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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20ZA OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON /00AB/LSC/2013/0143

Premises: 107 Fanshawe Avenue Barking Essex IG11 8RF

Applicant Raman Limited

Representative: Circle Residential Management Limited

Respondent(s): (1) Mr M Nawaz
(2) Mr V Piliciauskas

Representative: Not represented

**Leasehold Valuation
Tribunal:** Mr P L Leighton LLB Hons
Mrs S Justice BSc

Date of decision: 22nd April 2013

Decisions of the Tribunal

- (1) The Tribunal determines that it is reasonable to dispense with the provisions of Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) Regulations 2003 in so far as they apply to the works of repair to the premises at 107 Fanshawe Avenue Barking Essex IG11 8RF("the property")
- (2) The Tribunal determines that the costs of repairs to the section of wall and associated works at the said premises in the sum of £540 is reasonable and payable by the Respondents in respect of the service charge year 2013.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges and whether payable by the Respondent in respect of the service charge year 2013.
2. The Applicant also seeks dispe from the provisions of Section 20 of the 1985 Act in respect of the Service Charges Consultation Requirements Regulations 2003.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Directions provided for a paper determination.

The background

5. The property which is the subject of this application is a semi-detached property consisting of two self contained flats.
6. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. Photographs of the damaged areas were exhibited by the Applicant.
7. The Respondents hold long leases of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.
8. clause 2 (3) (1) of the lease provides

"The lessee here by covenants with the lessor as follows: –

to pay to the lessor by means of yearly payments payable on the 24th of June any service charge equal to one half of the expenses of

(a) repairing cleansing building and maintaining the main walls timbers and main structure (including the foundations) of the building the roof chimney stacks gutters and rainwater pipes used or to be used in common by the occupiers of the other flats in the building

(b) repairing cleansing building and maintaining all party walls all party roads fences pathways passages sewers drains pipes watercourses and other easements servicing the flat and the building."

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the cost of repairing an exterior wall, concreting an external pathway and securing a cable to the wall in the sum of £540;
 - (ii) Dispensation from the provisions of Section 20 of the Act and the Service charge Regulations on the grounds that the works were urgent and necessary.

10. Submissions were received on behalf of the Applicant but the Respondents have neither objected to the application nor made any submissions to the tribunal. Having read the submissions from Ms Carol Nelson on behalf of the Applicant and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Dispensation

11. The information supplied by the applicant in respect of the repairs is somewhat sketchy. It is stated that the managing agents inspected the property and discovered the wall in a dangerous condition. It is not stated when this inspection was carried out although estimates were obtained on 27th January 2013 and 14th February 2013. No details of the extent of the inspection are given.

12. A notice of intention was sent to the Respondents on 1st February 2013 and a second notice after having received the estimates on 4th April 2013.

13. An opportunity was given for the Respondents to make representations in respect of the need for the works and also to nominate an alternative contractor.

14. The Respondents made no representations nor offered an alternative interactive and none have opposed the application.
15. The Tribunal determines that the main elements of the consultation regulations have been complied with but that in the interests of urgency the tribunal will dispense with the remaining provisions although the period for making representations in respect of the second notice has not yet expired.
16. In all the circumstances and having regard to the fact that the amounts due from the Respondents are only marginally in excess of £250 and have not been challenged the Tribunal considers it reasonable to dispense with further requirements.

The Cost of Repairs

17. The Applicant has obtained two estimates from contractors in respect of the works. The estimate from the first contractor, P McGuinness Decorators and Maintenance, is in the sum of £540 and the second from Haywood Property Services is in the sum of £1300.
18. The Applicant proposes to accept the estimate from the lowest tenderer and is anxious to proceed with the work. Having regard to the fact that the work has been competitively tendered and that both estimates are in respect of the same elements of work the tribunal considers it reasonable for the applicant to accept the estimate of £540 which represents a reasonable price for the work.

Chairman: Peter Leighton

Date: 22nd April 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 20ZA

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.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).