

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**IN THE MATTER OF SECTION 20ZA LANDLORD & TENANT ACT 1985**

Application No	CHI/21UD/LDC/2009/0035
Property	Charmaine Court 1,2 and 3 St Margaret's Road St Leonards-on-Sea
Applicant	Dawson, Harden and Tanton, Managing Agents
Respondents	The Lessees
Members of the Tribunal	Ms H Clarke (Barrister) (Chair) Mr B H R Simms FRICS MCI Arb Ms J K Morris
Date of hearing	25 November 2009
Date of decision	25 November 2009

**1. THE APPLICATION**

The Applicant asked the Tribunal to dispense with the consultation requirements imposed by statute in relation to repair work to the roof of the property, on the basis that the work in question was urgently required.

**2. THE DECISION**

The Tribunal dispensed with the statutory consultation requirements in relation to the work set out in the Specification prepared by Mr M Atkinson dated November 2009.

3. The Tribunal informed the Applicant of its decision orally at hearing on 25 November 2009.

**4. THE LEASES**

The Tribunal was shown a standard form of lease in use at the Property. It provided for the landlord to maintain the structural parts including the roof serving the Property and for the tenant to

contribute to the costs under the service charge provisions. Nothing in the Application turned on any provision of the leases.

5. **THE LAW**

Section 20 Landlord & Tenant Act 1985 (as amended by the Commonhold & Leasehold Reform Act 2002) states:

*Limitation of service charges: consultation requirements*

*(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) a leasehold valuation tribunal.*

6. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987 and in summary the relevant part of the regulations at Schedule 4 Part 2 requires the landlord to give each tenant written notice of intention to carry out works, to invite observations on the works and invite the tenant to nominate a person from whom an estimate should be obtained, and subsequently to obtain estimates and provide information about them to the tenants before entering into a contract for the works to be done. The minimum time required for the entire consultation procedure to be completed is 60 days, but this does not take account of any additional time for matters such as service of notices, time for replies to be received from contractors invited to provide estimates, or time for the landlord to consider responses.

7. Section 20ZA(1) Landlord & Tenant Act 1985 states: *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.*

8. **THE INSPECTION**

Immediately before the Hearing the Tribunal inspected the exterior of the Property. It comprised three adjacent terraced buildings, probably constructed in the early 20<sup>th</sup> century, which had been converted into 19 flats over 4 storeys. The roofs to the main part appeared to be pitched tiled roofs. At the rear was an extension 3 storeys high which had a flat roof finished with roofing felt. Scaffolding was in place around the rear extension. From an upper window the Tribunal was able to see puddles of water on

the flat roof. The Tribunal inspected the interior of Flat 9, part of which was located under the flat roof. There were signs of considerable water damage to this area, some plasterboard had been removed, and there was wetness in the roof space. The lights to this part were not functioning. The Tribunal was told by the occupier that he had become aware of staining followed by a drip, and in the past few days more water had been coming through the ceiling and splashing into the room below.

**9. THE EVIDENCE AT HEARING**

A hearing was held at Hastings. The Applicant was represented by Mr Earwaker of the managing agents and Mr Atkinson MRICS, surveyor. In accordance with directions, at the hearing the Applicant submitted a witness statement from Mr Earwaker and relevant documents to support its statement of case.

10. No Respondents attended the hearing and no submissions were received by the Tribunal from any Respondent.

**11. REASONS AND DETERMINATION**

The Applicant's unchallenged case was that in late October the occupier of Flat 9 reported signs of water penetration. Mr Atkinson visited the property, and prepared a letter expressing his view that there was water penetration through the roof and some condensation in the roof space, and that urgent repairs were required. This letter was sent to all lessees soon after 5 November 2009.

12. Mr Atkinson then prepared a specification of work which was sent to a number of contractors. Three quotes were received, from South East Building Contractors (£7,740 + VAT), Ashford Building Services (£8,200 + VAT), and T Clark (£9,320 +VAT). None of these contractors was associated in any way with the landlord or the managing agents. South East Building Contractors were the preferred contractor, based on price. In order to make sure that no avoidable delays would occur, they had been asked to erect the scaffolding which the Tribunal saw. The price for this was included in their quote.

13. The cost of the works would be partly met from the reserve fund which presently stood at £7,200.

14. The Tribunal agreed with the Applicant's submission that the works under the specification prepared by Mr Atkinson were 'qualifying works' under s20 Landlord & Tenant Act 1985.

15. The Tribunal noted that s20ZA empowered a tribunal to dispense with all or any of the consultation requirements if satisfied that it was reasonable to do so. The question of whether it was reasonable was to be judged in the light of the purpose of the consultation provisions. The most important consideration was likely to be the degree of prejudice that there would be to the tenants if the consultation was not carried out as required by statute. This would not, however, be the sole consideration.
16. The Tribunal considered all the circumstances of the case, and decided that on balance it was reasonable to dispense with the requirement for the Applicant to consult the tenants before entering into a contract to carry out the work set out in the specification because:
  - i) The evidence demonstrated that the flat roof was in a defective condition and there was a real risk that rain water could again enter the property.
  - ii) There was therefore an urgent need for repairs and work to be carried out to prevent a recurrence.
  - iii) Recent weather conditions had included a prolonged period of heavy rain and high winds. The application was being considered in late November. It seemed likely that if dispensation was not given, Flat 9 would be in an unpleasant, uncomfortable and possibly unsafe condition for a lengthy period of time, allowing for seasonal slowdown in the building trade.
  - iv) The Applicant had obtained 3 quotes from local firms of contractors who were not associated with the landlord, and proposed to accept the lowest priced quote.
17. The Tribunal noted that the specification included provisions for making good the interior of Flat 9 and for providing an extractor fan, presumably to address the issue of condensation. The Tribunal decided that as these works constituted a fairly minor part of the whole, it was appropriate to dispense with consultation on the whole specification rather than requiring the landlord to consult on the interior works only. The internal work was required directly as a consequence of the external leaks. It was the view of the Tribunal in any event that the landlord's ability to recover the cost of the internal works, if priced separately, would be unaffected by the consultation requirements because the cost to each flat would fall below £250.

18. The law provides in effect that if a landlord is required to carry out the statutory consultation, but does not do so, then the amount which each tenant may have to contribute to the cost of the work in question is limited to £250. The effect of dispensing with the consultation requirements is to remove this limit. In making its decision to dispense with consultation in this case, the Tribunal is not making a determination as to the liability of individual tenants to pay for the work. Nor is the Tribunal making any determination as to the reasonableness of the service charge costs that will or may be incurred, nor that the work will or will not be carried out to a reasonable standard. Such a determination could only properly be made on an application under s27A of the Landlord & Tenant Act 1985.

Signed-----*AME* Chair

Dated-----*25-11-09*