



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

Case Reference: LON/00AF/LDC/2014/0047

Property: Summerhill Lodge, Summerhill, Chislehurst, Kent,
BR7 5NY

Applicant: Mrs C A Gallagher

Representative: Acorn Estate Management

Respondent: Mrs S June (The Tower)

Representative: Miss C De Vos

Type of application: Section 20ZA Landlord & Tenant Act 1985

Tribunal members: H Bowers BSc (Econ) MSc MRICS

Date of Hearing: 11th June 2014

Date of Decision: 11th June 2014

DECISION

The Tribunal determines that the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with in relation to emergency work carried out in February and March 2014.

Introduction

1. By an application dated 24th March 2014 the Applicant applied to the Tribunal for an order dispensing with the consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) Regulations 2003 in respect of the property at Summerhill Lodge, Summerhill, Chislehurst, Kent, BR7 5NY (the subject property).
2. Directions were issued on 4th April 2014 and a hearing was arranged for 11th June 2014 at 10, Alfred Place, London, WC1E 7LR.

Background

3. The subject property is a converted building comprising three flats. One flat is occupied by Mrs June, the Respondent on a long lease basis. The other two flats are retained by Mrs Gallagher and let out on an Assured Shorthold Tenancy basis.
4. The papers submitted to the Tribunal indicated that there was a history of problems associated with the roof area and that there had been some historic work carried out to the roof in 2007/8.

Hearing

5. The hearing was attended by Mrs Castellani, Manager and Miss Fowler, Senior Estate Manager, of Acorn Estate Management on behalf of the Applicant. Miss De Vos, Chartered Surveyor, of De Vos Consultancy, attended on behalf of the Respondent.
6. At the start of the hearing it was explained the very limited scope of the jurisdiction in respect of the current application. Clarification was sought from the Applicant's representative as to the extent of the works to be covered by the application. It was confirmed that dispensation was being sought solely for the works carried out in February and March 2014. The works are described in an invoice from RS Property Services dated 2nd April 2014 as the erection of a scaffolding tower and the application of a silicone seal to the affected area. The total sum covered in the invoice was £1,308 and a one third share is £436.00.

Applicant's Case:

7. It was explained that the work was as a response to an emergency situation at the subject as there was water ingress into the flat occupied by Mrs June. The insurers who were dealing with the insurance claim for the internal damage had advised that the emergency work was necessary to remedy the immediate problem. The contractor was instructed in March 2014 and the scaffolding had been installed for 6-7 weeks. There were concerns about leaving the scaffolding in situ as this would have resulted in additional cost. As it was the contract was for a fixed sum for the installation, erection for eight weeks and the striking of the scaffolding.
8. Mrs Gallagher was seeking a long term solution to the outstanding problems at the subject property. To this end a section 20 consultation had commenced in respect of major works. A Notice of Intention was served on 12th February 2014 for the major works, but the process had stalled pending the outcome of the current application.

Respondent's Case:

9. Miss De Vos explained that there had been some long term problems associated with the building and as such was not an emergency situation. However, she did explain that she had inspected on 3rd January 2014 and the "current emergency" was apparent, in that there were signs of water ingress, with water running down the walls of Mrs June's flat. Miss De Vos had written to Mrs Gallagher and there had been an exchange of correspondence. The consequence was the erection of the scaffolding in February 2014. Miss De Vos had inspected on 20th February 2014 and the scaffolding was already in place.

10. In Miss De Vos's opinion the emergency work had completely failed and during an inspection on 29th May 2014 it was observed that heavy rainfall was resulting in water running down the internal walls of The Tower. Miss De Vos noted that the specification of works prepared by Mr Wolfenden was not sufficiently comprehensive to deal with some aspects of repair that was required. In response to the issue as to what prejudice was caused to Mrs June, it was stated that the historic failure to consult had been prejudicial to her as she had been unable to be involved in discussions as to the appropriate repairs that were required. In particular, if the Respondent had had notice of the works, then Miss De Vos could have had a more active role in determining the necessary works and this may have resulted in a more effective specification. Concern was raised about the overall cost in respect of the length of time the scaffolding was in place and the scope of future works.

Tribunal's Decision

11. Miss De Vos did acknowledge that although the roof problems were a long term issue, the work that is the subject to this application was as a result of a "current emergency". The issues that Miss De Vos raised in respect of any prejudice caused to Mrs June are issues that go to the question of the reasonableness of the work undertaken and the reasonableness of the cost of those works. Those aspects are outside the remit of this application and may be subject to a separate section 27A application in due course.

12. The only issue for the Tribunal to determine is whether dispensation to the consultation process should be granted. In the opinion of the Tribunal the works were of an urgent nature. Giving the Applicant the benefit of the doubt regarding the anticipated effectiveness of the repair works and the requirements of the insurance company, it was important that the repair work should have been carried out as quickly as possible. Accordingly, in these circumstances the Tribunal grants dispensation to the section 20 consultation process. For clarity the dispensation only relates to the scaffolding and the silicone seal repairs that were the subject of the RS Property Services invoice of 2nd April 2014. This Tribunal makes no determination as to the level of costs and the necessity or quality of any works undertaken.



Chairman: Helen Bowers

Date: 11th June 2014.