

RESIDENTIAL PROPERTY TRIBUNAL
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/45UB/LDC/ 2005/0011

Re: 36 Brighton Road, Shoreham-by-Sea, West Sussex BN43 6RG

**IN THE MATTER OF AN APPLICATION UNDER SECTION 20ZA
LANDLORD & TENANT ACT 1985**

BETWEEN:

Adur District Council

(“The Applicant/Landlord”)

and

Mrs Marjorie Hankey (First/Second Floor Flat)

(“The Respondent/Tenant”)

Members of the Tribunal:

Mr. J.B. Tarling, MCMI (Lawyer/Chairman)
Mr J.N. Cleverton, FRICS

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

BACKGROUND TO THE APPLICATION

1. This Application is made under Section 20ZA(1) of the Landlord and Tenant Act 1985 (“the 1985 Act”) to dispense with the consultation requirements of Section 20 of the Act. That subsection was introduced by Section 151 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) which became effective on 31st October 2003. Regulations made under the 2002 Act gave the Leasehold Valuation Tribunal (“the Tribunal”) powers to deal with such applications. These powers are set out in the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003 No. 1987) (“the Consultation Regulations”), which came into force on 31st October 2003.

2. This Application requests the Tribunal to make an Order dispensing with the strict requirements of Section 20 of the Landlord & Tenant Act 1985 in respect of certain repair works which the Applicant/Landlord has already carried out. The repair works comprised the removal of a chimney breast and the repair of the gable wall in the attic area, the removal of loose bricks and debris, and other removal and reinstatement work. The Applicant/Landlord had commenced the consultation process on 5th May 2005 and had given the Respondent/Tenant until 6th June 2005 to make observations. On 18th May 2005, before the consultation period had expired, bricks fell through the bedroom ceiling from the void area in the attic above the bedroom. This caused damage to the Respondent/Tenant’s wardrobe and covered the bedroom in brick dust. In view of the risk of injury to the Respondent/Tenant and further damage the

Applicant/Landlord proceeded to carry out the works without waiting for the period of consultation to expire.

4. The Applicant/Landlord had indicated on the Application Form that it would be happy for the case to be dealt with on paper, without an oral hearing, if the Tribunal thinks it is appropriate and requested that the matter be dealt with on the Fast Track. By a letter dated 8th July 2005 the Respondent/Tenant wrote to the Tribunal saying she consented to the work detailed in the Application Form being carried out and did not request an oral Hearing.

5. In view of the Respondent/Tenant's consent to the work being carried out the Tribunal decided to carry out an inspection prior to making a determination. As neither party requested an oral Hearing the Tribunal dealt with the matter without holding an oral Hearing.

6. INSPECTION

The Tribunal inspected the property on 9th August 2005 in the presence of the Respondent/Tenant Mrs Hankey. No-one from the Applicant/Landlord attended the Inspection. The property is a semi-detached Building which had been converted into a Ground Floor Flat and a First and Second Floor Maisonette. The Tribunal inspected the Bedroom and Living Room on the First Floor. Internal decorations had just been completed but there were marks showing where parts of the ceilings of both rooms had recently been repaired. The Tribunal also inspected the Second floor bedroom which had also been recently decorated. A new stud wall had been erected adjacent to the flank wall so it was not possible to see the repairs to the brickwork on the flank wall, from the inside. There had been a chimney breast in this room which had been removed. Outside it was clear that some recent repair work had been carried out to the brickwork to the top of the flank wall and to the roof.

CONSIDERATION


7. The Tribunal reminded itself of the statutory provisions. Section 20ZA of the 1985 Act allows a Tribunal to dispense with all or any of the consultation requirements in relation to any qualifying works, and a Tribunal may make such a determination if satisfied that it is reasonable to dispense with the requirements. The facts in this case are not in dispute. The wall was in disrepair and the Applicant/Landlords were in the course of carrying out repairs. They had commenced the consultation procedure, but before the consultation period had ended, bricks had fallen through the ceiling into the first floor bedroom. The Applicant/Landlords then had an important decision to make. Either they should delay carrying out any repairs and wait for the consultation period to end. In view of the risk of injury and further damage they decided to proceed with the repairs without waiting for the consultation period to end.

8. The Tribunal had no difficulty in agreeing that the Applicant/Landlord had acted quite properly in proceeding with this work without waiting for the consultation period to end. It was clear that if any further bricks had fallen, there was a real risk of injury to the occupiers of the property. These circumstances are exactly the kind in which a determination should be granted.

9. For the reasons given above and in accordance with its powers under Section 20ZA of the 1985 Act, the Tribunal decided it was appropriate to determine that it is reasonable to dispense with the consultation requirements of Section 20 of the 1985 Act and **HEREBY MAKES** such a determination.

10. In making this Decision the Tribunal expresses no views whatsoever about the reasonableness or otherwise of the cost or standard of the repair works and that the determination now being made does not preclude an Application by any party under Section 27A of the Landlord and Tenant Act 1985 (Section 155 of the 2002 Act) at some later stage.

Dated this 11th August 2005


J.B. Tarling

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John B. Tarling MCMI
(Chairman)