

Y TRIBIWNLYS EIDDO
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

REFERENCE: LVT/0027/08/16

In the matter of 8 BODFOR TERRACE, ABERDOVEY, GWYNEDD, LL35 0EA.
In the matter of an Application under the Landlord and Tenant Act 1985, Section 20ZA.

APPLICANT: Mr George Tuthill

RESPONDENTS: Mr Ralph Heath
Mr David Humphreys & Mr David Westwood
Mr Gordon Proctor & Mrs Margaret Proctor
Mrs Katherine E Charters & Mrs Christine M Smith

TRIBUNAL: Trefor Lloyd (Chairman)
David Evans (Surveyor Member)
William Brereton (Lay Member)

VENUE: Wynnstay Hote, Machynlleth

DATE: 23rd September 2016

DECISION

The Tribunal grants the Landlord's Application under Section 20ZA of the Landlord and Tenant Act 1985 to dispose with all of the applicable consultation requirements under Section 20 of the Landlord and Tenant Act 1985, such dispensation is given upon the following terms:

- (a) dispensation is only granted in relation to the inspection and repair of the leak or leaks on the roof of the premises being the qualifying works as further described in Section 12.1 of the Application Form dated the 1st August 2016;
- (b) the Landlord shall at all times keep the Tenants apprised as regards any defects identified and the proposed remedy for the same;

Background

The Premises

1. 8 Bodfor Terrace is a large end of terrace property situated on the High Street in Aberdovey facing out towards the Bay. The ground floor facing the highway

and some of the rear is utilised for commercial purposes and let to a Commercial Tenant for operation as a Fish & Chip Shop. The premises also contain six flats numbered 1 to 6.

2. The Freehold of the premises is vested in the Applicant who also owns flats number 2 and 4. The Applicant in his capacity as Landlord manages the premises and has conduct of the matter.
3. There are seven Respondents to the application being the Tenants of the leasehold flats who are :
 - (a) Mr David Humphreys and Mr David Westwood who are the Leaseholders of flat 1;
 - (b) Mr Ralph Anthony Heath who is the Leaseholder of flat 3;
 - (c) Mr John Gordon Proctor and Mrs Margaret Proctor the Leaseholders of flat 5;
 - (d) Mrs Katharine Elizabeth Charters and Mrs Christine Mary Smith the Leaseholders of flat 6.
4. Only Mr Ralph Anthony Heath resides in his flat although we were told during the hearing that he is currently absent, staying in the United States. The other Leaseholders and the Landlord use their flats for holiday purposes.
5. The Application Form dated the 1st August 2016 completed by the Applicant in his capacity as Landlord sought dispensation of all the consultation requirements in relation to proposed qualifying works. The works were defined in Section 12.1 of the Form as being "*The inspection and repair of a leak or leaks on the roof of a four storey building known as Bodfor Terrace, Aberdovey, Gwynedd, LL35 0EA*".
6. The Application Form goes on to confirm that the leak had already caused water damage to the interior of a Leaseholder's third floor flat and may be causing damage to a flat on the second floor.
7. Directions were issued by a Procedural Chairman dated the 22nd August 2016 as follows:
 - (1) In relation to the Applicant, by noon on the 1st September 2016 to file at the Tribunal and serve upon the Respondents a Statement including any relevant exhibits to deal with the following:
 - (a) any further representation in addition to those in the Application Form as to why dispensation is sought, together with submissions as to why it is reasonable for the LVT to dispense with the consultation requirements;
 - (b) the Applicant's submissions on whether or not there would be any prejudice suffered by the Respondent Tenants if the Application is granted;

- (c) any further submission and/or documents in support of the Application.
8. The Tenants were similarly directed by the 15th September 2016 to file a Statement to include:
 - (a) Any response to the Applicant's Statement and to the information in the Application Form;
 - (b) Submissions upon whether it would be reasonable for the Tribunal to dispense with the consultation requirements of Section 20 and 20ZA of the Landlord and Tenant Act 1985 or whether the Respondents consider that the consultation process should take place giving reasons;
 - (c) Details of any prejudice that the Respondent Tenants may suffer if dispensation from the consultation requirements were to be granted;
 - (d) Any other submissions or documents upon which the Respondents wish to rely.
 9. The Direction also fixed the Hearing and inspection for the 23rd September 2016.
 10. The Applicant served a single page Statement dated the 30th August 2016 received by the Tribunal on the 31st August 2016.
 11. None of the Respondents provided Statements, attended the hearing or the site visit. In the premises the Tribunal did not have any evidence of reasonable objection before it as to the Respondents' stance.

