

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0019/08/21

In the Matter of Premises at Parkview Court, Coldstream Terrace, Cardiff CF11 6LY

And In the matter of an Application under Landlord and Tenant Act 1985 – Section 20ZA

APPLICANT: Seraph Property Management

RESPONDENTS: Mr and Mrs Hinc (Flat 1)
Mr Michael Hinc (Flat 7)

LESSEES: Mr Benjamin Lewis (Flat 2)
Mr Raymond Wagstaff (Flat 3)
Ms Jessica Venn (Flat 4)
Mrs Cheryl Willis (Flat 5)
Mr Andrew Davies (Flat 6)
Mrs Kathy O’Doherty (Flat 8)
Mr and Mrs Said (Flat 9)

TRIBUNAL: Mr AR Phillips – Chairman
Mr D Evans - Surveyor

DECISION

Dispensation is granted from the consultation requirements of s20 Landlord and Tenant Act 1985 in respect of works specified in the Applicant’s application.

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

The Applicant is to send a copy of this determination to each of the Lessees contributing to the service charge.

BACKGROUND

1. The Applicant seeks dispensation under s.20ZA of the Landlord and Tenant Act 1985 (“the Act”) from the consultation requirements imposed by s.20 of the Act.
2. The only issue for the Tribunal is whether it is reasonable to dispense with the statutory consultation requirements. The application does not concern whether any service charge costs are reasonable.

3. It has been agreed that the matter can be determined on the papers.

THE LAW

4. The relevant section of the Act reads as follows:

s.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.

The matter was examined in some detail by the Supreme Court in the case of *Daejan Investments Ltd v Benson and others* [2013] 1WLR 854. This was a case where the Supreme Court were considering a retrospective application where works had already been carried out. The principles are however relevant to this decision. In summary the Supreme Court noted 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 noncompliance 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.

SUBMISSIONS

The Applicant's Case

- 5. The Applicant has provided a statement from Liam Nolan dated 22/10/2021 confirming that:
 - a) Park View Court is a building containing a number of flats
 - b) The landlord's electricity supply to the communal areas of the building is deemed to be unsafe and requires replacement.
 - c) Western Power are the only contractor able to carry out this electrical work.
 - d) The statement purports to attach an estimate from Western Power, but this was not attached and has not been produced despite a number of requests from the Tribunal to do so.

The Respondent's Case

- 6. No response to the application has been received from the Lessees and none have asked to become a Respondent.
- 7. No statement has been filed with the Tribunal by the Lessees either objecting to or supporting the electrical works.

DETERMINATION

- 8. The Tribunal has been provided with a copy of a specimen regrant of a lease dated 01/02/1989 ("the Lease") for Flat 1 Park View Court.
- 9. In clause 10 of the Lease the Lessor covenants to keep "the whole of the structure roof balconies foundations and main drains of the Building and the walls rails fences and gates appurtenant thereto in good repair and condition including renewing reinstating and rebuilding any part or parts thereof as necessary".
- 10. The Building is defined in clause 3 of the Particulars of the Lease as "ALL THAT the freehold premises situate at and known as Park View Court Coldstream Terrace in the City of Cardiff".
- 11. Part II of the Fourth Schedule of the Lease sets out the expenses incurred by the Lessor which can be re-imbursed by the Maintenance Contribution. These include:

12. Clause 5 “carrying out such other repairs and improvement works and additions and defraying such other costs (including the modernisation or replacement of plant and machinery) as the Lessor shall in its discretion consider necessary to maintain the Building as a block of residential flats or otherwise desirable in the general interests of the tenants”.
13. Clause 8 “Keeping the entrance halls staircases and passages in the Building and used in common by any of the tenants and occupiers of the flats therein and all conduits now laid or hereafter to be laid in or upon the Building or any part thereof (other than those serving exclusively individual flats therein) in good repair condition and decoration and keeping the common parts aforesaid suitably lighted and cleaned”.
14. In clause 12 of the Lease, the Lessee covenants to pay the maintenance contribution to the Lessor payable by the Lessee as defined in clause 2.2 of the Lease. The Rents include the costs of insuring the building and the Advance Service Charge and the Service charge.
15. In the light of the above the Tribunal is satisfied that the works for which dispensation is sought by the Applicant are qualifying works under the Act.
16. 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.
17. The case of Daejan Investments Ltd v Benson and others [2013] 1WLR 854 referred to above provides guidance to the Tribunal when considering the issues raised by all parties.
18. The documentation before the Tribunal contains no evidence of any objection from any of the Lessees and there is no evidence of prejudice to the Lessees as referred to in the Daejan Investments case.
19. For the above reasons, dispensation is granted from the consultation requirements of s.20 of the Act in respect of the proposed electrical works.
20. In granting dispensation in respect of the Application the Tribunal makes no determination as to whether any service charge costs are reasonable or payable.
21. For the avoidance of doubt this decision does not grant dispensation for the costs of the purchase and installation of the fire detection equipment.
22. The Applicant is to send a copy of this determination to each of the Lessees who contribute to the service charge.

DATED this 04th day of March 2022

AR Phillips

Tribunal Judge