



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

**Case reference** : **LON/00AU/LDC/2018/0129**

**Property** : **Trematon Building, 1 Trematon  
Walk, Regent Quarter, London, N1  
9FN**

**Applicant** : **Aztec Nominees (UK) Ltd as  
Trustees of the Trematon Property  
Unit Trust**

**Representative** : **K & L Gates LLP, Solicitors**

**Respondent** : **The Lessees**

**Representative** : **In person**

**Type of application** : **For dispensation under section  
20ZA of the Landlord & Tenant Act  
1985**

**Tribunal members** : **Judge I Mohabir  
Mr S Mason FRICS**

**Date and venue of  
determination** : **17 September 2018  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **17 September 2018**

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**DECISION**

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### ***Introduction***

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for dispensation from the consultation requirements imposed by section 20 of the Act.
2. Trematon Building, 1 Trematon Walk, Regent Quarter, London, N1 9FN (“the property”) is described as a purpose built block of flats comprised of 36 residential apartments.
3. A low temperature hot water circulation system is used to provide under floor heating and hot water to each of the residential apartments in the property. The heat source for this system was 2 Elco manufactured gas fired Ultramax 602 boilers.

### ***Hire of Temporary Boilers***

4. On 31 January 2018 both boilers failed and were repaired. On 3 February 2018 both boilers failed again and were repaired a second time. The following day both boilers failed yet again and could not be repaired. On 5 February 2018 a specialist boiler engineer carried out an investigation and could not repair the boilers.
5. On 6 February 2018, M & E Consultants, investigated the boilers and concluded that complete failure of both boilers had occurred. Subsequently, by late afternoon on 7 February 2018, 2 oil fired temporary boilers had been installed to provide heating and hot water to the property. The cost of hiring these boilers will be £11,352.27 plus VAT every 4 weeks from 30 September 2018 (“temporary boiler costs”). It seems that until then the cost of hire is being met by the maintenance contractor for the previous boilers, Optimum Group Services.

### ***Replacement of Boilers***

6. The Applicant proposes to permanently replace the failed boilers rather than continue to rely on the temporary boilers, which are being provided at significant cost.
7. Therefore, the Tribunal is told that the Applicant served a Notice of Intention on the Respondents proposing to carry out this work. The Applicant’s managing agent, Cushman & Wakefield, obtained tenders and carried out a tender analysis from 5 contractors. Having done so, they recommended that the lowest tender from Rolfe Contracting Ltd in the sum of £93,275.03 be approved. Additional professional fees of £9,600 would result in a total cost of £102,875.03 plus VAT will be incurred for the installation of the new boilers.
8. In an email dated 15 April 2018, one of the leaseholders, Mr Eagland, wrote to Cushman & Wakefield expressing his concern (and those of

other leaseholders) as to why the boilers had failed so soon after construction of the property, which are advised was completed in 2013.

9. Subsequently, the Applicant made this application seeking retrospective dispensation in relation to the cost of the temporary boilers and prospective dispensation in relation to the cost of installing the new boilers.
10. On 30 July 2018, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.
11. No Respondent has filed any objection to the application.

### ***Relevant Law***

12. This is set out in the Appendix annexed hereto.

### ***Decision***

13. The determination of the application took place on 17 September 2018 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents.
14. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in ***Daejan Investments Ltd v Benson & Ors*** [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
15. The issue before the Tribunal was whether retrospective dispensation should be granted in relation to the cost of the temporary boilers and prospective dispensation in relation to the cost of installing the new boilers. It should be noted that the Tribunal is not concerned about the cost that has been incurred as that is not within the scope of this application.
16. Arguably, dispensation is not required in relation to the cost of the temporary boilers because the Respondents have not incurred any costs at the present time. To the extent that they may incur such costs after 30 September, dispensation is granted. In relation to the estimated cost of installing the new boilers, dispensation is also granted. The Tribunal granted the application the following reasons:
  - (a) the fact that each of the leaseholders has been kept promptly informed of the failure of the original boilers, the installation of

the temporary boilers and the requirement to install the new boilers.

- (b) the fact that each of the leaseholders had been served with a copy of the application and documents in support.
  - (c) no leaseholder has objected to the application.
  - (c) based on the investigations carried out by Cushman & Wakefield, the Tribunal was satisfied that the original boilers were beyond repair and that any further delay in carrying out the installation of the new boilers may well result in the Respondents incurring a cost liability for the rental of the temporary boilers after 30 September 2018.
  - (d) importantly, any prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the actual costs incurred.
17. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.
18. It should be noted that in granting this part of the application, the Tribunal does not also find that the scope and estimated cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act should they wish to do so.

**Name:** Judge I Mohabir

**Date:** 17 September 2017

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

**Section 20ZA**

(1) 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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.