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

Case Reference : MAN/00CY/LDC/2016/0005

Property : Regent Court, Albert Promenade,
Halifax HX3 0HD

Applicant : Regent Court (Halifax) Limited
Representative : Hunters RBM

Respondents : The leaseholders of the Property (see Annex)

Type of Application : Landlord & Tenant Act 1985 – Section 20ZA

Tribunal Members : Judge J Holbrook
Judge L Bennett

**Date and venue of
Hearing** : Determined without a hearing

Date of Decision : 24 March 2016

DECISION

DECISION

Compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985 is dispensed with in relation to works to remedy defects which have caused the ingress of water into the Property.

REASONS

Background

1. On 22 February 2016 an application was made to the First-tier Tribunal (Property Chamber) (“the Tribunal”) under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for a determination to dispense with the consultation requirements of section 20 of the Act. Those requirements (“the consultation requirements”) are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the Regulations”).
2. The application related to Regent Court, Albert Promenade, Halifax HX3 0HD (“the Property”) and was made by Hunters RBM. However, it is apparent that Hunters are acting as agents in this matter on behalf of the landlord/management company for the Property: Regent Court (Halifax) Limited. It is the landlord/management company which is the proper Applicant in these proceedings (in order that it may benefit from the dispensation hereby granted) and the Tribunal so orders. The Respondents to the application are listed in the Annex to this decision. They are the leaseholders of the 76 residential apartments which comprise the Property.
3. The only issue for the Tribunal to determine is whether or not it is reasonable to dispense with the consultation requirements.
4. The works in respect of which a dispensation is sought concern the lifting and replacement of three balconies to remedy defects which have caused water ingress to the Property together with ancillary remedial works.
5. On 23 February 2016 Judge Bennett issued directions and informed the parties that, unless the Tribunal was notified that any party required an oral hearing to be arranged, the application would be determined upon consideration of written submissions and documentary evidence only. No such notification was received, and the Tribunal accordingly convened in the absence of the parties on the date of this decision to determine the application. Documentary evidence in support of the application was provided on behalf of the Applicant. No submissions were received from any of the Respondents.
6. The Tribunal did not inspect the Property.

Grounds for the application

7. The Applicant's case is that dispensation from the consultation requirements should be granted to permit urgent works to remedy defects in three balconies which are causing continuing leakage of water into the flats below. There are also two surface areas which require re-rendering and a need to repair damage to some internal walls, floors and ceilings. These problems have been ongoing for some time and previous attempts to effect repairs have been unsuccessful. Water ingress is said to be continual during heavy rain and the Applicant wishes to instigate permanent repairs as soon as possible.
8. A defect analysis report has been obtained from Eddisons Commercial Limited. The report sets out a description of the scope of the proposed works together with indicative costings for the various elements comprised within those works. The total estimated cost (exclusive of VAT) is £37,000.

Law

9. Section 18 of the Act defines what is meant by "service charge". It also defines the expression "relevant costs" 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.

10. Section 19 of the Act limits the amount of any relevant costs which may be included in a service charge to costs which are reasonably incurred, and section 20(1) provides:

Where this section applies to any qualifying works ... the relevant contributions of tenants are limited ... unless the consultation requirements have been either—

- (a) *complied with in relation to the works ... or*
- (b) *dispensed with in relation to the works ... by the appropriate tribunal.*

11. "Qualifying works" for this purpose are works on a building or any other premises (section 20ZA(2) of the Act), and section 20 applies to qualifying works if relevant costs incurred on carrying out the works exceed an amount which results in the relevant contribution of any tenant being more than £250.00 (section 20(3) of the Act and regulation 6 of the Regulations).

12. Section 20ZA(1) of the Act provides:

Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

13. Reference should be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to:
 - give written notice of its intention to carry out qualifying works, inviting leaseholders to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought;
 - obtain estimates for carrying out the works, and supply leaseholders with a statement setting out, as regards at least two of those estimates, the amount specified as the estimated cost of the proposed works, together with a summary of any initial observations made by leaseholders;
 - make all the estimates available for inspection; invite leaseholders to make observations about them; and then to have regard to those observations;
 - give written notice to the leaseholders within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder if that is not the person who submitted the lowest estimate.

