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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : **34-39 Hammersmith Gardens,
Houghton Regis,
Bedfordshire LU5 5RG**

Applicant : **South Bedfordshire District Council**

Respondents : **Mr. Tarique Hussaun Shah**

Case number : **CAM/09UE/LDC/2007/0006**

Date of Application : **24th July 2007**

Type of Application : **Application to dispense with
consultation requirements in respect of
qualifying works (Section 20ZA Landlord
and Tenant Act 1985 as amended ("the
1985 Act"))**

The Tribunal : **Mr. Bruce Edgington (Lawyer Chair)
Mr. G. Rodney Petty FRICS
Mrs. Julia De M. Ambrose**

**Place and Date
of Decision** : **12th September 2007 at The Henry VIII
Suite, Old Palace Lodge Hotel, Church
Street, Dunstable, Beds. LU5 4RT**

DECISION

1. The applicant is granted dispensation from the consultation requirements in Section 20ZA of the 1985 Act and **The Service Charges (Consultation Requirements) (England) Regulations 2003** as amended ("the Regulations") in respect of work carried out on 20th March 2007 to the balcony walkway outside 37 Hammersmith Gardens, Houghton Regis, Bedfordshire.

Reasons

Introduction

2. The Applicant owns the property which consist of 6 flats. Only one of these flats, namely number 37 Hammersmith Gardens, has been sold under the right to buy scheme. The remaining flats are occupied by tenants of the Applicant. The Respondent is the current owner of the long leasehold interest in that flat created by a Lease ("the Lease") dated 15th August 1988 for a term of 125 years from 15th August 1988.

3. Earlier this year, an occupier of 39 Hammersmith Gardens complained to the Applicant that when it rained, there was a leak through the ceiling into the ground floor bedroom necessitating the use of a bucket to catch the water. On the 13th February 2007, an inspection was carried out by Keith Maddox, maintenance inspector, and Peter Hailes, building surveyor ("Mr. Hailes") from the Applicants.
4. They concluded that there was such a leak and that it was probably coming from a defect in the asphalt base to the walkway immediately above this bedroom which provides access to the 1st floor flats being 36 and 37 Hammersmith Gardens.
5. One of the occupiers of 39 Hammersmith Gardens was 6 months' pregnant and the Applicant decided that it was imperative that repair works were put in hand as soon as possible. However, the Applicant did not just go ahead with the works without any consultation.
6. On the 14th February, a letter was written to the Respondent to tell him about the problem. It said that the repair works would cost in the region of £4,000 and that his share would be about £667.
7. The Applicant then obtained quotations from North Herts Asphalt Ltd. (£3,601.21 including VAT) and from M.H. Goldsmith & Sons Ltd (£3,620.00 plus VAT). On the 12th March, copies of these quotations were sent to the Respondent with a letter telling him that an order had been placed with North Herts Asphalt.
8. The correspondence correctly told the Respondent that the Applicant would have to make an application to this Tribunal and obtain dispensation from the usual consultation requirements before the full amount could be charged.
9. The works were completed and successfully stopped the leak. This application was subsequently made and the Applicant said that, in its view, the matter could be dealt with by paper determination i.e. without an oral hearing. A Directions Order was made on the 30th July ordering the Respondent to submit a short statement in reply to the application identifying any matters which were in dispute.
10. No such statement was received and a further directions order was issued on the 21st August 2007 in accordance with Regulation 5 of **The Leasehold Valuation Tribunals (Procedure) (Amendment) (England) Regulations 2004** notifying both parties that the Tribunal agreed that this case could now be dealt with by paper determination which would occur on or after 12th September unless either party requested an oral hearing. Neither party did request such a hearing.

The Inspection

11. The Tribunal inspected the property and found that it was a purpose built block of 6 flats of brick construction under what appeared to be a tiled roof. The members of the Tribunal were able to inspect the passageway in question and they were also able to see inside number 39 Hammersmith Gardens and saw evidence of water ingress. The tenant told them that this had stopped since the repairs and the Tribunal accepted this from its own observation.

