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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00HB/LDC/2016/0001**
Property	:	**281 North Street Bristol, BS3 1JP**
Applicant	:	**Snarecroft Limited**
Represented by:		**Kuszer Estates (Managements) and Co.**
Respondents	:	**(1) Adlene Forder** **(2) Duncan Johnathan Baldwin**
Type of Application	:	**Landlord and Tenant Act 1985, section 20ZA**
Tribunal Members	:	**Judge M Davey** **Mr S. Hodges FRICS**
Date and venue of Hearing	:	**02 March 2016** **Bristol Magistrates' Court**
Date of Decision	:	**02 March 2016**

DECISION

1. **The Tribunal grants dispensation from compliance with the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985 (as amended) and in Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) in respect of the qualifying works carried out to the property at 281 North Street, Bristol in September 2015.**

REASONS

The application

2. On 19 February 2016, Kuszer Estates (Managements) & Co., the managing agents of Snarecroft Limited, the respondent freeholder and head leaseholder ("the Lessor) of 281 North Street Bedminster Bristol BS3 1JP ("the property"), applied to the Tribunal, under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act"). The application is for dispensation from compliance with the consultation requirements contained in section 20 of that Act and in Part 2 of Schedule 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations").

3. The Respondents to the Application are the respective under-lessees of the two flats at the above property. The Tribunal was supplied with a copy of the under-leases of both flats. One under-lease is of a flat on the ground and first floor of the property ("the first floor flat") and the other under-lease is of the flat on the first and second floor of the property ("the second floor flat"). Mr Baldwin is the current under-lessee ("the Lessee") of the first floor flat. The under-lease ("the lease") under which he holds is dated 12 May 1991 and was originally granted by Crestpage Properties Limited to Richard Ian Honeyfield and Trudy Elizabeth Stevens for a term of 99 years less seven days from 26 April 1988. Ms Forder is the current under-lessee ("the Lessee") of the second floor flat. The under-lease ("the lease") under which she holds is dated 14 April 1989 and was originally granted by Crestpage Properties Limited to Garth Thomas Manson for a term of 99 years less seven days from 26 April 1988.

The Leases

4. The leases are in all material respects in identical terms. They contain a covenant by the Lessor in clause 5(g) to insure the building against loss or damage against all risks normally covered by a householders' comprehensive insurance policy. This is subject to payment by each Lessee of 25% of the insurance premium in accordance with clause 4(c) of the lease. Clause 5(h) of the leases contains a covenant by the Lessor "To keep the structure roof fabric main walls timber forecourt

entrance halls passage stairs serviceway and rear passageway (if any) of the Building and the sewers drains watercourses water pipes party walls fences and party structures easements and appurtenances used or capable of being used by the Lessee in common with the Lessor or the Lessees or occupiers of the other flat and the shop in a good state of repair. By clause 1 of the leases the Lessee is obliged to pay 25% of "the yearly sum or sums which the Lessor shall from time to time reasonably and properly incur in supporting repairing renewing maintaining lighting cleaning and decorating the roof and foundations of the Building and all walls and fences gutters sewers drains and the forecourt entrance hall passages stairs and service way and the rear passages (if any) of the Building and all other things and the use of which is common to the demised premises to other property adjoining or near thereto."

The Law

5. A "service charge" is defined in section 18(1) of the 1985 Act as:

"an amount payable by a tenant of a dwelling as part of or in addition to the rent:-

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs."

6. Section 19(1) of the 1985 Act, provides that:

"Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

7. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as "the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

8. Section 20 applies where a landlord enters into a contract to carry out qualifying works (i.e. works on a building or other premises). It provides for a consultation process, set out in the Service Charges Consultation Requirements (England) Regulations 2003,where the relevant contribution of a tenant in respect of any accounting period exceeds the appropriate amount. The relevant contribution is the

amount that the tenant may be required under the terms of the lease to contribute by way of service charge to relevant costs incurred in carrying out works. The appropriate amount is set at £250. If the landlord fails to comply with the consultation requirements the amount that a tenant is liable to pay is limited to £250 unless on application to the Tribunal under section 20ZA the need to consult is dispensed with.

9. Section 20ZA permits the Tribunal to dispense with all or any of the consultation requirements in relation to any qualifying works where it is satisfied that it is reasonable to dispense with the requirements.

10. Schedule 4 Part 2 of the Regulations sets out the consultation requirements in the case of qualifying works where no public notice is required. The present case is such a case.

The inspection and hearing

11. The Tribunal inspected the property on the morning of 2 March 2016. The property comprises one of a four-storey terraced block of four properties each with a business on the ground floor and flats above on the first and second floors. No 281 has a cake shop on the ground floor and the two leasehold flats, which are the subject of the application, are above the shop on the first and second floors. There is an extension to the building, which forms the rear of the cake shop premises. The Tribunal, together with the Managing Agent's representative, Mrs Sharon Kuszer, and the Lessee of the second floor flat, Ms Forder, made an external inspection of the rear elevation of the property and the extension. They then visually inspected the tiled roof of the extension from the kitchen window of the upper flat, to which Ms Forder afforded access to the Tribunal and Mrs Kuszer. The Tribunal also inspected internally the room to the rear of the ground floor shop.

