

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0018/09/23

In the Matter of: Premises at Crichton House, 11-12 Mount Stuart Square, Cardiff, CF10 5EE

And In the Matter of: An Application under Section 20ZA of the Landlord and Tenant Act 1985

APPLICANT: Southern Land Securities Ltd,
and Crichton House RTM Company Ltd

RESPONDENTS: Paul Hudson – Unit 4
Leaseholders/Tenants
1,2,3,5,6,7,8,9,10,11,12, Crichton House, Cardiff

TYPE OF APPLICATION: To dispense with requirements to consult Tenants

TRIBUNAL: Claire Jones (Chairman)
Kerry Watkins FRICS (Surveyor Member)

VENUE: Microsoft Teams Virtual Platform

DATE: 21 February 2024

APPEARANCE FOR APPLICANT: David Britton, Managing Agent Western Permanent Property

APPEARANCE FOR RESPONDENT: Paul Hudson, in person.

DECISION

The Tribunal grants the Application under Section 20ZA of the Landlord and Tenant Act 1985 to dispose with the consultation requirements of Section 20 of the Landlord and Tenant Act 1985 in relation to the relevant qualifying works.

Background

1. The Tribunal orders that Crichton House RTM Company Ltd is joined as Applicant in these proceedings. The Applicant has repair obligations under relevant leases in relation to the Premises referred to above, and the Application is made on its behalf by its Managing Agents.
2. The Respondents to the Application are the Leaseholders/Tenants of the residential flats within the Premises and are for ease of reference referred to as 'the Tenants' in this Decision.
3. The issue for the Tribunal to determine is whether it is reasonable to dispense with the statutory consultation requirements in this case.
4. The Application to be considered by the Tribunal is dated 7 September 2023, and was received by the Tribunal Office on 15 September 2023. The works for which dispensation was sought, are described as; *'scaffolding to be erected on 13 September 2023 for our contractor to investigate the leak further. Once the leak has been investigated we will have a clear route on how to fix it'*.
5. The Tribunal did not inspect the Premises and considered that the nature of the Application in relation to roof works and availability of photographic evidence made this unnecessary. The Tribunal therefore considered that an inspection would not assist the Tribunal's determination as to whether consultation could be dispensed with.
6. The Tribunal accordingly met using remote technology at 10.30am on 21 February 2023 to consider the Application.

Directions Order

7. Following receipt of the Application by the Tribunal Office, a Directions Order dated 23 October 2023 was made by the Procedural Chairman.
8. The Directions ordered the Applicant to file and serve a Statement of Truth by 13 November 2023 to provide details of the qualifying works involved, any further representations as to why dispensation was sought, together with submissions as to why it was reasonable for the Tribunal to dispense with the consultation requirements. They also ordered the Applicant to provide submissions on whether there would be any prejudice suffered by the Leaseholders/Tenants if the application was granted. Finally, they ordered provision of any further submissions and/or Case Law in support of the Application.
9. The Directions recorded that Mr Paul Hudson had applied to be joined as a Respondent after being invited by the Tribunal to do so. No other Leaseholders/Tenants made such

application. In the circumstances, the Directions contained requirements for the Respondent to fulfil which were similar to the above. In particular, they required the Respondent to provide any response to the Applicant's Statement and to the information in the application form. They also required provision of submissions upon whether it would be reasonable for the Tribunal to dispense with the consultation requirements or whether the Respondent considered that the consultation process should have taken place, giving reasons.

Relevant Legislation and Caselaw

10. Section 20ZA of the Landlord and Tenant Act 1985 ('the 1985 Act') provides the Tribunal with powers to determine applications to dispense with the consultation requirements for any 'qualifying works', being works on a building or any other premises. If satisfied it is reasonable to do so, it may dispense with those requirements.
11. Section 20 of the 1985 Act limits recovery of the cost of qualifying works from each tenant by service charge to £250 in circumstances where consultation requirements have not been complied with, unless dispensation is given by the Tribunal under Section 20ZA.
12. The Supreme Court in *Daejan Investments Limited -v- Benson and Others* [2013] UKSC 14 provided guidance in relation to Section 20ZA Applications as follows:

12.1 The purpose of Section 20ZA and related sections of the 1985 Act is to ensure that tenants are not required to pay for unnecessary services, or services of a poor standard. It also ensures that tenants are not required to pay more than they should for services which are necessary, and to ensure that such services are provided to an acceptable standard.

12.2 A Tribunal considering an application under Section 20ZA should consider the extent, if any, to which tenants are prejudiced by failure to comply with the consultation requirements.

12.3 A Tribunal has power to grant dispensation on terms it considers appropriate, as long as the terms are appropriate in their nature and effect.

Consultation Requirements

13. The consultation requirements are contained in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 and require service of Notice of Intention to carry out qualifying works. The Notice must describe the works, the reasons for considering it necessary to carry out the proposed works and to provide estimates for the cost of the works. The tenants then have an opportunity to respond to the Notice and the Landlord is required to have regard to any observations made.

