

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



CASE No: CHI/43UF/LDC/2008/0032
BETWEEN :-

Tudor Lodge Mansions Management Company
Limited

Applicant

and

Various lessees (Mr and Mrs. Bendig and 15
others)

Respondents

PREMISES: Tudor Lodge Mansions, St Monica Road
Kingswood Surrey KT20 6EX

TRIBUNAL: Mr. H D Lederman
Mr. Potter FRICS
Miss J Dalal

HEARING: 17th December 2008

DECISION

1. The Tribunal decides it is reasonable to dispense with the following requirements in Section 20 of the Landlord & Tenant Act 1985 ("the 1985 Act") and in part 2 of schedule 4 to the Service Charges (Consultation etc) Regulations 2003, ("the 2003 Regulations")
 - a) articles 1 (2) (c), 1 (2) (d) and 1 (3) (invitation to tenants to make written observations in relation to proposed works) provided that the e-mail from Steve Hunter of 21st Century Lifts Limited dated 3rd November 2008 16.46 (annexed hereto) is appended to the Notice of intention to carry out qualifying works to be served under article 1(1) of the 2003 Regulations; and
 - b) article 2 (Inspection of description of proposed works)
 - c) article 3 duty to have regard to tenants observations), article 4 (estimates and response to observations) and article 5 (duty to have regard to observations in relation to estimates) of the 2003 Regulations in respect of the categories of works at the property identified in the e-mail from Steve Hunter of 21st Century Lifts Limited dated 3rd November 2008 16.46 (annexed hereto).

REASONS FOR DECISION

2. In these reasons all reference to section 20 of the 1985 Act should be taken to include the provisions of sections 20 and 20ZA of the 1985 Act currently in force where the context requires.

Representation

3. At the hearing which commenced shortly after 11.30 am at the Woolsack Room at the Harlequin Warwick Quadrant Redhill Surrey, the applicant was represented by Phillip Cobb a director of Heritage Management Limited and by Mrs. Mary Staples, company secretary of the Applicant. There was no representation by or on behalf of any of the Respondent Lessees.

Status of the Applicant

4. In her evidence Mrs. Mary Staples stated and the Tribunal accepts for the purposes of this application only, that in about 2000 after the original leases were granted Tudor Lodge Mansions Management Company Limited purchased the freehold of both blocks Tudor Lodge Mansions St Monica's Road, Kingswood Surrey KT20 6EX. ("the property") from the developers. The effect of that transaction was that Tudor Lodge Mansions Management Company Limited was the only landlord as well as the management company under the term of the Leases of each of the flats in the property. We have not seen documents evidencing that transaction, or any Official Copies of the Land Register relating to the property. The Tribunal has only seen a copy of one executed lease relating to Flat 1 Tudor Lodge Mansions dated 1st March 1999 and a draft lease relating to flat 14, attached to a copy of an agreement dated 30th April 1999. Accordingly, the Tribunal's findings about the status of the Applicant are limited to the purposes of the application for dispensation under section 20 of the 1985 Act. Another Tribunal or a Court may wish to reconsider the status of the Applicant in another context for other purposes.

The Inspection

5. The decision in this case was made following the inspection and hearing on 17th December 2008 and issued shortly thereafter.
6. The Tribunal inspected at shortly after 9.30 a.m. The Property consists of 2 blocks of residential flats in close proximity on the same site. Block contained Flats numbered 1-9. Block B contained Flats numbered 10-16. For the purposes of this application the Tribunal treated the layout and configuration of each block as

identical, although there are some differences as the numbering of the flats alone indicates. Drawings of the respective blocks before completion are found on page 53 of the principal bundle (a plan accompanying the lease of Plot 1 – as it was then called). In each block there was a ground floor with some flats, a first floor with flats and a penthouse flat. In each block at the property there was passenger lift serving the first and penthouse floors, although the Tribunal was informed that access to the penthouse flat by the lift in each block was by way of key operation only. There was in each case a flight of stairs leading from the first floor to the penthouse flat in addition to the lift.

7. The Tribunal noted that the numbering of the flats at the blocks at the property had been transposed in an e-mail from Steve Hunter of 21st Century Lifts Limited to Philip Cobb dated 3rd November 2008 and in two Lift engineering reports concerning the lifts at the property dated 21st August 2008 prepared for Allianz Insurance company. The Tribunal finds that nothing of any significance turned on the transposition of Block A and Block B and of the numbering of the flats at the property in these reports. For the remainder of these reasons the Tribunal adopts its description of Block A and Block B.

8. The Tribunal noted that one of the lifts appeared to require attention as when stepped upon, the whole passenger car moved downwards, more than would normally be expected for a passenger lift in the Tribunal's experience.

