

Southern Rent Assessment Panel & Leasehold Valuation Tribunal

Case No: CH1/OOHH/LDC/2006/0030

Re: 67 Fore Street Barton Torquay Devon TQ2 8BP

In the matter of an application under SECTION 20ZA

**LANDLORD & TENANT ACT 1985 AS AMENDED BY SECTION 151 COMMONHOLD
AND LEASEHOLD REFORM ACT 2002**

Applicant: Riviera Housing Trust Ltd.

Respondent: James Edward Timms and Donna Anne Timms

ORDER OF THE LEASEHOLD VALUATION TRIBUNAL

On hearing Mr. Stone for the Applicant, and Mr. Timms on behalf of the Respondent (who agreed to consent to the application of the Applicant) the Tribunal makes an ORDER in the following terms:

By consent the consultation requirements in relation to the investigation of and carrying out of works required to repair the flat roof/ box gutter to the front of the demised premises, be dispensed with in accordance with Section 20ZA of the Landlord and Tenant Act 1985 as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002

Dated: 08 January 2007

Miss Cindy A. Ray LLB (Chairman)

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Number: CH1/OOHH/LDC/2006/0030

Decision on an Application under Section 20ZA Landlord and Tenant Act 1985

Applicant: Riviera Housing Trust Limited ("RHT")
Respondent: James Edward Timms and Donna Anne Timms
Premises: 67 Fore Street Barton Torquay TQ2 8BP
Date of Application: 12th December 2006

Tribunal Members: Miss C. A. Rai LLB (Chairman)
Mr. M. C. Woodrow MRICS (Valuer Member)

Date of Decision: 4th January 2007

DECISION

The Application and the proceedings

- 1 The Tribunal is asked to exercise its jurisdiction under section 20ZA of the Landlord and Tenant Act 1985 ("the Act") to dispense with the consultation requirements of section 20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations").
- 2 A Hearing was held in the Mallock Room at the Livermead Cliff Hotel Sea Front Torquay on Thursday 4th January at 1100 hours.
- 3 The Hearing was attended by Keith Stone a Director of the RHT and Darren Hand the Senior Project Manager of RHT on behalf of the Applicant and James Edward Timms ("Mr. Timms") on behalf of the Respondent

Inspection

- 4 Prior to the Hearing the Tribunal attended the Premises at 1000 hours and inspected them in the company of Mr. Timms. The Premises comprise a first and second floor maisonette located above a retail shop situate at Fore Street which is part of a small parade of three ground floor shops with maisonettes above. The Tribunal inspected the first floor dining room,

lounge and the two bedrooms on the second floor. By leaning out of the windows of these upper rooms, it was possible to see only part of the box parapet valley gutter referred to in the Application. Mr. Timms has recently replastered the walls in both the lounge and the dining rooms well as the dining room ceiling and therefore the Tribunal members were unable to view any internal damage that had resulted from water ingress other than some staining to the edge of the lounge ceiling. The Tribunal concluded that it was not possible to ascertain the actual cause of the water ingress or the extent of the defect by merely looking out of opened windows but noted that although the gutter passed across the front of the Premises it also served the rest of the parade. Mr. Timms initially told the Tribunal that he did not intend to attend the Hearing. He said that he had referred the application to his solicitors. It was not clear to the Tribunal whether or not he had informed the Tribunal office that correspondence should be sent to his solicitors. There is no evidence within the papers supplied that the Tribunal Service has been asked to correspond with anyone other than the Applicant. The Tribunal explained to Mr. Timms that if he wanted to comment on the application he would need to attend the hearing and he agreed that he would. The Tribunal offered to delay the commencement of the Hearing for a short time and Mr. Timms agreed to attend at 1115 hours

