



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

Case reference : **CHI/24UH/LDC/2016/0024**

Property : **Mark Anthony Court, Beach Road,
Hayling Island, Hampshire
PO11 0AE**

Applicant : **Stellargrade Limited**

**Applicant's
Representative** : **Beals LLP**

Respondents : **The Leaseholders**

Tribunal member : **Judge D. Agnew**

Date of Decision : **14th September 2016**

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. (the Act)
2. The Applicant states that a lift in a 3 storey block of 60 flats some occupied by elderly lessees had to be closed down as a failure of the control panel presented a fire risk. Repairs had been urgently required.
3. The Tribunal made Directions dated 16th June 2016 which required the Applicants to send a copy of the application to each lessee together with the Tribunal's Directions and a form indicating whether the landlord's application was supported and whether a hearing was required.
4. It was intended to seek two quotations prior to the repairs being carried out. Lessees had been kept informed of the problem and the need for the repairs to be effected.
5. The repairs have subsequently been carried out.
6. None of the leaseholders have objected to the application and in the absence of a request for an oral hearing the Tribunal has determined the matter on the basis of the information contained on the basis of the Applicant's representations.
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.

Decision

10. The application clearly sets out the reasons for urgency and the Tribunal are satisfied that the lessees have been kept informed of progress throughout.
11. The lessees have been notified of the application and have had the opportunity of objecting and calling for an oral hearing. No such objection or call has been made and the Tribunal is satisfied that the prejudice referred to in the Daejan case referred to in paragraph 9 above has not been shown.

12. 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.

13. The 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.

14th September 2016

Judge D. Agnew

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. 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.