The Applicant's Case

14. The Application of 7 September 2023 explained that it was seeking dispensation from the consultation requirements in relation to the qualifying works because they were *'urgent due to water entering into Unit 12'*.
15. As to any consultation carried out, the Application stated; *'agreement with all Directors on scaffolding costs already achieved. A letter will be sent to all leaseholders describing works and the reason for its urgency'*.
16. The Applicant provided a formal Statement of Truth as ordered in the Directions. It said the Applicant arranged for its contractor to investigate the leak and advise on the cause. Following the contractor's visit, it was advised the leak was coming from the roof, however access was required to safely inspect the roof and investigate further. Scaffolding was erected to the rear of the property. The contractor then reported slates missing and two pipe vents leaking due to the collars being eroded. The Applicant said that *'all new slate tiles were fitted, and new pipe vent collars were replaced and sealed. All gutters and valleys on the rear of the building where the scaffolding was erected were cleared and cleaned to ensure the rainwater discharged correctly.'*
17. The Applicant supplied photographic evidence of the roof areas which had required attention and produced two invoices from the contractor. The first in the sum of £180 inclusive of VAT was dated 5 September 2023 and related to an investigation to establish the reason for a leak coming through the ceiling of Unit 12. It reported that due to the building's height, scaffolding was required for further investigations to be carried out. The second invoice was in the sum of £1,608. This related to the scaffolding and the remedial work described in paragraph 16 above.
18. The Applicant produced to the Tribunal a copy of the Lease for Unit 4. The Lease provided for the Applicant to carry out various works and for the payment by the Tenants of a variable service charge regarding such works. This included steps for repairing parts of the Premises and for complying with any statutory requirements relating to the Premises. Unfortunately, it did not supply copies of any correspondence to the Tenants, referenced in the Application and which described the works and their urgency.
19. Finally, the Applicant stated in the covering letter to the Statement of Truth dated 25 October 2023 that further investigations had been needed due to the poor weather and Unit 12 being located on the top floor. It said that it then realised that the works would exceed the Section 20 threshold. It concluded that; *'Due to the urgent nature of dealing with water ingress in a timely manner we felt it necessary to apply for dispensation through the Property Tribunal. The work is now completed and the scaffolding has been removed. We did not receive any complaints from the residents during the process of these works.'*

The Respondents' Case

20. Mr Paul Hudson said that he was in attendance at the hearing as he wished to understand the process and referred to leaks in Unit 4 of the Premises. He made it clear that he was not however looking to object to the current Application. Neither he, nor any other Respondents provided any Statement of Truth or evidence and submissions in response to the Directions and in response to the Tribunal Office's correspondence. Consequently, given Mr Hudson's clear position and that none of the other Tenants had applied to be joined in as Respondents, the Tribunal continued the hearing on the basis that the Application was not formally opposed.

The Hearing

21. In response to questions from the Tribunal, and on behalf of the Applicant, Mr Britton provided further background details in relation to the Application. He explained that he represented the Applicant as a 'right to manage' company. He said that he had appointed a contractor to carry out the initial investigations as he did not consider that he had the expertise to make a decision as to the extent of the works and as to whether there would be a need to apply to this Tribunal for dispensation. He used the contractors as he had engaged them previously and found them multi-skilled and competent. He considered this a more cost-effective approach than engaging a property surveyor.
22. For background information, Mr Britton explained that the Applicant became responsible for management of the Property in 2020 and that there had been a need at the time for major works to be carried out to windows and sills at the Premises, due to inadequate work carried out by previous contractors and sub-contractors. He said that a decision was required to resolve this problem following legal advice, and that defective windowsills would need to be replaced and may need to be manufactured.
23. Mr Britton was unable to precisely identify when he became aware of this particular leak. However, he said he was alerted by the relevant Leaseholder that water was entering Unit 12, who in turn was informed by the Tenant. He said that a letter was then sent to all Tenants on 19 September 2023 to inform them of the problem. Mr Britton said that he should not have used the phrase 'on-going' issue, as he had only become aware of the issue shortly before sending the letter. He considered it had been necessary to carry out the necessary work as quickly as possible.
24. The contractor had been instructed as Unit 12 was on the top floor of the Premises and water was coming in from the roof. Mr Britton said that it had not been possible to ascertain the extent of the work until scaffolding had been erected and the roof had been physically inspected. Scaffolding was difficult due to the nature and lay-out of the Premises and a fixed price was paid rather than a day-rate, to resolve any other issues at the same time to achieve value for money. This would also allow time to ensure that the remedial works had been carried out successfully. He said completion of the work was an

emergency in view of driving rain and wind around that time, and water had poured into the Property.