The Statutory Basis for the Application

12. Section 20ZA(1) of the Landlord and Tenant Act 1985 (hereinafter referred to as the LTA 1985) provides the Tribunal with power upon an application being received to make a determination to dispense with all, or any of the consultation requirements in relation to any qualifying works.
13. A Tribunal has the power, if satisfied it is reasonable, to dispense with the requirements and qualifying work, means work on a building or any other premises (Section 20ZA (2) LTA 1985).
14. Section 20 of the LTA 1985 limits recovery via service charge of the cost of qualifying works from each Tenant to £250 in circumstances where consultation requirements have not been complied with unless dispensed by way of Section 20ZA.

15. The Supreme Court in **Daejan Investments Limited -v- Benson and Others [2013] UKSC 14** set down guidance in relation to Section 20ZA applications and the consideration of the same as follows:
- (i) Section 20ZA is part of a legislative scheme whose purpose is to ensure that Tenants are not required to pay for unnecessary services, or services which are provided to a defective standard; and
 - (ii) To pay more than they should for services which are necessary and are provided to an acceptable standard.
 - (iii) A Tribunal in considering an Application under Section 20ZA is to consider the extent if any to which Tenants are prejudiced by failure to comply with consultation requirements.
 - (iv) A Tribunal has power to grant a dispensation on terms as it considers appropriate, as long as such terms are appropriate in their nature and effect.

Statutory Consultation Requirements

16. The consultation requirements are contained in the Service Charges Consultation Requirements (Wales) Regulations 2004. In this case the applicable requirements are contained in Part II of Schedule 4 to the Regulations and require:
- (a) A Notice of Intention to carry out qualifying works. Such a Notice is to include the reasons for considering, if necessary, to carry out the proposed works, and an invitation to nominate a person from whom an estimate should be sought;
 - (b) The Tenants then have 30 days in which to respond to the Notice;
 - (c) The Landlord is required to have regard to any observations made;
 - (d) The Landlord is then under a duty to obtain estimates with an obligation to seek estimates from any nominated person;
 - (e) The Landlord has to supply Tenants with a Statement setting out for at least two of the estimates, their estimated costs and a summary or observations made and any estimate from a nominated person must also be included;
 - (f) The Landlord must make the estimates available for inspection;
 - (g) The Landlord must invite observations from the Tenants on the estimates. The Tenants have 30 days to make observations, and the Landlord must have regard to any observations;
 - (h) Following the entering into of a contract for the carrying out of the qualifying works, the Landlord must within 21 days give written notice to each Tenant setting out reasons for awarding the contract, or specifying the place and hours at which a statement of the reasons may be inspected.
17. In this case, none of the above steps have been taken and the Landlord seeks dispensation in relation to the entire matter.

Inspection

18. During the limited inspection the following was noted;

External

- (i) From the municipal car park in front of the premises signs of plant/shrub growth could be seen on the slate roof to the right hand side of the top floor dormer window of flat 5.
- (ii) Looking through the front dormer window of Flat 5 some slates could be seen to have slipped off the roof on to the felt roof covering of the bay window of the flat below.

Internal

- (i) Part of the side wall of the top floor flat 5 below the roof of the dormer window was found to be suffering from rain water penetration with discolouration to the plaster work. A wooden shelf is fixed to this wall and a number of towels had at some time been placed on the shelf and these were found to be very wet.
- (ii) Both flats below the top floor flat [numbers 4 and 2] were visited and no signs of rain water penetration could be seen in the side wall of these apartments.

At the Hearing

- 19. As referred to above only the Applicant attended the Hearing at the Wynnstay Hotel in Machynlleth and the Hearing was commenced promptly at 11 am.
- 20. In the circumstances the Tribunal has directed that the Applicant supplies a hard copy of the email correspondence with Mr Heath to this effect by 4 pm on Friday 30th September 2016. Subject to receipt of that information the Tribunal is satisfied that Mr Heath has been duly informed of the Hearing.
- 21. During the Hearing the Tribunal was told the following:
 - (1) Some eight years previously the flat roof covering to the dormer window of flat 5 was damaged during stormy weather, and was replaced in its entirety.
 - (2) In or about July of 2016 the Leaseholders of flat 5 being Mr & Mrs Proctor complained of a damp problem. The Applicant initially hired a cherry picker immediately after the complaint was raised, but it became apparent that due to inter alia the height of the building, and also the fact that there are wires running within the alleyway to the gable end of the premises, a cherry picker was not suitable.
 - (3) In the circumstances the Applicant felt that only a scaffold would be appropriate and seeks dispensation as in the past he had carried out qualifying work not knowing about the requirements to consult, which resulted in contribution in respect of only two of the flats.