The Statutory Framework

12. The purpose of Section 20 of the 1985 Act as now amended by the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") and the Regulations is to provide a curb on landlords incurring large amounts of service charges and, now, entering into long term agreements, which would involve tenants paying large amounts of money.
13. The original regime meant that if service charges were over a certain limit, then the landlord had to either (a) provide estimates and consult with tenants before incurring such charges (b) have such service charges 'capped' at a very low level or (c) try to persuade a judge to waive the consultation requirements.
14. The 2002 Act which came into effect on the 31st October 2003 tightened up these provisions considerably and extended them to qualifying long term agreements i.e. agreements involving a tenant in an annual expenditure of more than £100 and which last for more than 12 months.
15. The consultation requirements in the Regulations are extensive and include:-
 - (a) The service of a notice on each tenant of an intention to undertake works. The notice shall set out what the works are and why they are needed or where particulars can be examined. It shall invite comments and the name of anyone from whom the landlord or the landlord's agent should obtain an estimate within a period of not less than 30 days.
 - (b) The landlord or landlord's agent shall then attempt to obtain estimates including from anyone proposed by a tenant.
 - (c) At least 2 detailed proposals or estimates must then be sent to the tenants, one of which is from a contractor unconnected with the landlord, and comments should be invited within a further period of 30 days
 - (d) A landlord or landlord's agent must take notice of any observations from tenants, award the contract and then write within 21 days telling everyone why the contract was awarded to the particular contractor.
16. The 2002 Act transferred jurisdiction for the waiving of these requirements from the courts to Leasehold Valuation Tribunals.

The Lease

17. The Applicant correctly sets out the relevant parts of the Lease from which it is clear that it is the Applicant's responsibility to keep this walkway in repair and that it is able to collect a reasonable proportion of the costs of repair from the Respondent. The Applicant says that a reasonable proportion would be one based on floor area and the Tribunal agrees. A calculation of the amount due from the Respondent was produced in the paperwork which appeared to the Tribunal to be fair.
18. The Lease also provides that the Applicant can charge an additional maintenance charge not exceeding 10% of the service charges.

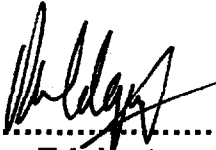
The Facts

19. The facts are set out in statements from the Applicant's solicitor, Amerjit S. Kang, dated 31st August 2007 and from Mr. Hailes, also dated 31st August. They exhibit a copy of the Lease and subsequent legal documents relating to the Lease, a photograph, copies of the correspondence and copy case reports.
20. There is also a report from Mr. Hailes dated 17th August 2007 which confirms that the works were undertaken on the 20th March 2007 and that the leak has been cured.
21. The Respondent has been sent copies of the statements and other evidence and has not disputed any of the facts. The Tribunal therefore accepts such facts as set out in those statements and outlined above.

Conclusions

22. The only decision for this Tribunal is whether the consultation requirements should be dispensed with. The test, in this case, is whether the Applicant acted reasonably in pressing ahead with the works without taking the considerable time needed to consult with the Respondent in accordance with the Regulations.
23. The matters which the Tribunal considered relevant in making such decision were:-
 - (a) the fact that the leak appears to have been a serious one involving the necessity to use a bucket to catch the water coming through the leak
 - (b) the fact that an occupier of number 39 Hammersmith Gardens was six months pregnant and would probably have had to suffer this water leak for a period after the baby was due to be born by the time specifications had been prepared and the 2 stage consultation period had been complied with,
 - (c) the fact that estimates were obtained. Even though the Respondent was not actually invited to make any comments thereon he had previously been told, accurately, of the likely cost and could have put forward names of contractors if he had wished,
 - (d) the fact that the Respondent made no complaint about the amount of the charges at any stage,
 - (e) the fact that he has not responded to this application with any suggestion that he disputes the process or the cost of the works, and
 - (f) the fact that the Applicant did not rush into dealing with the works as an emergency, which could well have increased the cost. It chose a mid-way course of telling the Respondent what it intended to do with an accurate estimate of the likely cost followed by submitting 2 estimates.

24. In the circumstances, the Tribunal finds that the Applicant acted with appropriate speed balanced with an appropriate level of consultation taking the circumstances into account.



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Bruce Edgington

Chair

12th September 2007