SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

In the matter of section 20 and section 20ZA of the Landlord & Tenant Act 1985 (as amended) ("the Act")

Case Number: CHI/00ML/LDC/2007/0004

Re: 79 The Drive Hove BN3 3PG ("the property")

Between:

79 The Drive Hove Limited Applicant

and

The lessees of flats 1,2,3 and 4 at 79 The Drive Respondents

Hearing 9th February 2007

Decision issued 13th February 2007

Tribunal:

Mr R P Long (Chairman)
Mr R A Wilkey FRICS FICPD

Application

1. On 17th January 2007 79 The Drive Hove Limited ("the Company"), through its agents Messrs Ellman Henderson, made application to the Tribunal for dispensation from the requirements of section 20 of the Landlord & Tenant Act 1985 (as amended) ("the Act") in connection with works intended to deal with an outbreak of dry rot in the first floor flat at 79 The Drive ("the premises"). The purpose of such a dispensation only is to remove the requirement to go through the consultation and notification procedures for which section 20 of the Act provides, and thus the limitation on recoverable service charges that failure to comply with those requirements would otherwise incur.

Directions

2. Provisional directions were given on 22nd January 2007 that indicated that the Tribunal had determined that it would dispense with the usual 21 days notice of hearing in view of the possible health and safety factors that affected the occupiers of the building, and provided that a hearing should be held on 9th February 2007. In the meantime the Applicants were to provide a bundle of documents for the hearing, and any of the Respondents who wished to contest the application were required to produce copies of any documents or witness statements that they wished to introduce on the occasion of the hearing.

Inspection

3. The Tribunal inspected the premises on 9th February 2007 in the presence of Mr Perry of Messrs Ellman Henderson, Mr Hall of Messrs Philip Hall Associates and Mr Chris Hudon of the same firm together with Mr & Mrs Grant, the lessees of flat 3. They saw a brick built house with some stone facing erected on a sloping site. The house appeared to date from the latter Half of the nineteenth century and is typical of the large dwellings erected in The Drive at around that time. There are three stories at the front and four at the rear. The property is divided into four flats, and it appeared externally that one such flat occupied each floor, the lower ground floor flat facing to the rear. At the time of inspection there was scaffolding to the southern (side) and western (rear) elevations.

4. The dry rot outbreak has been identified on the front (east) elevation of the first floor in the flat occupied by Mr & Mrs Grant. The Tribunal were shown the room within that flat situated above the porch where extensive work had been undertaken to expose the outbreak. There was clear evidence of dry rot in some of the exposed floor joists, one of which still bore the remains of a fruiting body, and in a cavity adjacent to the main sitting room a fruiting body could clearly be seen. No investigation has yet been made in the sitting room or in the staircase that is similarly adjacent to the room in which the exposure work has been carried out, so that the extent of the outbreak has yet to be established.

5. The Tribunal's attention was drawn to an outbreak that has also been identified as part of other work at the rear of the house in the bay of the bedroom to the first floor flat. That outbreak had yet to be investigated, and had only been identified in the few days before the Tribunal's visit.

Hearing

6. Mr Perry attended the hearing on behalf of the Applicant. None of the lessees attended the hearing and none had communicated with the Tribunal except to the extent that Mr & Mrs Grant had made it possible for it to see the damage in their flat.

7. Mr Perry said that his firm had been associated with the property since 2004 when the lessees had enfranchised the block. The Applicant is now the freehold owner and all of the lessees are shareholders in that company. A meeting of the lessees in 2006 had determined by a majority to do work to two of the elevations. That was to be standard external redecoration and repair. Originally those were to have been the front and rear elevations, but it subsequently became apparent that work was required to the side elevation on the south of the building. One of the lessees was antagonistic to having work done at the property.

8. Mr & Mrs Grant had purchased their flat on 15 December 2006 and their attention had been drawn to some deformity in wood in front window frames in their flat. Mr Hall had looked at the frames in January 2007 and had called in Messrs Bensleys who are specialists in dry rot. It was then that the dry rot had been found.

9. The dry rot at the rear had been identified on 8 February. It was believed to be a separate outbreak. He accepted that it was not part of this application and that a new application would have to be made in respect of it that would in turn have to be notified to the lessees. It appeared clear on present information that this secondly discovered outbreak was not connected with that at the front of the building, and it was not yet certain that the outbreak at the rear was still live.

10. A further meeting of three of the lessees had agreed to approach the work required in respect of the dry rot the subject of this application with caution in the light of the antagonistic approach of the fourth lessee. Mr Perry produced a doctor's letter that explained that Mrs Grant is pregnant and suffers breathing problems so that the present situation is unsatisfactory from the point of view of her health. He said that the lessees as shareholders in the company were more comfortable to expose and treat the dry rot on a room-by-room basis. In the light of that he found it difficult to suggest how to identify the extent of the dispensation sought.

11. The reason why the dispensation was required was that the fungus can spread very rapidly, and the outbreak would become a very great deal more serious, and so more expensive to eradicate, if the Applicant had to go through the section 20 procedure before carrying out any works. Such a procedure would

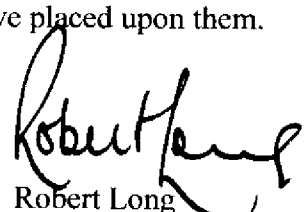
occupy some three months during which time extensive further damage would very probably occur.

Decision

12. The Tribunal was satisfied from its inspection that this is a potentially serious outbreak of dry rot. It is aware from its collective knowledge and experience of the locality that properties of this type in the Brighton and Hove area are prone to such infestations. It would be wholly inappropriate for the Applicant to have to wait for the section 20 procedures to take their course before it could carry out any work because, as Mr Perry said, extensive further damage may well occur in that time. It concluded that the appropriate dispensation for it to grant was a dispensation in respect of the whole of the outbreak in the front of the building. That is because in its experience such outbreaks are usually better dealt with comprehensively than on a piecemeal basis because of the very considerable speed with which the fungus that causes dry rot can sometimes spread. That will enable the lessees to deal with the matter on a more comprehensive basis, or not, as they may choose.

13. Accordingly the Tribunal grants dispensation from the requirements of section 20(1) of the Act to enable the Applicant to conduct such investigations and remedial treatment as are reasonably necessary to enable it to establish the extent of and to eradicate the outbreak of dry rot centred on the first floor front of the building at 79 The Drive. The Tribunal makes it clear that this dispensation does not apply to the outbreak at the rear of the building, and that if work is required there it will have to be the subject of a new application for dispensation.

14. The dispensation granted relates solely to the requirement that would otherwise exist to carry out the procedures in accordance with section 20 of the Act. It does not prevent the making in due course of an application under section 27A of the Act to deal with the resultant service charges or standards of work if any lessee so wishes, but simply removes the cap on the recoverable service charges that section 20 would otherwise have placed upon them.



Robert Long
Chairman

12th February 2007