



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

Case reference : **CHI/00ML/LDC/2015/0046**

Property : **4 Castle Square, Brighton, East
Sussex BN1 1EG**

Applicant : **Mr I Carter Investments**

Representative : **C P Bigwood Managing Agents**

Respondents : **The Lessees**

Date of Decision : **3 December 2015**

DECISION

Summary of decision

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

Background

1. This is an application for dispensation from the consultation requirements provided by section 20 Landlord and Tenant Act 1985.
2. The Applicant advised that sewage was leaking into the ground floor shop and that a contractor has identified a leaking pipe requiring urgent repair.
3. Due to the investigation work required it was not possible for a cost to be provided prior to commencement and due to the need to make urgent repairs the Applicant considered that dispensation from the consultation procedure was required.
4. An invoice for the works dated 25 September 2015 in the sum of £1,925.82 inclusive of VAT has been received.
5. Directions were made on 21 October 2015 requiring the Applicant to serve a copy of the application and Directions on each lessee with a form to be returned to the Tribunal indicating whether the application was opposed and whether an oral hearing was required.
6. No forms have been returned to the Tribunal either objecting to the application or requesting an oral hearing and the matter has therefore been determined on the basis of the bundle received in accordance with rule 31 of the Tribunal Procedure Rules 2013.

Decision

7. 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

8. 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.

9. 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

10. The history of this matter is set out in paragraphs 2 to 6 above. In a letter dated 11 November 2015 Mr Darren Yeomans of CP Bigwood confirms that the Tribunal's Directions and a copy of the application form have been sent to the lessees and by a letter dated 16 November 2015 Mr Yeomans confirms that no objections have been received.

Decision

11. It is clear that these works were urgent and needed immediate attention. It is further accepted that it was not practicable to obtain two or more estimates.

12. None of the lessees has objected to the application or indicated whether they have suffered prejudice by the lack of consultation required by S.20 of the Landlord and Tenant Act 1985.
- 13. On the basis of the evidence before it the Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985.**
14. 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
3 December 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.