

SOUTHERN LEASEHOLD VALUATION TRIBUNAL

In the matter of section 20 and section 20ZA of the Landlord & Tenant Act 1985 (as amended) and in the matter of Fiona House, 67 York Road, Guildford.

Case number: CHI/43UD/LDC/2005/0023

BETWEEN:

Nicholas Faulkner

Applicant

and

The Lessees of Fiona House

Respondents

Hearing: 16th December 2005

Appearances:

Mrs Gill Voizey of Labyrinth Properties Limited for the Applicant

Mr Currie and Mr Crooks-Meredith (Lessees of Flat 4)

Decision of the Tribunal

Date of Issue: 22nd December 2005

Tribunal:
Mr R P Long LL B (Chairman)
Mr R Athow FRICS MIRPM
Miss J Dalal

Decision

1. This was an application by Mr Faulkner for a waiver of the consultation requirements contained in section 20 of the Landlord & Tenant Act 1985 (as amended) ("the Act") made pursuant to section 20ZA of the Act. The works in respect of which he would otherwise be required to comply with the consultation requirements are those of investigating and treating an outbreak of dry rot in the basement and at Flat 4 Fiona House 67 York Road Guildford. The tribunal grants the dispensation sought. The works in respect of which the dispensation is granted are those described in the report dated 10 November 2005 from Alpine Preservations Limited addressed to Messrs Daniells & Harrison. Its reasons are set out below.

Reasons

2. The applicant is the manager and receiver of premises at Fiona House 67 York Road Guildford ("the property"), having been so appointed by the tribunal in earlier proceedings. It has come to his attention that there is an outbreak of dry rot at the property. It first manifested itself when a hole appeared recently in part of the bathroom floor in flat 4, and surveyors were instructed to investigate it. They reported, following an inspection on 26 October 2005, that they had found an infestation of dry rot under the bathroom of, and in the basement beneath, flat 4. Alpine Preservations Limited were thereupon instructed to carry out initial emergency sterilisation works. That was done at a cost below that which would trigger the consultation requirements of section 20 of the Act.
3. The present application seeks to obtain a dispensation for the very much more extensive works of investigation and remedy that will now be required, and whose cost the surveyor has indicated may be of the order of £20-30,000 excluding VAT and professional fees.
4. The provisions relating to an application to the tribunal for a dispensation in respect of all or any part of the consultation requirements in relation to any qualifying works are contained in section 20ZA of the Act. The tribunal may make such a determination if it is satisfied that it is reasonable to dispense with the requirements.
5. In this instance the tribunal has had the benefit of seeing copies of the reports of Messrs Daniells & Harrison dated 26 October 2005, and of Alpine Preservations Limited dated 10 November 2005. It has inspected the basement of the property beneath flat 4 and has seen there the remains of the infestation that were sterilised by Alpine Preservations Limited, and it has seen the interior of flat 4, where it saw substantial deposits a rust-coloured dust along the inside of the northern flank wall that appeared to be (an which it was informed indeed were) spores of the dry rot fungus *serpula lacrymans*. The floor in the bathroom of flat 4 that collapsed has been temporarily repaired to enable continued use of the room, so that it was not able to see the evidence of the outbreak at that point. The tribunal was satisfied from its inspection that there was clear evidence of a very material outbreak of dry rot.

6. At the hearing Mrs Vasey said that the next phase is for the surveyor to prepare a specification for a builder, although she accepted that the builder will in the first instance be required to hack back plaster in flat 4 in an attempt to determine the present extent of the outbreak. She could give no time scale for that work but said that it is urgent. Her firm had served an initial section 20 notice on the lessees at the beginning of November. Only one lessee had contacted her and that was only to ask when work could begin. None had expressed any opposition to the work being done. Mr Curry and Mr Meredith said that they were in favour of the dispensation being given, as the work was in their opinion most urgent in order to protect the flat that they own.
7. It was plain to the tribunal from its inspection, from the reports that it had before it and from the information given to it at the hearing that the work of identifying the extent of the outbreak and of treating it needs to be taken forward as soon as possible in order to preserve the property as a whole. The members of the tribunal are aware from their own collective knowledge that dry rot can spread very rapidly indeed and that it is of great importance to deal with an outbreak as soon as possible after it is discovered.
8. For these reasons it would not be in the interests of any of the parties for the work to be delayed for any longer than absolutely necessary, and the grant of a dispensation would enable the works to be put in hand as soon as is practicable without waiting for the rest of the time that would be taken in following the section 20 consultation procedure. The work in respect of which the dispensation is to be granted is that described by Messrs Alpine Preservations Limited in its report before referred to, since that represents the greatest extent of work that the application envisages.
9. The dispensation so granted does not of course amount to a determination of liability for or reasonableness of service charges, for which a separate application under section 27A of the Act will be necessary if any issue arises in that respect.

(Signed) Robert Long
Chairman
22nd December 2005