IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/29UN/LDC/2005/0016

IN THE MATTER OF 34 & 35 DALBY SQUARE, CLIFTONVILLE, KENT, CT9 2EP

AND IN THE MATTER OF SECTION 20ZA OF THE LANDLORD & TENANT ACT 1985

BETWEEN:

MR PAUL de VOS

Applicant

-and-

THE LESSEES OF 34 & 35 DALBY SQUARE

Respondents

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to s.20ZA of the Landlord and Tenant Act (as amended) ("the Act") to dispense with the consultation required by s.20 of the Act. The "qualifying works" in respect of which the application is made are the remedial works to treat or eradicate dry rot found in Flats 7, 8 and 9 in the subject property.

2. The only copy of a specimen lease before the Tribunal related to Flat 7. The Tribunal was not told that the leases of the other 8 flats in the building had

been granted other than on identical terms. Clause 2(3) of the lease requires the Respondents liability to pay a one ninth contribution of the costs incurred by the Applicant pursuant to the matter set out in the Third Schedule, which includes, *inter alia*, the expense of maintaining, repairing and renewing the main structure of the building. It is not necessary to set out the details of these provisions in the lease because the Respondents do not deny their contractual liability to pay service charges and, in any event, that is not the issue in this application.

3. By a Notice of Intention dated 18 July 2005 served pursuant to s.20 of the Act, the Applicant's managing agents, Dauntons Soar, informed the Respondents that it was intended to treat the dry rot found in the property. The treatment itself was going to be carried out by a specialist form, BWPDA, with the making good being carried out by another contractor. Only three of the Respondents responded to the notice. In a letter dated 5 August 2005, the lessee of Flat 3, Ms Holmes, queried why further treatment of dry rot was necessary when it appeared that the same treatment had been carried out to Flat 8 and had been charged to the service charge account for the year ending 24 March 2004. She also asserted that the presence of dry rot was the direct result of the Applicant's failure to maintain the property generally. A letter of objection dated 20 July 2005 was received from Mr and Mrs Webber, the lessees of Flat 10. Their objection was on the basis that they did not want the work carried out by the Applicant's contractor. Instead, they wished to obtain estimates from contractors of their own choosing. In a letter dated 26 July

2005, Miss Benton, the lessee of Flat 8 understandably wanted the works to be carried out as soon as possible.

4. On 5 September 2005, Dauntons Soar, served a Statement of Estimates on the Respondents setting out the three estimates for the proposed works that had been obtained. These were:

Anglian Tectonics	£8,996.60 plus VAT – for treatment and subsequent repair works.
Gableson Property Services	£7,135 for repair works only.
Anglian Tectonics	£1,596.60 plus VAT – for treatment only.

5. The notice accompanying the statement of estimates proposed that any objections from the Respondents should be made within the next 10 days (by 12 September 2005) and not the 30 days provided for by s.20 of the Act. The reason given was that the remedial works should be carried out as soon as possible. The notice also proposed that Anglian Tectonics carry of the treatment of the dry rot and that Gableson Property Services carry out the repair works. The estimated total cost of the works, including VAT and administration fees, was £10,476.39 for which the Respondents were each liable to contribute £1,164.04. The Statement of Estimates and accompanying notice produced a reply from the lessee of Flat 2, Mr Mountford, dated 8 September 2005 that was effectively in the same terms as the earlier letter from Ms Holmes. A letter dated 26 October 2005 was sent to the Tribunal by the lessee of Flat 5, Mr Jablonski, confirming that he had no objection to this

application. On 6 September 2005, the Applicant issued this application to dispense with the consultation requirements of s.20 on the basis that they had not fully been complied with.

Inspection

6. The Tribunal inspected the subject property on 2 November 2005. It is a large semi-detached brick built building approximately 100 years old located within a residential square close to the sea front. The property has a slate roof and a mixture of timber and Crittal windows.

Hearing

7. The hearing in this matter also took place on 2 November 2005. The Applicant appeared in person. None of the Respondents attended the hearing nor were they represented.

8. The Applicant told the Tribunal that there had not been any earlier dry rot treatment carried out to Flat 8 in 2003 or 2004. The work referred to in the letter from Ms Holmes dated 5 August 2005 had been carried out by the firm known as 'All Aspects' and concerned only the cleaning of the gutters and some minor plastering to the property. When asked by the Tribunal why the consultation process had not been completed, the Applicant said that the lessee of Flat 8, Miss Benton, had in fact threatened legal proceedings if the dry rot remedial works were not carried out without further delay.

9. The Applicant went on to explain to the Tribunal that the presence of dry rot in the affected flats had been known to him since April or May 2003. He provided the Tribunal with copies of reports prepared by Gulliver Timber Treatments Ltd dated 2 December 2003 and two reports prepared by Anglian Tectonics Ltd dated 21 July 2003 and 22 November 2004. All of these reports variously confirmed the presence of dry rot to Flats 8 and 9. When asked by the Tribunal why the remedial works for the dry rot had not been completed earlier, the Applicant said that there had historically been a lack of trust between the Respondents and the managing agents. In addition, the majority of the Respondents had not paid their service charge contributions for the last several years and these presently amounted to £21,700. He was not confident that these monies could be collected from the Respondents.

Decision

10. The Tribunal was concerned to note that, as long ago as April or May 2003, the Applicant had been on notice about the presence of dry rot to Flats 8 and 9 in the property and had not carried out any remedial works. Under the terms of the leases, the Applicant has a repairing obligation to repair and maintain the building. It is not for this Tribunal to make any findings of fact about whether the Applicant has breached that repairing obligation. The existence of large service charge arrears is irrelevant. The recovery of the service charge arrears is a matter for the Applicant and perhaps he should have been more proactive in their recovery. Nevertheless, the Tribunal decided to grant this application to dispense with the consultation requirements of s.20 of the Act for the following reasons.

11. On the basis of the reports referred to in paragraph 9 above, the Tribunal was of the view that the Respondents have not been prejudiced in costs by the Applicant's inactivity to carry out the necessary remedial works. From the reports, it appeared that the extent of the dry rot had not increased nor the cost in real terms in the intervening period since December 2003. In addition, the Applicant had largely complied with the consultation requirements of s.20. The purpose of the consultation is to put tenants on notice as to the extent of proposed works and the cost. It seemed to the Tribunal that the notices already served by the Applicant had sufficiently informed the Respondents of the proposed works and the estimated cost. It was also relevant that, upon receiving the said notices from the Applicant, only two of the Respondents objected. Their objection was not that the proposed works were unnecessary or that the estimated cost was unreasonable, but that the lessees should undertake the works themselves. Consequently, none of the Respondents took any steps to even nominate a contractor to carry out the proposed works. A possible explanation why this occurred was that the contractor employed by the Applicant, Gableson Properties Services Ltd, was in fact also the managing agent proposed by the Respondents in their preliminary notice of invitation served on the Applicant as a precursor to making an application to acquire the right to manage the property.

12. Accordingly, for the reasons set out above, the Tribunal allowed this application and dispensed with the consultation requirements of s.20 of the Act limited to the remedial works necessary to treat the presence of dry rot to

Flat 7, 8 and 9 in the subject property. In granting this application, the Tribunal should make it clear that it does not find that the costs of the remedial works are also reasonable. Any subsequent challenge by the Respondents in relation to those costs may form the subject matter of a separate application.

CHAIRMAN..... J. Mohamed .....

DATE..... 2/12/05 .....