The Application

9. By an application dated 10th November 2008 the Applicant landlord through its agents Heritage Management Limited ("Heritage") applied for an order dispensing with all of the requirements of section 20 of the 1985 Act in relation to proposed works to two lifts at Tudor Lodge Mansions St Monica's Road Kingswood Surrey KT20 6EX. ("the property") to a total cost of £5,369.75. It was clarified at the hearing these works were those described in the e-mail from 21st Century Lifts Limited dated 3rd November 2008 (16.46). These works will be described in these Reasons as "the proposed works".

10. On 26th November 2008 written directions were given for the determination of that application. One of the directions was that if any of the Respondents wished to confirm any matter which was accepted and those matters are not agreed they should do so in writing. There was no record of any response from any of the Respondents apart from a form completed on behalf of Mr and Mrs. Bendig of Flat 9 on 02 12 2008 indicating that they would not attend. The Tribunal's record showed that the application was

served on each of the 16 lessees in the schedule attached to the application and that each lessee was notified of the hearing by letter of 1st December 2008.

11. In the absence of any written confirmation the Tribunal was unable to proceed on the basis that the application was agreed, although it appeared to be unopposed.
12. In addition to the documents accompanying the application (including the e-mail from Steve Hunter of 21st Century Lifts Limited to Philip Cobb dated 3rd November 2008 and the lift engineering reports concerning the lifts at the property dated 21st August 2008 prepared for Allianz Insurance company) a further bundle of documents was submitted by Phillip Cobb on behalf of the Applicant. This consisted of 16 enclosures behind an unsigned and undated document entitled "Statement of Works required to the Lifts and paginated Enclosures".

The hearing

13. Phillip Cobb gave evidence that it was he who had prepared the application and the bundles. He was Associate of the Institute of Residential Property Management and Heritage was a member of the Association of Residential Managing Agents. The following points emerged from his oral evidence and the written evidence tendered by him.
14. The property had been managed by Huggins Edwards & Sharp ("HES"), a firm of agents in Great Bookham, until Heritage took over the management on 1st June 2008.
15. On 13th March 2008 quotations for lift works at the property were provided by Pickering Lifts to HES.
16. During the course of the inspection by Pickering or their agents an incident occurred which caused damage to the top of one of the lifts and the need for additional works. There was a dispute as to responsibility for that damage. The Tribunal was told Pickering's did not accept responsibility for the damage. The precise details of the damage and the liability for the same caused were not investigated by the Tribunal.
17. On 13th June 2008 the lift engineering insurers Allianz (then obtained through Oval Insurance broking) renewed the insurance for the lifts at the property for the period 13 06 2008 to 24 03 2009, subject to terms.
18. In July 2008 Heritage arranged for a 21st Century Lifts ("Century") a lift maintenance company to provide a quotation for a service and maintenance of the lifts at the property. That quotation was accepted by the Applicant. A new service agreement entered into by the Applicant with Century on 31st July 2008. That agreement is not the subject of this application.

19. On 20th August 2008 engineers inspected the lifts on behalf of Allianz and prepared a partly written “emergency” report in relation to both lifts. In relation to Block A described as including Flats 10-16 (which the Tribunal reads should have been Block B) they recommended works to the broken safety work within one month. In relation to the lift in Block A (which the Tribunal reads should have been Block B) they were unable to inspect as one of the controls was inoperative. They offered to inspect following repair. Typed reports followed from Allianz for each lift on 21st August 2008. The typed report in relation to what Allianz called Block A made a number of recommendations for works and recommended a further lift examination at the latest by 20 02 2009. The typed report in relation to what Allianz called Block B (Flats 1-9) also made a number of recommendations for works.
20. All of the Allianz reports inaccurately described the name of the user as “SS Property management & Hechen Homes. Mr Cobb thought this was a simple clerical or administrative error or no significance as those names had nothing to do with the property. There was no need for the Tribunal to reach a finding on that issue.
21. Further inspections of the lifts were carried out by Century in September 2008. Century reported by e-mail on 3rd November 2008 in which they said they had received the lift insurers’ reports. Century use the numbering and description of the Blocks and Flats which is adopted in these reasons.
22. By e-mail of 6th November 2008 Century explained that a number of its recommendations concerning lift works were required in its view to comply with the Health and Safety Act Work Act 1974 and the Provision and Use of Work Equipment Regulations. It seems likely this was a reference to the 1998 Regulations of that name. That e-mail also reported that one of the lifts had been withdrawn from service because of a defect which required repair.
23. Mr Cobb’s evidence (confirmed by Mrs. Staples) was that a significant number of the lessees or residents on the first floor of each block at the property were elderly with medical conditions that impaired their ability to use the stairs. As a consequence they relied upon the lifts greatly in their use of the property.
24. Mr Cobb gave evidence that there had been oil leaks from both lifts. He informed the Tribunal (and the Tribunal finds) that one of the lifts had broken down recently as the safety gear jammed which was the direct result of leaks. The Tribunal finds this was probably the incident referred to in the Century e-mail of 6th November 2008.
25. Mr Cobb gave evidence of complaints about the condition of the lift and its falling out of repair by residents at the property with a new knee replacement or a heart condition who depended upon the lift.
26. Upon questioning from the Tribunal it appeared that the Century quotation contained in its e-mail of 3rd November 2008 had not been had been circulated to all lessees by Heritage, although it had

