



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

**Case Reference** : CHI/43UE/LDC/2020/0047

**Property** : Lyndon Court, 49-55 South Street,  
Dorking, Surrey RH4 2JX

**Applicant** : Mrs Jill Elizabeth Stanford

**Representative** : Blakes Chartered Surveyors and Estate  
Agents

**Respondent** : Stonegate Homes Ltd

**Representative** : Mr James Lawrence

**Type of Application** : Section 20ZA Landlord and Tenant Act  
1985

**Tribunal Member** : Mr W H Gater FRICS MCI Arb  
Regional Surveyor

**Date of Decision** : 19 August 2020

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**DECISION**

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**The Tribunal grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the roof and chimney repairs as described in the application.**

**In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## Background

1. The Applicant seeks dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act.
2. The Applicant explains that the roof leak is directly affecting the residential accommodation, mainly flat 2, which makes the unit uninhabitable and requires immediate attention.
3. The Tribunal made Directions on 6 July 2020 indicating that the application would be determined on the papers in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. Attached to the directions was a form for the Respondents to indicate whether they agreed with or objected to the application. It was further indicated that if the application was agreed to or no response was received the lessees would be removed as Respondents.
4. With the exception of Stonegate Homes of Flat 1, each of the original respondents indicated agreement with the application. Accordingly those parties have been removed as respondents in this matter. Stonegate Homes remains the sole Respondent.
5. The only issue for the Tribunal is whether it is reasonable to dispense with any statutory consultation requirements. **This decision does not concern the issue of whether any service charge costs will be reasonable or payable.**
6. References to page numbers in the bundle are shown as [\*]

## The Law

7. 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.
8. The power to dispense with consultation was examined by the Supreme Court in the case of *Daejan Investments Limited v Benson and others* [2013] UKSC 14. In summary the Supreme Court decided the following:
  - a. 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.

- b. 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.
- c. Dispensation should not be refused solely because the landlord seriously breached, or departed from, the consultation requirements.
- d. The Tribunal has power to grant a dispensation as it thinks fit, provided that any terms are appropriate.
- e. 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).
- f. 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.
- g. 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.
- h. 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.
- i. Once the tenants had shown a credible case for prejudice, the Tribunal should look to the landlord to rebut it.

## **Evidence**

- 9. In their statement of case [52 et seq] the Applicant states that on 2 February 2020 they received a report of two heavy leaks into the bedroom of flat 2. Contractors were instructed to investigate, and an inspection report and schedule of works was submitted by the contractor on 5 and 12 May 2020
- 10. On 18 June 2020 a further leak was reported and the bedroom in Flat 2 became uninhabitable.
- 11. The Lessees were informed in a notice of intention to carry out works dated 15 June 2020. [Appendix 5].
- 12. Photographs showing water damage in Flat 2 are included in the bundle [Appendix 1].
- 13. Stonegate Homes made representations in a letter of 20 July 2020 to Blakes Property Management [51].

14. They gave the following reasons for objecting to the application

1. We have only been given 2 working days to consider and respond to this matter.
2. No detailed plan of work has been provided informing leaseholders as to the extent of works that need to be carried out.
3. No quotations have been provided to the leaseholders to give an indication of the cost.
4. No budget has been discussed with the leaseholders giving us an indication of the maximum outgoing for these specific works
5. There is only £900.01 in the reserve fund. No clarification has been given if this will be enough to cover the works that have been requested.
6. No clarification has been given to leaseholders as to their portion of costs they will have to bear. Such as, will ground floor leaseholders be liable for the same amount as top floor leaseholders?

### **Determination**

15. Dispensation from the consultation requirements of S.20 of the Act may be given where the Tribunal is satisfied that it is reasonable to dispense with the requirements.

16. The Tribunal finds the following facts:

17. (1) the proposed works to the roof and chimney are s urgent to prevent further water ingress into Flat 2. The bedroom of flat 2 is presently uninhabitable.

2)An established roof contractor has been commissioned to carry out the repairs and has supplied a detailed schedule of the works.

3) A Chartered Surveyor has reviewed the schedule of works and formed the view that that they are reasonable and appropriate.

4)Four of the five leaseholders have not objected to the application

18. The Tribunal considers that the steps taken by the Applicant have met some of the concerns expressed by the remaining leaseholder who objects to the application.

19. Given the above findings the Tribunal is satisfied that the leaseholders would not suffer relevant prejudice if dispensation is granted.

**20. The Tribunal therefore grants dispensation from the consultation requirements of S.20 Landlord and Tenant Act 1985 in respect of the roof and chimney repairs as described in the application.**

**21. In granting dispensation, the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.**

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk).
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.

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