25. Mr Britton said that he could have obtained alternative quotes, however he considered that this would have delayed matters. He said he also used other contractors and that there was a network of local, relatively small and reliable contractors. Mr Britton confirmed that it was the contractors who had engaged scaffolders and not Mr Britton himself.
26. The photographic evidence did not include images of the relevant problem before it was addressed, and the Applicant therefore subsequently supplied to the Tribunal office an image of the ceiling in Unit 12 which showed water ingress around the main outlet pipe. He also supplied details of the respective service charge contributions to be paid by each Tenant.
27. Mr Britton did not consider that any prejudice had been caused to Tenants by the lack of formal compliance with the consultation requirements since there had been an immediate need for the works to be carried out. He was unable to clearly state whether the works had cost any of the Tenants over £250. He subsequently supplied details however which showed that this was the case in relation to some of the Units in the Property.
28. Finally, Mr Britton added that he was happy to fulfill the Tenants' wishes as to whether they wished to receive notification of repair or other such matters by means of notices, e-mail or letter in future.
29. Turning to Mr Hudson's submissions, he did not think he had received a copy of the letter dated 19 September 2023. Nevertheless, he said that he was content that the works were justified in this case and that the costs were relatively low. He said that when he saw the scaffolding and received notification from the Tribunal office of the current Application, he automatically assumed that the works would cost tens of thousands of pounds and he had not realised that they would cost less than £2,000. He said that he would not have sought to come to a hearing if the Applicant's communications had been better. Mr Hudson concluded by saying that he was amazed that the work had been carried out so cheaply. He considered it to be good value for money and said that he was fairly comfortable with the way in which things had been done.

Reasons for the Decision

30. Notwithstanding that the Application was not formally opposed by Mr Hudson or any of the other Tenants, the Tribunal continued to fully consider all the facts and evidence before reaching its Decision. The Tribunal found that the repair works were qualifying

works within the definition contained in Section 20ZA of the Act and were therefore subject to the consultation requirements of the Act unless dispensation was granted by this Tribunal.

31. The issue for the Tribunal to decide was whether it was reasonable for qualifying works to proceed without the Applicant first complying with all statutory consultation requirements. The consultation requirements provide for transparency and accountability and ensure that tenants know about, and can comment on, plans to carry out works before those decisions are made. It is reasonable that the consultation requirements are complied with, unless there are good reasons for dispensing with any of them on the facts of a particular case.
32. In order to determine whether to allow the Applicant to dispense with the consultation requirements, the Tribunal had to consider whether there was a good reason why the works could not be delayed until the requirements had been complied with. The Tribunal therefore carefully considered the competing factors. These were the need for swift remedial action to ensure that the Premises were water-tight and protected from further damage on the one hand, and the legitimate interests of the Tenants being properly consulted before works took place, on the other.
33. The Tribunal considered whether the balance fell in favour of permitting the works to have been undertaken without the full range of consultation, or whether it fell in favour of the need for prior consultation in the usual way. The balance is likely to be in favour of dispensation in a case in which there is an urgent need for remedial or preventative action, or where all the Tenants consent to the grant of dispensation.
34. In this case, the Tribunal was satisfied that there was clear evidence that the works were urgent and on the available evidence, the Tribunal was satisfied that it was reasonable to grant the Application for dispensation. This was because diligent repairs and swift action in the case of water ingress into a building could avoid much greater problems and cost in the longer term if the problem was not rapidly addressed, so costing more to the Tenants in the long run.
35. As to whether the dispensation would prejudice Tenants, the Tribunal noted that neither Mr Hudson nor any other Tenant objected to the works. The Tribunal also noted that the Applicant said that it had written to the Tenants to explain the works and the reason for urgency. The Tribunal therefore considered that, whilst the Applicant had not complied with the full range of consultation requirements, it had to an extent minimised prejudice to the Tenants in this regard.
36. In the circumstances, the Tribunal expressed some concern about the quality of the Applicant's records and that the Applicant retained the services of one contractor and did not obtain urgent quotes from any competitor. It did not however consider that the ultimate cost was excessive bearing in mind that scaffolding and that the Applicant had

taken the opportunity to address other issues on the same occasion. The Tribunal appreciated that dispensing with the full extent of the consultation requirements in this case may have avoided any practical problems and delays caused by strict adherence to the consultation requirements and timescales. It also considered that the replacement works were of clear benefit to all Leaseholders/Tenants in the long term. In the circumstances, it considered that it was appropriate to grant dispensation in this case. Indeed, the Tribunal considered that there would be a prejudice caused to Leaseholders/Tenants had the work not been carried out as soon as possible.

37. In making this determination to grant dispensation in respect of the Application, and for the avoidance of doubt, the Tribunal wishes to clarify that it makes no formal determination as to whether the final costs or whether any service charge levied, are reasonable or payable.
38. In conclusion, and having carefully considered all the available evidence, the Tribunal is satisfied that this Application for dispensation should be granted with immediate effect.

Dated this 1st day of May 2024

**C Jones
Tribunal Judge**