been discussed by the directors of the Applicant. Indeed the Service charge budget for the year ended 30th September 2009 has only allowed £1500 for lift maintenance, whereas the work envisaged in that quotation would cost considerably more. Mr Cobb responded that that budget was prepared before the nature of the works to the lifts had been confirmed.

27. Mrs. Mary Staples gave evidence about a resident who lived on the first floor of Block A with breathing difficulties. This made it impossible for the resident to go up and down stairs without the benefit of the lift.
28. She also gave evidence that the lift in Block B had "got stuck" some 4-5 days earlier.
29. The Tribunal has not had the benefit of any independent expert evidence about the condition of the lifts or necessary repairs. It accordingly has had to use its own judgment and experience to evaluate the quotations, reports and other evidence about the condition of the lifts.
30. The Tribunal accepts the description of the defects and disrepair in the Century e-mail of 3rd November 2008 and finds *for the purpose of this application only* that these works need to be carried out urgently so as to ensure the lifts are in proper working order and comply with relevant legislative requirements.

The Lease

31. Before considering the exercise of its powers of dispensation, the Tribunal considered the preliminary question whether the costs of the works to the lifts were "qualifying works" within the meaning of section 20 of the 1985 Act. For this purpose the Tribunal assumed that the Leases put before it were typical of all the Leases at the property in their relevant provisions. This was the effect of Mr Cobb's evidence and the Tribunal accepted his evidence about this.
32. Section 20ZA(2) of the 1985 Act defines "qualifying works" to mean "work on a building or any other premises". The Tribunal finds works to the lifts are works to the building or other premises.
33. By clause 5(g)(i) of the specimen Lease the Applicant (in its capacity as management company) covenanted to "insure and maintain and cause to be maintained the lift in the Building and to pay all maintenance and electricity charges in connection therewith". For this purpose reference to the Building can be taken to be to each Block in the property: see clause 2 of the recitals to the Lease.

Approach to the application for dispensation

34. In the absence of any evidence of written communications from Heritage to the lessees about the proposed works the Tribunal finds there was non-compliance with articles 1, 2 and 3 of the 2003 Regulations.
35. However given the urgency and the nature of the works (and in particular the need for the lifts in blocks of this kind) in the circumstances described in these Reasons the Tribunal considers it is reasonable to dispense with the following parts of the 2003 Regulations articles 1 (2) (c), 1 (2) (d) and 1 (3) (invitation to tenants to make written observations in relation to proposed works) provided that the e-mail from Steve Hunter of 21st Century Lifts Limited dated 3rd November 2008 16.46 (annexed hereto) was appended to the Notice of intention to carry out qualifying works is to be served under article 1(1) of the 2003 Regulations.
36. For the same reasons the Tribunal considers it reasonable in all the circumstances to dispense with article 2 (Inspection of description of proposed works) c) article 3 duty to have regard to tenants observations), article 4 (estimates and response to observations) and article 5 (duty to have regard to observations in relation to estimates) of the part 2 of Schedule 4 to the 2003 Regulations in respect of the categories of works at the property identified in the e-mail from Steve Hunter of 21st Century Lifts Limited dated 3rd November 2008 16.46.
37. The test which the Tribunal is required to apply in deciding whether to dispense with such requirements was confirmed in *Eltham Properties Ltd v Kenny* [2008] L. & T.R. 14 Lands Tribunal 24th October 2007 at paragraphs 15 and 27. It is for this Tribunal to satisfy itself that it is reasonable to dispense with the requirements; it does not have to be satisfied that the landlord acted reasonably (as per Woodfall's Law of Landlord and Tenant at para.7.199.8). The test in section 20ZA(1) of the 1985 Act is not whether a landlord has acted reasonably but whether it is reasonable — that is in an overall sense or in all the circumstances — to make the determination applied for.
38. The Tribunal has also considered the Lands Tribunal decision in *Auger v Camden LBC* LRX/81/2007 on 14th March 2008 at paragraph 46. The Lands Tribunal in the different context of that decision held it may be a relevant consideration to the question of dispensation whether the landlord has provided a sustainable reason for dispensing with the consultation requirements of section 20 of the 1985 Act. The tribunal also had regard to principles subsequently confirmed by the Lands Tribunal in *London Borough of Camden v Leaseholders of 37 Flats at 37 Grafton Way*

