co dated 20 August 2018 asking a building contractor to quote for remedial works to a leaking roof. A reply dated 21 August 2018 suggested that rather than quote “if the works are below £5k we just get on and do it”. Authorisation to proceed was duly given by the Applicant on 23 August 2018.
11. A copy of the email trail was sent to the Lessee referred to above on 27 November 2018 with a request that he advised the Tribunal within 7 days whether he wished to pursue his application that the application be reserved.
12. No request has been received.
13. The only issue for the Tribunal is if it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern**

the issue of whether any service charge costs will be reasonable or payable.

The Law

14. The relevant section of the Act reads as follows:

20ZA Consultation requirements:

- a. (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.

15. 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

- b. 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.
- c. 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.
- d. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- e. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- f. 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).
- g. 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.
- h. 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.
- i. 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.
- j. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

Evidence

16. A bundle has been provided extending to 202 pages. It includes a brief statement of case containing the same information as in the application

form, a 157 page specification of works dated August 2018 and prepared by Hallas & Co entitled External & Internal Repairs and Decorations, an invoice from the OlliGroup dated 10 September 2018 entitled “Roof Works” and referring to “carrying out works as per our estimate and your valued instructions”

17. The email trail referred to at paragraph 10 above was also included.

Determination

18. For the Tribunal to grant dispensation from the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in respect of works there has to be clarity as to the nature of those works.

19. The statement of case gives no more information than the application form and, despite the substantial bundle there is no indication as to the relevance of the Schedule of Works referred to at paragraph 16 and whether it is intended to describe the works for which dispensation is sought. Clearly the schedule is for a far more extensive project than that now at issue.

20. Unfortunately the contractor’s invoice sheds no further light on the matter either and the Tribunal is simply left to speculate on the nature of the works that have been carried out and for which dispensation is now sought.

21. In these circumstances the Tribunal is not prepared to grant the dispensation required.

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

D Banfield FRICS
6 December 2018

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 appeal is seeking.