FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/LDC/2019/0188**
Property	**:**	**8 Lady Margaret Road, London, NW5 2XS**
Applicant	**:**	**Margaret Towers Ltd**
Representative	**:**	**N/A**
Respondents	**:**	**The lessees**
Representative	**:**	**N/A**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal member	**:**	**Tribunal Judge I Mohabir**
Date and venue of determination	**:**	**25 November 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**25 November 2019**

DECISION

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) ("the Act") for dispensation from the consultation requirements imposed by section 20 of the Act.

2. 8 Lady Margaret Road, London, NW5 2XS ("the property") is described as a Victorian building that has been converted into 4 flats. The Applicant is the freeholder company in which each of the four lessees is a Director.

3. There is a leak into Flat C from the roof terrace of Flat D above leading to water ingress into two rooms, being a second bedroom and the hallway. Apparently, the water is collecting close to light fittings, as there is a possibility that water may affect the electrics and it poses a danger to the occupant(s). The water ingress has left the bedroom uninhabitable and the hallway covered in tarpaulin.

4. All of the Directors of the Applicant (the lessees) held a meeting on 17 October 2019 when it was unanimously agreed to replace the roof terrace of flat D as an emergency because the temporary work carried out on 3 October 2019 to prevent the leak was unsuccessful.

5. The Tribunal was provided with a specimen lease of Flat C. It is assumed that all of the other residential leases have been granted in the same terms. The relevant service charge provisions appear in clause 5 generally.

6. It appears from paragraph (f) in Part I of the Schedule to the lease and the lease plan that those flats from the first floor upwards have the benefit of a roof terrace, which is demised with each flat but not the structure. Unhelpfully, the term "structure" is not defined anywhere else in the lease.

7. Clause 3(1) of the lease requires the lessee to repair and maintain the demised premises *"and in particular so as to support shelter and protect the parts of the Building other than the demised premises"*. Arguably, therefore, the lessee is obliged to repair the roof terrace.

8. Assistance is not provided by having regard to the landlord's repairing obligations found in Part V of the lease. Paragraph 1(a) refers to the repairing obligation as including *"the external walls and structures"*.

9. From the photographic evidence provided by the Applicant, it seems that the water leak occurs under the roof terrace flooring of Flat D. From the limited, it is not possible for the Tribunal to determine if this falls within clause 3(1) or paragraph 1(a) in Part V of the lease. However, for the reasons set out below, it was not necessary for the Tribunal to determine this point.

10. On 23 October 2019, the Applicant made this application seeking dispensation from the proposed works because of the water ingress to Flat C and for the reasons set out in paragraph 3 above. The proposed urgent remedial works are set out in paragraph 1 of the grounds for seeking dispensation in the application and do not need to set out here again.

11. On 31 October 2019, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Directions required the Applicant to serve a copy of the application on each of the lessees. The Tribunal also directed that this application be determined on the basis of written representations only.

12. No Respondent has filed any objection to the application.

Relevant Law

13. This is set out in the Appendix annexed hereto.

Decision

14. The determination of the application took place on 25 November 2019 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents.

15. The relevant test to the applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.

16. The issue before the Tribunal was whether dispensation should be granted in relation to requirement to carry out statutory consultation with the leaseholders regarding the proposed remedial works to the roof terrace of Flat D. It should be noted that the Tribunal is not concerned about the actual cost that has or will be incurred, as that is not within the scope of this application.

17. The Tribunal granted the application the following reasons:

    (a) the fact that each of the leaseholders has been kept informed of the defects to the roof terrace and the requirement to carry out the proposed works.

    (b) the fact that each of the leaseholders had been served with a copy of the application and documents in support.

(c) no leaseholder has objected to the application.

(d) the Tribunal was satisfied was satisfied that it did not have to construe the lease to decide if the repairing obligation fell on the lessee of Flat D or the Applicant as freeholder. The point appeared to be academic because, in effect, the leaseholders are the Applicant company. In addition, this point has not been taken by any of the lessees and they appear to be acting by common consent.

(e) importantly, any prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred.

18. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.

19. It should also be noted that in granting this part of the application, the Tribunal makes no finding that the scope and estimated cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act in the event that this becomes necessary.

Name: Tribunal Judge I Mohabir **Date:** 25 November 2019

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  (a) complied with in relation to the works or agreement, or
  (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  (a) an amount prescribed by, or determined in accordance with, the regulations, and
  (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.