12. A hearing was held at Bristol Magistrates' Court at 14.00 on the afternoon of the same day. Mrs Kuszer, Ms Forder and Mr Baldwin all attended. Mrs Kuszer outlined her case by reference to a bundle of documents, which she had submitted in evidence in advance in accordance with Directions. The Respondents then questioned Mrs Kuszer on her case and made oral submissions as to why they opposed the application.

The submissions

13. Mrs Kuszer stated that on 27 August 2014 Ms Forder emailed Mrs Kuszer to report ingress of water into her flat from the external walls "at quite an alarming rate". Ms Forder also referred to water in the communal hallway and expressed the opinion that the matter needed prompt attention and stated that she would like to make an insurance claim. Within the hour Mrs Kuszer responded giving the name of a loss adjusting company, Davies Managed Systems, used for all of her

clients, stating that they preferred to deal directly with the client about a claim. Following Ms Forder's report of the matter to Mrs Kuszer the tenant of the shop also reported that water was leaking into her shop.

14. Mrs Kuszer and Ms Forder, with the knowledge of Mr Baldwin, who did not express any objection to the arrangement, agreed that Ms Forder would handle the claim and deal directly with the insurers. By 14 October 2014 Ms Forder and Mr Baldwin had obtained two quotes, as requested by the insurers. The first quote, dated September 12, 2014, and obtained by Mr Baldwin, was from Mogford Prescott Ltd. of Westbury on Trym Bristol. The sum quoted was £8,465.00. The second quote, dated 19 September 2014, which was obtained by Ms Forder, was from Millford Property Services of Shirehampton, Bristol, a company run by Ms Forder's brother, about which Ms Forder had been completely open. The figure quoted for the works in question was £11,120.

15. However, Mrs Kuszer said that, "considerable time went by" without her having received any estimates and without resolution of the claim with the loss adjuster. She says it was only on 15 April 2015 that Ms Forder contacted her to report that water ingress was still occurring and asking why she had not had a response from Mrs Kuszer, following submission by the insurance assessors of a report to Mrs Kuszer explaining that the policy would only cover internal damage caused by water ingress and not the remedying of external damage caused by wear and tear which was not a policy risk. When Mrs Kuszer contacted the insurers it transpired that they had been sending correspondence to Mrs Kuszer at the premises and not at her actual business address in London. She says that for this reason she never received the report or quotes.

16. Mrs Kuszer stated that when she spoke to the loss adjuster he explained that they had been unable to resolve the matter because Ms Forder had been under the impression that the insurance cover extended beyond internal water damage to encompass also the remedying of external disrepair. Mrs Kuszer said that she then telephoned Ms Forder to explain that in accordance with the terms of the leases, the cost of remedying the external works was to be borne 50% by the Lessor and 25% each by the Lessees. The insurers would only satisfy the claim in respect of the internal works if the external works were carried out.

17. Mrs Kuszer could not agree with either of the quotes provided by Ms Forder and Mr Baldwin. She said that neither quote dealt with the down pipes and guttering which the loss adjuster had felt was the main cause of the water ingress.

18. Mrs Kuszer said that although she tried to obtain further quotations this proved to be difficult because contractors were turned away either by one of the lessees (the Tribunal infers that this was a reference to Ms Forder) or the shop tenant. Eventually Mr Baldwin agreed to show

round a third company, Calder RBS of Ashton Vale Bristol, who provided a quote of £4,589 plus VAT (i.e. £5,506.80).

19. Discussions between Mrs Kuszer and the Lessees continued but they were unable to come to an agreement as to which quote should be accepted. At that point Mrs Kuszer decided that it would be necessary to serve notices under section 20 of the Landlord and Tenant act 1985. She says that compliance with this statutory process, which would take at least 3 months, was then stymied by the need for repair, which soon became critical because the leak in the shop had worsened considerably. Mrs Kuszer decided that it was therefore necessary for the works to be carried out as a matter of urgency in accordance with Calder's quote, including (as suggested by Mr Baldwin and requested by Mrs Kuszer) painting of the exterior at a cost of £1,650 plus VAT. Calder therefore invoiced Mrs Kuszer for the sum of £7,486.80 in respect of which she claims that the leaseholders are liable to the extent of 25% each. The invoice is dated 29 September 2015.

20. The works carried out, which required scaffolding were (1) roof work to the rear annex together with the renewal of facia, gutters and rainwater pipes and (2) repairs to isolated damaged rendering on the rear elevation together with associated works and painting of the exterior.