- (4) The Applicant confirmed that he was concerned that the condition of the ceiling in flat 5 could get worse and the consultation process would mean (as was echoed in his Witness Statement) that there would be a considerable delay before any work could be undertaken, such work in his mind being emergency work.
 - (5) The Applicant also confirmed, as set out in the Application that he would use a local builder who charges £20 per hour and upon being questioned on the point confirmed that he would regularly keep the Leaseholders informed as regards the outcome of any initial exploratory works, also other works of repair which would then ultimately be required.
 - (6) The Applicant also confirmed that the Leases granted were similar in terms to the copy appended to his Application being the Lease of flat 5, the only difference being that the percentage Tenant's share of annual maintenance costs varied per flat depending upon the size of the flat. The Applicant also indicated that he himself paid between 20 and 25% in respect of the flats within his ownership, being flat 2 and flat 4.
22. It is also clear to us from perusal of the Lease that the "building" for the purposes of the maintenance contribution excludes the ground floor shop the said shop (as per the 5th Schedule to the Lease) being responsible for the whole foundations of the property, structural walls surrounding the shop up to the level of the bottom structures supporting the ceilings of the shop and the shop front etc.
23. Towards the end of the Hearing the Applicant again echoed his concern that if he had to follow the normal consultation process there would be many months delay, which in his mind would cause further damage to the property and escalate the eventual repair cost, concluding by stating that he did not consider there to be any prejudice suffered to the Respondent Tenants if the Application was granted.

Landlord's Obligation Under the Lease

24. As referred to above a copy of the Lease granted to Mr & Mrs Proctor in relation to flat 5 was included with the Application. By Section 5.4 of the Lease the Landlord covenants subject to certain conditions to:
"As often as necessary to maintain, repair and keep in good and proper condition and to cleanse, repaint, redecorate and renew
5.4.1 *The main structure of the building including but not by way of limitation (the roofs and exterior and the load bearing walls..."*
25. Section 4 of the Lease includes a Tenant's covenant to pay the service charge.

The Applicant's Case

26. The Applicant's case as referred to above is that it is reasonable to dispense with consultation requirements due to the urgency of the qualifying work, and the delay that would ensue by having to consult would inevitably increase the cost of the works.

27. The Landlord is of the view there is no prejudice to the Tenants as a result of dispensing with the consultation.

The Respondents' Case

28. Conversely none of the Tenants/Respondents have seen fit to provide any evidence before the Tribunal to argue that it is unreasonable to do so and/or that they would be prejudiced in any way.

29. We were told by the Applicant that all the Tenants are aware of the works, and as far as he was concerned, agreed they had to be completed.

30. As a result of having had the benefit of an inspection we are of the view that until a detailed and close external examination of the roof is undertaken it is difficult to know the exact cause of this rainwater penetration and what action and repairs are to be undertaken to rectify this problem.

31. Having considered the matter carefully, we as a Tribunal are of the view that it is reasonable to dispense with all the consultation requirements in this case for the following reasons:

(1) There is clearly an urgency to carry out the repair works before the situation gets worse;

(2) The only effective means of doing so is to erect a scaffold, undertake exploratory works, and thereafter carry out any necessary repair.

(3) The Applicant himself owns two of the flats and as he informed us during the Hearing, the total expense of the work will be divided (in accordance with the Lease percentages) between the other four flats and he himself having to fund the costs of the work to the extent of the requirements placed upon him. Accordingly, it will be within his interests to obtain the most cost effective and appropriate repair.

(4) We do not consider there would be any prejudice to the Respondents from granting the dispensation, but there could well be prejudice to the Respondents if an Application is refused as it would simply delay repairs which we find as a fact are urgent, and simply increase the overall cost to the Respondents.

32. In the circumstances the Tribunal grants dispensation on the terms set out at the beginning of this document, such terms having been agreed by the Landlord at the Hearing (concerning the disseminating of information to the Tenants as regards the result of the exploratory investigation and thereafter the repair works required).

Dated this 30th day of September 2016



Trefor Lloyd
Chairman