The Hearing

- 5 Prior to the time originally scheduled for the hearing the Chairman explained to the Applicants representatives that the time of the commencement of the hearing would be delayed by 15 minutes to afford Mr. Timms the opportunity to attend
- 6 The Chairman asked the Applicant to explain why it had not complied with the directions made by the Tribunal on the 18th December and enquired whether the parties had received a copy of the directions. The Applicant indicated that it had only seen the directions this week and therefore had had no time to comply. Mr. Stone produced 4 bundles of documents and one bundle was given to the Respondent. Mr. Stone said that a roof leak had been reported to the Applicant by Mr. Timms. He did not know when. He said that he had commenced correspondence with Bynes the solicitors who represented the Respondent. He thought that this was in early December 2006. He is simply making an application for dispensation with consultation requirements to enable him to commission and manage the necessary repair works urgently. He said that the Applicant had served an initial notice and that the bundle of documents contained a copy. The copy notice included in the bundle was not signed or dated. Eventually Mr. Stone was able to extract copies of letters from the files he had brought with him. He apologised to the Tribunal for not including such relevant information in the Applicant's bundle. The Tribunal and Mr. Timms read the correspondence which appeared to have been entered between the Applicant and the Respondent's lawyer in response to a letter from them dated 23rd November 2006. The Applicant responded, by a letter dated the 24th November 2006, that it would remedy the defect but that being aware of the statutory consultation requirements and the timescales involved, it enclosed a Notice of its Intention to carry out works (which it had also sent

to the Respondent) It invited the Respondent's solicitors to ascertain if the Respondent would waive his rights under the Commonhold and Leasehold Reform Act 2002 (CLARA) which was the legislation which had amended the Landlord & Tenant Act 1985 with regard to consultation requirements and suggested that this might enable it to accelerate the implementation of any required works.

- 7 The Respondent's solicitor, in a letter dated the 24th November 2006 indicated that the consultation procedure should take its course; its client wished to be involved in this but that urgent repairs should be carried out to prevent further water ingress. In response to that letter the Applicant indicated that it could not carry out works without obtaining a dispensation from the consultation provisions of the Act and that it had written to the Tribunal service requesting such dispensation.
- 8 An application was made by the Applicant to the Residential Property Tribunal service on the 12th December 2006
- 9 In response to the Applicant's case the Respondent told the Tribunal that the water ingress problem was "long standing" He said that he had telephoned RHT on many occasions. He suggested that some attempt at a repair had been made during the last year but that the Applicants contractors had not to date carried out any successful repair. Frustrated at the lack of a response to his telephone calls he had instructed solicitors to act on his behalf. He indicated that he was concerned about the potential costs of the repairs. He said that although the defective guttering was located on the roof above the first floor of his property the gully served the entire block and that the repair would need to make good the whole gully
- 10 The Chairman explained to Mr. Timms that the only matter with which the Tribunal could deal was the application before it. She understood his other concerns but recommended that he discuss these with his lawyers; the application before the Tribunal was for dispensation for the Applicant to comply with the statutory consultation requirements for the works referred to in the application. Mr. Timms advised the Tribunal that he would consent to the application for dispensation. The Chairman asked if he first wished to consult with his solicitor and he declined. He said that he was unable to understand fully the government leaflet that he had read and that the wording of the application and letters from the Landlord confused him. The Chairman explained again the ambit of the jurisdiction of the Tribunal with regard to the current application. Mr. Timms confirmed his agreement to the Application of RHT and left the hearing.
- 11 Following Mr. Timms departure the Tribunal arranged for copies to be made of the letters that had not been included in the Applicants bundle. In response to an enquiry from the Tribunal Mr. Stone explained to the Tribunal that the costs of any necessary works would be shared proportionately between the occupiers of the block of which the Property formed part. When questioned by the Tribunal Mr. Stone conceded that the Lease of the Premises was silent as to how the apportionment should be made except that clause 4(2) provides for the sum payable to be a

proportionate part of the reasonable expenses and outgoings incurred by the Landlord to be paid by the Tenant

- 12 The Chairman suggested to Mr. Stone that it may be helpful to advise the Respondent of any proposed method of apportionment.

Consideration of the facts and the law

- 13 The Chairman explained that an Order would be made by the Tribunal that with the consent of the Respondent the consultation requirements in relation to the investigation and carrying out of works required to repair the flat roof/ box gutter to the front, of the demised premises, be dispensed in accordance with Section 20ZA of the Landlord and Tenant Act 1985 as amended by Section 151 of the Commonhold and Leasehold Reform Act 2002



Cindy A. Rai LLB

Chairman

8th January 2007