

RESIDENTIAL PROPERTY TRIBUNAL SERVICE (WALES)

Leasehold Valuation Tribunal (Wales)

DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL (WALES)

Landlord and Tenant Act 1985 S.20ZA

TRIBUNAL

J D M Jones Chairman

E R Williams LL.M.FRICS

In the matter of an Application dated 14th February 2013 under Section 20ZA of the Landlord and Tenant Act 1985

Applicant: Elmdon Real Estate LLp

Respondents: Miss Diane Thomson Flat 1
Mr Roger Beckingham Flat 2
Ms Janet Barrington Flat 3
Mrs Pauline Whalley Flat 5

ORDER

The Application to dispense with consultation requirements is granted

Dated: 22nd March 2013

A handwritten signature in black ink, appearing to be 'D. M. R.', written in a cursive style.

Chairman

REASONS

1. An Application was made on the 14th February 2013 pursuant to Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") in respect of works to be carried out to 43 Lawson Road Colwyn Bay Conwy ("the Building"). The Application stated that there was major ingress of water causing dampness to Flat 5 which is located on the top floor of the building.
 2. The Building is a semi-detached brick built house under a slate roof close to the centre of Colwyn Bay. It is approximately 100 years old and has been converted to use as five flats. Flat 5 is owned by Pauline Whalley under a Lease ("the Lease") dated the 19th July 2006 and made between Whalley Huws Ltd. (1) and Pauline Whalley (2) and is for a term of 999 years from the 1st January 2006.
 3. In the Lease, the Lessor covenants (inter alia) at page 12 clause 5(i) to maintain repair mend cleanse re-paint and re-decorate and renew and otherwise keep in good and substantial condition
 - (a) *the structure of the building and in particular the main roof of the building, the chimney stacks, foundations and walls, including structural walls and joists thereof and the main external entrance door leading into the building situate at the front thereof...*
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4. The Freehold is vested in the Applicant
 5. On the morning of the 13th March 2013 the Tribunal inspected the Building from the outside to front and rear and had access to the common parts. An attempt was made to gain access to the interior of Flat 5 but the flat was locked and there was no one available with a key. Scaffolding had been erected to the front and to the rear of the Building. No workmen were present at the time of our inspection and no ladders were available to enable a close inspection of the roof to take place.

6. It appears from ground level inspection that there was some evidence of repair work having been done at some time to the roof and chimneys.
7. The hearing was attended by Diane Thomson of Flat 1 and Roger Beckingham of Flat 2. Although the Freeholder was not present at the hearing, we have had sight of an Assessment Report prepared by Square One Property Consultants Ltd. of Leeds. Although the document appears to be dated January 2012 on the front page it is understood the Report was prepared in January 2013 and the photographs within the report are dated the 21st January 2013. Although the photographs are not very clear, they appear to show evidence of damp in various parts of Flat 5.
8. The Report indicates that while penetrating damp is a significant issue, of greater significance is the severity of rainwater running into the Flat causing faults to electrical items putting the system at risk as well as encouraging timber decay. It is said that there is a notable amount of water entering the Property above and around the cheeks of the dormers within the front kitchen and living room. It reports also that there is evidence of missing slates and ridge tiles, resulting in spot leaks to the ceiling.
9. In addition, the Tribunal has had sight of correspondence from Conwy County Borough Council to Elmdon Real Estate LLP. An Improvement Notice under S.11 of the Housing Act 2004 was served on the 21st January 2013 in respect of dampness in Flat 5. This Notice detailed a Category 1 hazard resulting from dampness and required remedial action to be undertaken by the 18th April 2013. By a letter dated the 18th February 2013, the Council reported that the situation had significantly worsened and accordingly the Notice was varied to require the remedial work to be completed by the 18th March 2013.
10. Only one quotation for the remedial work has been submitted with the papers and it was contended by the two Respondents present at the hearing that additional quotations should be made available, to ensure that the costs incurred by the Freeholder in complying with its obligations were reasonable.

11. By S.20ZA of the Landlord and Tenant Act 1985 the Tribunal may dispense with consultation requirements if reasonable to do so. It is necessary to consider whether there is significant prejudice to the Leaseholders if such dispensation is granted.
12. We are satisfied on the evidence before us that no such prejudice would occur and that it is reasonable to grant dispensation; there is evidence of significant ingress of water to Flat 5 and the possible consequence will include damage not just to the fabric of the main structure but to the electrical system resulting in possible danger to life. We consider that the Application should be granted.
13. However, it should be noted that all we are doing is dispensing with the requirement for the Applicant to consult in accordance with the regulations. We are not asked to observe on the reasonableness of the cost of the works. Similarly we are not asked to determine the recoverability of any charges under the Lease. We are merely granting the Application to dispense with the consultation requirement.

Dated: this 22nd day of March 2013



Chairman.