21. In conclusion, Mrs Kuszer submitted that in reality she had gone through an informal consultation process with the leaseholders despite having failed to follow the statutory consultation requirements. Mrs Kuszer drew the Tribunal's attention to the decision of the Supreme Court in *Daejan Investments Ltd v Benson and others* [2013] UKSC 14, which is the leading authority on how a Tribunal should approach an application under section 20ZA of the Landlord and Tenant Act 1985.

22. She said that in that decision the Court held that the purpose of a landlord's obligation to consult tenants in advance of qualifying works is to ensure that tenants are protected from paying for inappropriate works or from paying more than would be appropriate. She says that in the present case the works that were done cost less than the quotations provided by lessees and that neither of the lessees had questioned the quality of the works carried out. She argues therefore that the lessees have not been prejudiced by the admitted failure of the landlord to comply with the statutory consultation requirements. The Tribunal should therefore grant dispensation under section 20ZA.

23. Both lessees contest the application. Ms Forder says that Mrs Kuszer had allowed the matter of carrying out the necessary repairs to drag on for far too long and that this was why the situation had become critical by 3 September 2015 when the works began without the landlord having gone through the statutory consultation process. She said that the quote obtained from Calder was not like for like with that supplied by Millford Property Services because it did not quote for the provision of new roof tiling. Furthermore, unlike the Calder quote, the quotes obtained by the leaseholders also covered the necessary internal works

to the hallway behind the front door. Mr Baldwin's concerns were mainly with regard to the work to the rendering. He says that rather than patching over cracked lines in the render, the contractor should have taken the opportunity to check the condition of the rendering elsewhere on the rear external elevation whilst scaffolding was in place. Ms Forder said that this was also matter of concern for her.

24. In short the Lessees considered that the opportunity to consider whether longer term remedial works to the rest of the rendering and laying of new roof tiles would be prudent has been lost and that they have thereby suffered prejudice. They therefore opposed the granting of dispensation.

Consideration

25. It is important to remember that the sole issue for determination by the tribunal is whether they should dispense with all or any of the consultation requirements in respect of the works carried out to the property at 281 North Street. The consultation Regulations specify that the landlord must give each tenant notice of intention to carry out the qualifying works and give the tenants the opportunity to make observations about the proposals including an invitation to suggest a person from whom the landlord shall try to obtain an estimate. The landlord must then try to obtain an estimate from a nominated person. The next stage is for the landlord to obtain estimates for the work and supply a statement setting out as regards at least two of the estimates (one of which must be a nominated estimate if suggested and obtained) the estimated costs of the proposed works and where he has received observations a summary of the observations and his response to them. Where observations have been received the landlord is required to "have regard" to them.

26. In the present case both the Applicant and the Respondents accept that this procedure has not been followed. However, the Applicant submits that she has complied in substance, in so far as she has had regard to three estimates, two of which were provided by the Respondent leaseholders. Having had regard to them she chose the lowest priced estimate, which, as everyone agrees, has dealt with the disrepair and remedied the cause of the water ingress to the shop and flats. It is true that the matter had gone unremedied for a year after the problem was first reported but this was because the Lessees were handling the matter and communications between the insurers and Lessor broke down because they were not reaching Mrs Kuszer.

27. The Respondents argue that Mrs Kuszer should have accepted a higher estimate that would have resulted in more extensive works, which would arguably have provided a longer-term solution. Mr Baldwin suggested that investigation of other parts of the rendering should have been carried out and Ms Forder suggested that when tiles were

replaced after the roof work they should be new tiles and not the existing tiles. However, there is no suggestion that the existing tiles were not doing the job they were supposed to do (save for a few cracked tiles which are not letting in water, but may need to be replaced). Nor was it established that it was necessary to examine and investigate more extensive areas of rendering than had been affected by the leak.

28. There is no application before the Tribunal to determine that the service charge should be lower because of defects in the premises that have not been dealt with. Following the decision of the Supreme Court in the *Daejan* case, in order to refuse dispensation to the Applicant the Tribunal would need to be satisfied that the lessees have been prejudiced by the landlord's failure to consult. The Tribunal is not so satisfied. The disrepair has been remedied in accordance with the lowest quote and all parties are satisfied with the efficacy of the repair works. The Lessees simply believe that the works should have been more extensive but the need for such potentially preventive measures were not indicated by the immediate disrepair. The Tribunal considers that it would be an injustice if the Lessor was prevented from recovering more than £250 from each lessee in respect of works costing £7,486.80 pence which all parties agree have solved the problem of water ingress that led to the need for the landlord to take appropriate action.

29. The Tribunal considers it reasonable for the above reasons to grant dispensation from compliance with the consultation requirements in respect of the works carried out to the property by Calder in September 2015.

Martin Davey
Chairman

07 March 2016

Note:
Appeals

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.

2. 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.

3. 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.

4. 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.