Conclusions

14. The Tribunal must decide whether it is reasonable for the works to go ahead without the Applicant first complying with the consultation requirements. Those requirements are intended to ensure a degree of transparency and accountability when a landlord (or management company) decides to undertake qualifying works – the requirements ensure that leaseholders have the opportunity to know about, and to comment on, decisions about major works before those decisions are taken. It is reasonable that the consultation requirements should be complied with unless there are good reasons for dispensing with all or any of them on the facts of a particular case.
15. It follows that, for it to be appropriate to dispense with the consultation requirements, there needs to be a good reason why the works cannot be delayed until the requirements have been complied with. The Tribunal must weigh the balance of prejudice between, on the one hand, the need for swift remedial action to ensure that the condition of the Property does not deteriorate further and, on the other hand, the legitimate interests of the leaseholders in being properly consulted before major works begin. It must consider whether this balance favours allowing the works to be undertaken immediately (without consultation), or whether it favours prior consultation in the usual way (with the inevitable delay in carrying out the works which that will require). The balance is likely to be tipped in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the leaseholders consent to the grant of a dispensation.

16. We note that in the particular circumstances of the present case, there is a clear need for urgent action to be taken in order to prevent further ingress of water to the Property. We note that the Respondents have been informed of the proposal to carry out the works and that none of them have objected. There is no evidence that the Respondents have been prejudiced to date by the lack of opportunity to be consulted about the works. The balance of prejudice therefore favours dispensing with the consultation requirements.
17. The fact that the Tribunal has granted dispensation from the consultation requirements should not be taken as an indication that we consider that the amount of the anticipated service charges resulting from the works is likely to be reasonable; or, indeed, that such charges will be payable by the Respondents. We make no findings in that regard.

ANNEX

LIST OF RESPONDENTS

<u>Leaseholder</u>	<u>Interest</u>	<u>Interest</u>	<u>Interest</u>
Ms I Menon	Apt 1	Mr & Mrs Craven	Apt 43
Mr Gibbs	Apt 2	Mr Philip	Apt 44
Mr & Mrs Gill	Apt 3	Mr Burgess & Ms Gavin	Apt 46
Ms Khan	Apt 4	Mr & Mrs Trout	Apt 48
Mr & Mrs Rockley	Apt 5	Ms Austin	Apt 49
Ms S J Prior	Apt 6	Mrs Shaw	Apt 50
Mr King	Apt 7	Mr Jaynes	Apt 51
Mr Crowther	Apt 8	Mr & Mrs Sutton	Apt 52
Ms S Garner	Apt 9	Mr & Mrs Greaves	Apt 53
MBJSC (Properties) Ld	Apts 10 & 45	Mr Fletcher	Apt 54
Ms Alhadad	Apt 11	Mr Rowland	Apt 55
Mr & Mrs Rai	Apt 12	Mr & Mrs Sami	Apt 56
Mr Thorogood	Apt 14	Mr Fisher & Mr Forsyth	Apt 57
Dr & Mrs Hayes	Apt 15	Mrs Wray	Apt 58
Mr J Salik	Apt 16	Mr & Mrs Humphreys	Apt 59
Mr McConnochie	Apt 17	Mr & Mrs Cross	Apt 60
Mr N Quarmby	Apt 18	Mr & Mrs McSharry	Apt 61
Mr Clothier	Apt 19	Mr Vickers & Mr Lilley	Apt 62
Mr & Mrs Sinclair	Apt 20	Mr Vickers & Mr Santer	Apt 63
Ms D McLean	Apt 21	Mr & Mrs McIlwraith	Apt 64
Mr Kazi	Apt 22	Miss Sopala	Apt 65
Mr Amerat	Apt 23	Ms Barron	Apt 66
Ms Rutten	Apt 24	Mr & Mrs Whitham	Apt 67
Mr D Porter	Apt 25	Mr Stansfield	Apt 68
Mr M Shah	Apt 26	Mr Dervine & Miss Burke	Apt 69
Mr Crowther	Apt 27	Mrs Kershaw	Apt 70
Ms P Moore	Apt 28	Ms Sopala	Apt 71
Mr & Mrs Fletcher	Apt 29	Ms Hayes	Apt 72
Lady J Bona	Apt 30	Mr & Mrs Broadhead	Apt 73
Mr Jackson	Apt 31	Mr & Mrs Beasley	Apt 74
Ferry Top Properties	Apt 32	Mr & Mrs Blundell	Apt 75
Mr & Mrs Gueli	Apt 33	Mr Holroyd & Ms Bedford	Apt 76
Mr & Mrs Smith	Apt 34	Mr & Mrs Sutcliffe	Apt 77
Mr Smith	Apts 35 & 47		
Mr Oldfield	Apts 36 & 42		
Ms Hindle & Mr Henshaw	Apt 37		
Fly Half Limited	Apt 38		
Mr & Mrs Campbell	Apt 39		
Mr Freeman	Apt 40		
Mr Cannon, Mesdames Cannon	Apt 41		