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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 20ZA OF THE LANDLORD AND TENANT ACT 1985 (as amended)

Case Reference:	LON/00AM/LDC/2012/0083
Premises:	96 Lauriston Road London E9 7HA
Applicant:	Hamilton King Management Limited
Representative:	None
Respondents/leaseholders:	Miss M Wong (Basement & Grd Flr Flat- 96a) Mrs Louise Balint- Kurti (Grd Flr Flat- 96b) Mr M Frankel (First Flr Flat- 96c) Miss D Patel(Second Flr Flat- 96d)
Representative:	None
Date of hearing:	28th August 2012
Appearance for Applicant(s):	None
Appearance for Respondent(s):	None
Leasehold Valuation Tribunal:	Mrs N Dhanani LLB(Hons) Mr M C Taylor FRICS MAPM
Date of decision:	28 August 2012

The Tribunal grants an order dispensing with the consultation requirements imposed under s.20 of the Landlord and Tenant Act 1985 in respect of the emergency roof works to the Premises.

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a dispensation of the consultation requirements imposed under s.20 of the 1985 Act and set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "2003 Regulations") in respect of emergency works to the roof of the Premises.

The hearing

2. The parties did not request a hearing and so the application was decided by the Tribunal on the papers alone.

Background:

3. The Premises is a four storey end of terrace property converted into four flats.

4. The Applicant is the managing agent of the landlord. The Applicant claims the roof of the Premises is allowing water to penetrate the top floor flat and that urgent repairs are required as the water ingress is causing damage to the top floor flat.

Directions:

5. The Tribunal issued Directions in the matter on the 20 July 2012 and the matter was set down for a decision in the week commencing 27 August 2012.

Inspection:

6. The Directions issued did not provide for an inspection of the Premises and no request for an inspection was made by either party.

The Applicant's Case:

7. The Applicant states that rainwater is penetrating Flat D and internal damage caused as a result. The Applicant states that the roof has been inspected from ground level but scaffolding is required to gain safe access in order to undertake a further inspection. The Applicant claims that it appears that some slates have slipped but until access can be gained they cannot be certain as to the full extent of works required. The Applicant seeks a dispensation of the consultation requirements as they state that it is unreasonable to expect the leaseholder to experience any further water ingress whilst the s.20 Notices are served.

8. The Applicant has produced a copy of a first stage consultation notice dated 16 July 2012 which it claims was sent to all the leaseholders. The Notice informed the leaseholders that urgent works to the roof were necessary to maintain and repair the Premises in accordance with the terms of the lease and as the top floor flat has water ingress. The Notice informed the leaseholders that the works require the erection of a scaffold to gain access to the roof and to replace slates and any other works that may be necessary once the roof can be accessed.

9. The Applicant has produced a copy of the lease relating to the top floor flat as a sample lease.

10. The Applicant states that the works require the replacement of all broken/slipped slates to the front and back elevations of the roof.

11. The Applicant has produced quotes from Aldenham Roofing contractors and Pro Tech Property Solutions in respect of the works.

The Law:

12. **s. 20** of the 1985 Act provides that:
"(1) Where this section applies to any qualifying works....., 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) a leasehold valuation tribunal."

13. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) a leasehold valuation tribunal.

14. "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of

tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

15. **s. 20ZA** of the 1985 Act provides:

> *"(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."*

16. Under Section 20ZA(1) of the 1985 Act, "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 ... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements". The basis on which this discretion is to be exercised is not specified.

The Tribunal's decision:

17. The Tribunal needs to consider whether it is reasonable to dispense with the consultation. Bearing in mind the purpose for which the consultation requirements were imposed, the most important consideration being whether any significant prejudice has been suffered by a leaseholder as a consequence of the failure to consult in terms of a leaseholder's ability to make observations, nominate a contractor and or respond generally.

18. The Tribunal having considered the evidence is satisfied that proposed works are qualifying works to which the provisions of s. 20 of the 1985 Act and the 2003 Regulations apply. The landlord has not complied with the consultation requirements set out in the 2003 Regulations. However, the Tribunal is satisfied that the proposed works are of an urgent nature and are for the benefit of the interests of both landlord and leaseholders in the Premises. The leaseholders have not made any representations.

19. The Tribunal has taken into consideration that the leaseholders have not had the full opportunity for consultation under the 2003 Regulations. However, the works are urgent and the Applicant has taken reasonable steps in the circumstances and time available, to provide the leaseholders with relevant information and an opportunity to make observations and to comment.

20. The Tribunal having considered the evidence is satisfied that it is reasonable to dispense with the consultation requirements in this case. In the circumstances, the Tribunal makes an order that the consultation requirements are dispensed with in respect of the proposed roof works. In doing so, it is important to note that the Tribunal does not make any

findings as to the reasonableness of, or the liability to pay the actual or estimated costs of the works.

CHAIRMAN: Mrs N Dhanani LLB (Hons)

DATE: 29 August 2012