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Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, Section 20ZA ('the Act')

Case reference: LON/OOAG/LDC/2010/0083

<u>Premises</u>	New College Court, Finchley Road, London NW3 5EX
<u>Applicants</u>	City and County Properties Ltd (managing agents) on behalf of Freshwater Property Management Limited
<u>Representation</u>	Mr T Leigh, solicitor of Hammond Bale, solicitors and Mr M Shelvin, building surveyor of Freshwater Property Management Limited
<u>Respondents</u>	All the leaseholders at New College Court
<u>Representation</u>	None and no appearances
<u>Date of Hearing</u>	27 September 2010
<u>The Decision</u>	<p>The application seeking an order under section 20ZA of the Act dispensing with the consultation requirements in section 20 of the Act for the costs of the temporary boiler is allowed.</p> <p>The application seeking an order under section 20ZA of the Act dispensing with the consultation requirements in section 20 of the Act for the costs of the replacement boiler is refused.</p>
<u>Date of Decision</u>	22 October 2010
<u>The Tribunal</u>	James Driscoll (Lawyer Chair), Alison Flynn MA MRICS

Introduction

1. This is an application for an order dispensing with the statutory consultation requirements in section 20 of the Act and in the regulations made under that section of the Act. It is made by the managing agents who are employed by the freeholders of a block of flats who are also the landlords under the long leases of the twenty flats in that block. The respondents are the leaseholders of the flats. The block consists of a six-storey building with three ground floor shops and twenty flats on the upper floors.

2. The application relates to the costs of installing a temporary boiler and a replacement boiler. At the hearing of the application we were told that neither the managing agents nor the landlord had consulted the leaseholders over these proposed works. Instead the applicants ask the tribunal to exercise its discretion to dispense with the requirements.

3. At the hearing we were addressed by Mr Leigh a solicitor representing the applicants and by Mr Shevlin who works for the landlords but who is not directly responsible for the management of this property. Mr Shelvin told us that both the supply of hot water and heating is supplied to the flats by an external boiler. The boiler is located in another building. The heating is only supplied during the autumn and winter periods. He could not give us the exact dates. Hot water is supplied throughout the year.

4. Mr Leigh prepared a bundle of documents which we considered along with his submissions. Based on this, the brief history of this matter may be summarised in the following way. In January 2010 a firm called William Austin Engineering Services Ltd wrote to Steve Thomas who is employed by the landlords about the boiler. (The copy of the letter provided to us is of poor quality and we cannot make out the exact date. Mr Leigh does not have a better copy).

5. In this letter the firm gave a quotation for the replacement boiler of £10,996. The letter stated that this would be for the 'replacement ..the existing boiler'.

6. There appears to have been no action taken by the landlords or the managing agents. Mr Shevlin suggested that it may have been decided not to replace the boiler right away until the existing boiler failed. The bundle also includes a copy of another letter dated 21 April 2010 from another firm (but their name does not appear on the copy) with an estimate for the replacement of £16,850 (plus VAT). No action appears to have been taken on this quote.

7. We have a copy of an email sent to Steve Thomas dated 15 July 2010 from Dawn Cooke giving a quote of £14,612.88 (plus VAT) for '..the hire of the temporary boiler'). Ms Cooke describes herself as the office supervisor for a company called 24 Hour Heating Services Limited.

8. The landlord's representatives told us at the hearing that they understood that the old boiler broke down in June 2010 as a result of which no hot water was available for a period of time. The bundle includes a letter from the landlords sent to the leaseholders dated 11 June 2010 about the non-supply of hot water. We were told at the hearing that the replacement boiler works have started and are expected to be completed shortly. After the hearing we received an email from Mr Leigh stating that the works for the replacement boiler started on 17 June 2010. The application to the tribunal under section 20ZA of the Act is dated 16 July 2010. It includes a statement that no consultation has taken place and that dispensation is sought to 'urgently' replace the old boiler.

9. Neither Mr Leigh nor Mr Shelvin could offer any explanation for the failure to consult except to make the point that the landlord is responsible for the supply of hot water and heating.

10. In these circumstances it is difficult to see on what basis the non-compliance with the consultation can be justified. As we pointed out the statutory consultation could have started in January 2010 or at the latest in June 2010 when the old boiler eventually broke down. In light of Mr Leigh's post-hearing communication that the new boiler works were started in July it appears that the application to this tribunal was made after the decision was taken to start the works.

11. We were also troubled that the full costs of the works appeared to be unavailable at the hearing. The costs included supplying a temporary boiler and the costs of replacing it with a new boiler. The landlords have not consulted over this either. There is no explanation for this, other than the point that the landlord has the responsibility to supply hot water and heating (the latter during the colder parts of the year).

12. There is also the issue of the possible prejudice to the leaseholders. We can assume that they became aware of the disruption to the hot water supply in the summer (though we note from the list of names supplied by the landlord and attached to the landlord's application to the tribunal that some of the leaseholders have sublet their flats).

13. The tribunal sent each leaseholder a copy of the directions given on 25 August 2010. In the landlord's bundle are copies of letters sent by the landlord's solicitors following the directions enclosing a copy of an inspection report, two estimates for the temporary boiler and one estimate for the boiler replacement.

14. No comments were sent to the tribunal and Mr Leigh told us that his clients had no communications either. However, we do not think that we can conclude that the leaseholders have formed any particular view on what has happened. However, they may well have suffered prejudice; for example, they were not told of their right to nominate other contractors who might have bid for the work and they were not invited to comment on the landlord's proposals (and were not, so far as we can tell, made aware of them).

15. To summarise, the faults with the old boiler became apparent to the landlords at the latest in January 2010. No action was taken until that boiler broke down in June 2010. A decision was taken to fit (if that is the right word) a temporary boiler until the replacement could be fitted. The landlords did not engage the leaseholders in the consultation process required by section 20 of the Act and in the regulations made under that section. They applied to this tribunal after the decision was taken to install a new boiler.

16. We accept, though, that last June the landlord had to act quickly to restore the hot water supply so that the failure to consult with the leaseholders over the fitting of the temporary boiler was explicable. We, do, therefore, exercise our discretion to dispense with the required consultation for the costs involved in the temporary supply of hot water by the installation of the temporary boiler. The costs of that does concern us but we consider that this is a matter for the leaseholders to raise (if they think it appropriate) when they receive their service charges demands for that part of the work. In other words our decision to dispense with the consultation requirements does not prevent any leaseholder challenging the reasonableness of the costs in respect of the temporary boiler or whether they are recoverable under the terms of their leases.

17. We cannot see any basis for dispensing with the consultation requirements for the fitting of the replacement boiler. The landlord has had since January 2010 to engage in a full consultation. Alternatively they could have made an application to this tribunal for an advance determination of the charges under section 27A of the Act. In making such an application they could also have invited their leaseholders to confirm their support, or otherwise for the application.

18. To summarise, we can see no reason to dispense with the requirements for the replacement boiler. The potential prejudice to the leaseholders has been referred to throughout this decision and is summarised in paragraph 13 above. We are conscious of the financial implications this carries for the landlords: recovery of the costs of the replacement boiler from the leaseholders is capped at £250 per leaseholder. However, this is a result of the legislation that as amended (by the provisions in Part 2 of the Commonhold and Leasehold Reform Act 2002) recovery of charges is limited under section 20 unless the consultation requirements have been complied with or dispensed with by this tribunal.

Signed:

(James Driscoll, Lawyer Chair)

Dated: 22 October 2010.