

**LON/00AH/LDC/2006/0095**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 20ZA OF THE LANDLORD AND  
TENANT ACT 1985 AS AMENDED**

Re: 35A Galpins Road, Thornton Heath, Surrey CR7 6EL

Applicants: Mr and Mrs Mahmood Bharwani

Respondent: Ms Josephine Okagbue

Inspection: Not applicable

Hearing date: Thursday 12<sup>th</sup> April 2007

Appearances: Mr and Mrs Bharwani – for the Applicants  
Ms Josephine Okagbue – for the Respondent  
Mr Robert Awoloye-Kio – as representative for the Respondent  
Also present: Stanley Okagbue Osademe-Patrick and Janet Drummond

Members of Tribunal: Mr N.M. Gerald  
Mr F. Coffey  
Mrs R.J. Turner

1. This is an application by the Applicant landlord under section 20ZA of the Landlord and Tenant Act 1985 (“the Act”) for dispensation of the consultation requirements in relation to some emergency repairs to the roof of 35A Galpins Road, Thornton Heath, Surrey CR7 6EL (“the Property”) carried out in December 2006.
2. The Property comprises a ground floor flat and first floor flat. Throughout, the Applicants own the freehold and, until about October or November 2006, occupied the first floor flat.
3. The ground floor flat was granted on long lease dated 16<sup>th</sup> June 1988, and was purchased by the Respondent in 2003. It was occupied by her son Stanley Okagbue Osademe-Patrick until January 2006 when their friend Janet Drummond moved in. She moved out in November 2006 since when the Respondent has been in occupation.

4. The roof has been in need of repair since at least October 2005 when the Applicants wrote to the Respondent informing her that the roof was leaking: see their letter of 26<sup>th</sup> October 2005 (to the Respondent personally) and 30<sup>th</sup> December 2005 (to the Respondent's solicitors). The Respondent said that she had read both of these letters, but had not replied to them.
5. On 14<sup>th</sup> November 2006, the Applicants wrote to the Respondent's representative Mr Robert Awoloye-Kio inviting joint instructions to a surveyor to carry out a full survey of the whole property including the roof. Awoloye-Kio told the Tribunal that he had provided a copy of this letter to the Respondent, and she said she had read it, but had not replied to it.
6. During the one year period prior to the Applicants moving out of the first floor flat in October/November 2006, Mrs Bharwani said (and her husband confirmed) that they had kept buckets in the roof to catch the leaks, and regularly checked and emptied them. When they moved out, they were unable to continue doing so. There was some very heavy rain, and their contractor (who was engaged to redecorate their flat prior to being let to the local authority) reported that there was heavy leaking which must immediately be repaired to avoid further serious damage and higher costs.
7. The Applicants (by Mr Bharwani), then mindful that money would have to be spent, contacted the Leasehold Advisory Centre who advised the Applicants of the section 20 consultation process (details of which Mr Bharwani then downloaded from the internet) and that they should first apply for dispensation before executing any works.
8. However, the Applicants felt that they had no alternative but to immediately carry out the repairs to the box guttering, which cost them £950, in order to prevent any further damage to the structure of the building, to their flat and also to the Respondent's flat.
9. It was in those circumstances that the Applicants made this Application. They also sought dispensation in respect of effecting consequential internal repairs, but they do not pursue that part of their Application because those works have been completed and paid for by their insurers, Royal & Sun Alliance, so that there will be no attempt to recoup them from the Respondent.
10. This Application is therefore confined to seeking dispensation from the consultation provisions in respect of the emergency repairs to the "box" or parapet gutter.
11. Initially, the Respondent was not prepared to accept that there had been any roof leaks at all. However, in his closing submissions, Mr Awoloye-Kio, on behalf of the Respondent, quite properly accepted that there had been roof leaks which necessitated emergency roof repairs.

12. That acceptance was quite proper because the photographs provided and the evidence given by the Applicants establishes beyond doubt that there had been roof leaks which needed to be repaired on an emergency basis. Indeed, it was in the vital interests of the Respondent that the roof be repaired otherwise further damage to the Property, including her own flat would ensue.
13. Section 20ZA of the 1985 Act provides that the Tribunal may grant dispensation "if satisfied that it is reasonable to dispense with the requirements".
14. Given that the ~~Respondent~~ herself accepts that the roof repairs were an emergency and that, it must follow, necessary to preserve the integrity of the fabric of the Property and the water-tightness of her own flat, the Tribunal finds that it was not only reasonable but necessary for the roof to be repaired as a matter of urgency.
15. The fact that the Applicants were aware since at least October 2005 that roof repairs were required, and that there were (albeit intermittent) leaks during 2005 which the Applicants were prepared to manage by emptying the collection buckets in the roof does not alter the fact that throughout the year urgent repairs were required and that, by the end of November/early December 2006, the need for roof repairs was not just urgent but constituted an emergency.
16. The Respondent's reason for not responding to any the letters referred to above was that she viewed them as part of an ongoing series of harassments from the Applicants in which they contained actual or veiled threats of forfeiture. Had a section 20 notice been served, it is quite likely that the Respondent would have ignored it also. Neither the non-responses to these letters nor the reasons for not responding form any part of the Tribunal's decisions because the question is "was it reasonable to execute emergency roof repairs" to which the answer is "yes".
17. In making this decision, the Tribunal makes no finding as to whether the £950 costs of repair were reasonable or not reasonable. That is a matter which was not the subject of the Application. If the Applicants wish to recover those or part of those costs from the Respondent, then they will have to make a new application to the Tribunal if the parties cannot reach agreement on it.

*Nigel Gardley*

*13/4/07*