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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

A

Case Reference : **LON/OOBG/LDC/2013/0104**

Property : **Prusom's Island, 135 Wapping High Street, London E1W 3NH**

Applicant : **Prusom's Management Ltd.**

Representative : **Rendall & Rittner Ltd.**

Respondent : **Lessees of Prusom's Island**

Representative : **None notified**

Type of Application : **For dispensation of all or any of the consultation requirements**

Tribunal : **Judge Goulden**

Date and venue of Hearing : **Wednesday 27 November 2013 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **27 November 2013**

DECISION

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with.

The application

1. The Applicant seeks a determination pursuant to S20ZA of the 1985 Act for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Landlord and Tenant Act 1985 (" the Act"). The application was dated 4 October 2013 and was received on 7 October 2013.
2. Directions of the Tribunal were issued on 10 October 2013. Forms for completion by the lessees in respect of the S20ZA application were attached to the Tribunal's Directions which the Applicant was directed to send to each lessee by 18 October 2013.
3. The case was listed for a paper determination. No request had been made by any of the parties for an oral hearing.
4. Completed forms were received from fourteen Respondents, all of whom supported the application for dispensation.

The hearing

5. The matter was determined by way of a paper hearing which took place on Wednesday 27 November 2013.

The background

6. Prusom's Island, 135 Wapping High Street, London E1W 3NH ("the property") which is the subject of this application is described in the application a development comprised of 35 flats across five levels including the ground floor, together with a basement level car park with 35 spaces and a roof terrace. There is one lift (26 years old) serving all six levels. Some photographs were supplied within the hearing bundle.
7. The proposed works related to the refurbishment of the lift which had been scheduled for the year 2014/2015. It was maintained that the lift had broken down due to the lift hydraulic ram having been severely scored due to foreign bodies being found in the hydraulic system. The ram could not be repaired and required replacement. The property had been without a working lift since 2 September 2013.

8. A Notice of Intention under the Act dated 11 September 2013 was served on 11 September 2013. That Notice expired on 11 October 2013.
9. Neither side requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. A copy of a specimen lease had been omitted, but was provided to the Tribunal on the day of the paper hearing. This lease required the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge.

The issues

11. The issues are as set out in paragraph 7 above.

The Applicant's submissions

12. Written submissions dated 25 October 2013 were received from Ms S Amarteifio, Property Manager, Rendall & Rittner, the Applicant's managing agents.
13. The Applicant contended, inter alia, that the lift had been reported as faulty on 26 August 2013. The lift maintenance company, Crown Lifts had attended on 27 August 2013, and reported that hydraulic oil had been leaking through faulty seals. The oil level had been topped up and the lift put back in operation. The Applicant had been advised that the lift was safe to use however "*until repairs are carried out the lift would continue to shake when approaching the fourth floor...*". A date in early September 2013 was fixed for repair.
14. On 3 September 2013, the lift engineers advised that the ram was severely scored indicating that there was an unidentified defect which was causing damage, the lift was unable to be repaired and the lift was unsafe to use. The Applicant was advised that the entire hydraulic system should be replaced, together with a new control system.
15. A letter of explanation was sent to all the lessees on 14 October 2013.
16. A Notice of Intention to carry out work was sent to the Respondents on 11 September 2013. That Notice expired on 11 October 2013.
17. The Tribunal has been provided with copies of four lift condition reports from Cook & Associates, 21st Century Lifts Ltd., Otis and Lerch Bates; Allianz lift report dated May 2013; tender analysis report dated 23 October 2013 from Cook & Associates, works specification, and correspondence with the lessees.

The Respondent's submissions

18. No written representations were received from or on behalf of any of the Respondents.

The Tribunal's Determination

19. S20 of the Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

20. Dispensation is dealt with by S 20ZA of the Act which provides:-

“Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”

19. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
 - (i) the address to which such observations may be sent;**

(ii) that they must be delivered within the relevant period;
and
(iii) the period on which the relevant period ends.

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

(a) the place and hours so specified must be reasonable; and
(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

20. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
21. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.
22. No Respondent had challenged the consultation process. No written submissions have been received from or on behalf of any of the Respondents.
23. There is only one lift serving all floors. That lift has been out of commission since the beginning of September 2013 and cannot be repaired, but must be replaced. The absence of a single working lift must affect all the lessees, some of whom have been described as vulnerable. It is understood that if the full consultation process is to take place, works could not commence until mid December and the lift would be out of service until the end of March 2014.

24. The Tribunal is satisfied that, in the particular circumstances of this case, the Respondents are not unduly prejudiced and it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.

Name: J Goulden

Date: 27 November 2013