



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

Case Reference	:	LON/ooBK/LSC/2014/0157
Property	:	Capital House, 7 Clipstone Street, London W1W 6BD
Applicant	:	Ms K K Teofilak
Representative	:	Robert Irving Burns, Managing Agents
Respondent	:	ALL LESSEES AS PER APPLICATION
Representative	:	n/a
Type of Application	:	For dispensation from the consultation requirements required by section 20 of the Landlord and Tenant Act 1985
Tribunal Members	:	Judge Carr
Date of Decision	:	22nd December 2014

DECISION

Decision of the Tribunal

1. The Tribunal determines to exercise its discretion to dispense with the consultation requirements contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) England) Regulations 2003.

The Application

2. Mr Michael Ross of Robert Irving Burns, as managing agents of the freeholder of the premises, Ms K K Teofilak, applied on 27th November 2014 under section 20ZA of the Landlord and Tenant Act 1985 for dispensation from the consultation requirements contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) England) Regulations 2003.

Procedure

3. The Tribunal held a case management review of this matter on 3rd December 2014 and issued directions on the same date. In those directions it was decided that in view of the urgency of the application the matter should be determined on the basis of written representations and without an oral hearing.
4. The Directions gave an opportunity for any party to request an oral hearing. They also gave an opportunity for any leaseholder who wishes to oppose the application from the landlord to provide a statement to the Tribunal setting out his or her reasons for so doing. None of the parties requested an oral hearing and therefore the matter is being determined on the basis of the documents provided.

Determination

The Evidence

5. The evidence before the Tribunal indicates as follows:
 - a. The Managing Agents for the subject property, in the course of carrying out works to the lift discovered that there were more extensive works to be carried out to the lift than had been anticipated. In particular the lift engineers, in the course of fitting new parts for the brake, found that the main motor was running very hot and not lifting the load it was supposed to. The lift engineers informed the managing agent that the motor needed to be removed by lift specialists and rewound.

- b. The lift engineers provided a quotation for carrying out repairs to the lift installation of £3,600.80 p plus VAT.
- c. The managing agents applied to the Tribunal for dispensation from the consultation requirements as they consider that the leaseholders in the building will be caused unnecessary suffering and inconvenience if the works are not carried out as a matter of urgency. In particular the elderly resident on the fourth floor will be trapped in her home until the repairs are carried out.
- d. The managing agents propose using the existing lift engineers to carry out the work generally finding them to have a fair pricing structure.
- e. Following the issue of directions, the managing agents communicated with all of the lessees about the proposed works and their urgency.
- f. The managing agents received 3 responses from the lessees. Mr R Pavlos Clifton of flats 9 and 7, who has a liability for 30% of the service charge fully supported the action of the managing agents and noted that the matter was urgent due to his family circumstances. Mr Rupert Hollins Murray of flat 6 also fully supported the action of the managing agents and informed the agent he was happy to pay his share of the costs.
- g. Mr Peter, another lessee, did object to the application considering that there was sufficient time to obtain further estimates and to comply with the consultation requirements. The managing agents have responded to Mr Peter, attempting to address his concerns.

The Law

- 6. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:
- 7. “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**” (emphasis added).

The Tribunal's decision.

8. The Tribunal determines to grant the application.

The reasons for the Tribunal's decision.

9. Although the information from the lift engineers is somewhat sketchy, and the survey report undated the Tribunal determines that the lift works are necessary and urgent. Any delay is likely to cause great inconvenience to the lessees particularly those residents on the upper floors.
10. Whilst Mr Peter has expressed some concern at the failure to obtain further estimates (a concern that the Tribunal has sympathy with), as well as the failure to comply with the statutory procedures, the Tribunal considers that in this particular case it is reasonable to grant the dispensation, particularly as Mr Peter has not provided evidence to suggest that the estimate is too high. In addition other lessees have expressed support for the actions of the managing agents.

The parties should note that this determination does not concern the issue of whether any service charge costs will be reasonable or indeed payable. The Respondents are able, if it appears to them to be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability.

Signed Judge Carr

Dated 22nd December 2014