

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



S.20ZA S.20C Landlord & Tenant Act 1985

DECISION & REASONS

Case Number: CHI/00ML/LDC/2009/0042

Property: 106 Preston Drove
BRIGHTON
BN1 6LB

Applicant: Victor Chandler Ltd

Represented by: Mr R A Draycott – managing agent

Respondent: Mr I R Strachan

Date of Application: 16 December 2009

Date of Consideration: 10 February 2010

Date of This Determination 10 February 2010

Tribunal Members: B H R Simms FRICS MCI Arb (Chairman)
Mr R A Wilkey FRICS FICPD

DECISION

1. The Tribunal determines to dispense with all of the consultation requirements in relation to the qualifying works, the subject of this application described as the treatment of an outbreak of dry rot to include associated reinstatement works.

NOTICE

2. Following formal notice given in Directions dated 22 December 2009 the Tribunal proceeded to determine the case on the basis of only written representations without a formal oral hearing.
3. By his letter received by the Tribunal on 1 February 2010 Mr Draycott identified one of the ground floor occupiers as Grove Lodge Veterinary Group. Up to this point the ground floor commercial occupiers had not been identified. Mr Simms, the Tribunal chairman, acts for Grove Lodge in his professional surveying practice in connection with rating matters but not in connection with issues such as this application. Under other circumstances Mr Simms would have identified a possible perceived conflict of interests and sought the parties' approval to proceed. This would have caused unnecessary delay. Grove Lodge Veterinary Group is not a party to these proceedings and in these particular circumstances as there is no actual conflict the case proceeded to a determination.

REASONS

INTRODUCTION

4. This is an application by Managing Agent for the Landlord, R A Draycott, 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 LAW

5. The statutory provisions primarily relevant to this application 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.

6. 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.
7. The definitions of the various terms used within S.20 e.g. consultation reports, qualifying works etc., are set out in that Section.
8. 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.
9. 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 estimates and provisions whereby a lessee may make comments about the proposed work and nominate a contractor.
10. 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

11. The Tribunal was provided with a copy of lease for 106a Preston Drove dated 17 December 1993 between Victor Chandler (Preston Drove) Ltd (the Lessor) and S J Hill and T A May (the Lessee).
12. Although the Tribunal had regard to the full lease and there was no plan attached, little turned on its interpretation when considering this 20ZA application.

13. There are provisions for the tenant to keep the *demised premises*, meaning the flat on the first and second floors as defined in the lease, in good and substantial repair together with internal and external decoration at particular times. The tenant also contributes "a *due proportion*" of the costs and expenses of repairing and maintaining all specified parts of the property "...belonging to or used or capable of being used by the Lessee in common with the Lessor and the Lessee of the ground floor premises..." in particular "...the internal wall enclosing the stairs at the front of the property leading to the flat...".
14. The Tribunal has not interpreted the lease to determine whether or in what proportion a service charge may be levied on the tenant.
15. There were no matters raised by either of the parties in respect of the interpretation of the lease.

BACKGROUND & REPRESENTATIONS

16. On 22 December 2009 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 paper track.
17. Mr Draycott provided representations with his application in a letter dated 16 December and also in later letters dated 26 and 28 January 2010. He explained that the work was urgently required to remedy the outbreak of dry rot at the property of which the demised premises form part.
18. A report and estimate dated 4 December 2009 from R H Smith (Worthing) Ltd, specialists in this sort of work, was provided to the Tribunal. Dry rot was identified in three specific places 1) to the skirting on the party wall between the convenience store and the entrance hallway; 2) the treads and string of the staircase leading to the first floor and 3) the hanging jamb of the inner lobby doorframe. In six other areas R H Smith noted that there was no dry rot visible but remedial work would be required as the areas fell within 1m from the last visible sign of attack. Most of these additional areas are within adjoining premises to which there will be disruption during the work.

19. A full specification of treatment and remedial work was set out and the Tribunal understands that R H Smith Ltd is instructed to carry out the work. A guarantee would be issued on completion.
20. Mr Strachan made no representations.

INSPECTION

21. The Tribunal members inspected part of the ground floor of the property on 10 February 2010 at 10.00 a.m. A workman from R H Smith and Mr Draycott were present and the Tribunal was shown the extent of the works including an area within the ground floor occupied by Grove Lodge Veterinary Group. Mr Strachan was not present or represented and the members did not inspect his flat, other than the staircase area, as all the work is restricted to the ground floor and basement. The work was almost complete and none of the original dry rot was visible. The R H Smith workman showed the members some photographs of the dry rot which he had recorded on his telephone.
22. Mr Strachan's property comprises a maisonette with accommodation arranged on the first and second floors of the building approached by a self-contained vestibule and staircase leading from the entrance door at ground floor level. The remainder of 106 is occupied on the ground floor, and probably the basement, by the Veterinary surgery.
23. The building is part of a terrace of similar properties having ground floor commercial uses and upper floors in mainly residential use.

CONSIDERATION

24. The Tribunal considered the papers carefully and it was clear from what Mr Draycott told the Tribunal that the landlord had little choice but to proceed with the work quickly.
25. Mr Draycott explained that the dry rot infestation would spread. Using its own knowledge and experience the Tribunal is aware that Dry rot is very invasive and spreads quickly through timber and brickwork if left unchecked.

Any delay to allow for the full S.20 consultation process would almost certainly have allowed the dry rot to spread further and would have resulted in more extensive works being required.

26. Mr Strachan, the tenant, was aware of the need for the work and had raised no objection to it proceeding. He had in fact brought the defect to the landlord's attention in the first place.

N.B.

27. Merely for the sake of clarification the Tribunal reminds the parties that either the landlord or the tenant may make a separate 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.
28. Similarly and as mentioned at para. 14 above, the Tribunal confirms that it has not interpreted the lease to determine whether or in what proportion a service charge may be levied on the tenant.

Dated 10 February 2010

Signed

Brandon H R Simms FRICS MCI Arb
Chairman