LRX/185/2006 (30th June 2008) at paragraphs 32-33 where the President indicated that the overall scheme of the consultation and having regard to the observations of tenants in the provisions of part 2 of Schedule 4 to the 2003 Regulations was designed to protect tenants. In that decision he also held at paragraph 33:

“The principal consideration for the purpose of any decision on retrospective dispensation must, in our judgment, be whether any significant prejudice has been suffered by a tenant as a consequence of the landlord’s failure to comply with the requirement or requirements in question. An omission may not prejudice a tenant if it is small, or if, through material made available in another context and the opportunity to comment on it, it is rendered insignificant. Whether an omission does cause significant prejudice needs to be considered in all the circumstances. If significant prejudice has been caused we cannot see that it could ever be appropriate to grant dispensation. “

39. Applying that approach the Tribunal is not satisfied that it is reasonable to dispense with the provisions in articles 1(1) and 1(2)(a), (b) and (c) of part 2 to Schedule 4 of the 2003 Regulations. These provisions require the Applicant as landlord to give notice in writing of its intention to carry out qualifying works to each tenant and to describe in general terms the works proposed to be carried out, or provide facilities for inspection of such proposals. They also require the Applicant to state the reasons for considering it necessary to carry out the proposed works. The Tribunal has seen no evidence of any written communications between the Applicant or Heritage and the Respondents in relation to the proposed works or any works carried out. The Tribunal has not been provided with a satisfactory explanation why written communications or full compliance with articles 1(1) and 1(2)(a) – (b) of Schedule 4 of the 2003 Regulations is or was not appropriate or practicable. Compliance with those parts of the 2003 Regulations and article 6 of part 2 of Schedule 4 would go some way to enabling the Respondents to understand the rationale behind the proposed works, the cost of the works and why the particular contractor used was selected. Such an understanding may be of some importance, given the different quotations for works to the lifts which are in the bundles before the Tribunal. The Tribunal concludes that the Applicant’s non-compliance with articles 1(1) and 1(2)(a) and (b), 1(2) and 6(1)(a) of Schedule 4 of the 2003 Regulations has caused or may cause significant prejudice to the Respondents. That non-compliance may make it more difficult for the Respondents to question or subsequently challenge the reasonableness or

payability of contributions they will be required to make towards the costs of these works by reference to contemporary documentation.

40. The urgency of the works discussed in this part of the Tribunal decision would not in the circumstances make it reasonable to dispense with the requirements of articles 1(1) and 1(2)(a) and (b) of part 2 of Schedule 4 of the 2003 Regulations, having regard to the purpose of the 2003 Regulations and section 20 of the 1985 Act, namely consultation with tenants in relation to proposed qualifying works.
41. Similarly the Tribunal finds on the material available there is no explanation or justification for dispensation with the requirement in article 6(1)(a) of part 2 to Schedule 4 to the 2003 Regulations for requiring the Applicant to state its reasons for awarding the contract, or provide facilities for inspection of such reasons. It is not reasonable to dispense with that requirement in the circumstances in relation to any of the proposed works. Consultation about the identity of the contractor and the price of the proposed works goes to the very heart of the purpose of the 2003 Regulations, The Applicant has not provided any reason or any sustainable reason why this part of the 2003 Regulations should be dispensed with.

Scope of this decision

42. The Tribunal is not deciding that the cost of any of the proposed works are or will be reasonably incurred or are or will be payable by the lessees under section 27A of the 1985 Act. These issues are not before the Tribunal.
43. This Tribunal is not asked to decide whether the costs of the proposed work or of any of the works to the lifts which have been carried out are reasonable, or whether any part of those costs are payable by the Respondents as service charges under their Leases. It is only asked to decide the question of dispensation of the requirements of section 20 of the 1985 Act and of the requirements of the 2003 Regulations.
44. It is not this Tribunal's task to decide what works are necessary, or whether there is any risk to the health or safety of the Respondents or any occupant or visitor to the property, or a risk of future problems with the lifts. Nothing in this decision should discourage all of the parties from taking appropriate independent professional advice perhaps from a surveyor or relevant local authority if they have any concerns, in this respect. The evidence and information available to the Tribunal was too limited to enable a definitive view to be reached on these risks and the works which might be needed to address these issues.

45. The Tribunal was only able to take into account the evidence available to it at the date of the hearing and its findings on inspection of the property. Should any further evidence of significantly different character come to light the Applicant is of course at liberty to make a further application for dispensation in respect of any relevant qualifying works, which will of course be considered on its own merits.

Howard Lederman

Signed : Mr. H D Lederman
Chairman *27th*
Dated: ~~22nd~~ January 2009