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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LON/00BJ/LDC/2013/0098**

Property : **42 Culverden Road, London SW12
9LS**

Applicant : **Production Technology Consultants
Ltd**

Representative : **Mr A Behchet**

Respondent : **The leaseholders as per the
schedule attached to the
application and this decision**

Representative : **None**

Type of Application : **For dispensation of the
consultation requirements under
section 20ZA**

Tribunal Members : **Judge O'Sullivan
Mr Jarero BSc FRICS**

**Date and venue of
Hearing** : **13 November 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **14 November 2013**

DECISION

The tribunal's decision

The application for dispensation under section 20ZA of the Landlord and Tenant Act 1985 is refused.

The application

1. The Applicant seeks an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") for the dispensation of any or all of the consultation requirements.
2. The property concerned comprises a four storey building comprising four flats known as 42A, 42B, 42C and 42D Culverden Road, Balham London SW12 9LS (the "Property") and the application is made against the various leaseholders in the schedule attached to the application form (the "Respondents").
3. The issue in this case is whether the consultation requirements of section 20 of the 1985 Act should be dispensed with. In the application the Applicant says that urgent works are required to prevent dampness from entering into the basement flat known as Flat 42A (the "Basement Flat") which is suffering from water penetration when it rains. In turn the Applicant says that this causes the power to "*short-out*" as water is seeping through the tiles in the kitchen walls including those containing electrical cables.

The background

4. The application was dated 24 September 2013. Directions were made dated 3 October 2013 which provided for the Applicant to serve a statement of case on the Respondents and for them to then indicate whether they consented to the application and wished to have a hearing.
5. Only one leaseholder has objected to the application.

The hearing

6. The matter was considered at a hearing on 13 November 2013. It was attended by Mr Behchet, director of the Applicant company and Mr Watson, the leaseholder of Flat 42C.
7. The Tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

The issues

8. The only issue before the Tribunal is whether it should grant dispensation from all or any of the consultation requirements contained in section 20 of the 1985 Act.
9. The Applicant had filed a bundle in accordance with the directions.
10. The Applicant says that the problem has been investigated and it appears there are 3 issues requiring urgent attention;
 - (i) There is a leaking gutter near the kitchen of 42A
 - (ii) The front steps are in poor condition and water is coming from the front steps of the Property
 - (iii) Works are required to internal or external walls to eradicate damp in the Basement Flat.
11. The Applicant says that it has consulted and obtained estimates in respect of the works to be carried out and that all information has been passed on to the leaseholders. However it appears that the notices served do not provide a 30 day consultation period and dispensation is sought in this regard.
12. The works specified in the Stage 1 notice are stated as;

“To carry out all works to internal or external walls to eradicate the damp in the basement flat; and all necessary repair work to the front steps or to asphalt the steps to prevent the water ingress to the basement; to inspect and clear out the gutters and carry out repairs to ensure that they are all leak free”.
13. The tribunal heard from Mr Behchet that the problems had first been identified in July 2013. The leaseholder of the Basement Flat had carried out some works in or around July 2013 including some damp works but these had proved ineffective. Mr Behchet then obtained various quotations to deal with the problems he had identified as set out at paragraph 10 above. Following this the landlord had commissioned the surveyor’s report of Mr Macswayed which had not been included in the bundle but had been sent to the tribunal shortly before the hearing. This identified that the Property was generally in disrepair and in need of extensive external and internal repairs and redecoration. A section 20 notice was served in respect of these works on 8 November 2013.

14. The items which are the subject of this application were identified in that report but were not particularised as being of an urgent nature. When asked why these works had been considered urgent and had not been left to be dealt with as part of the major works contract Mr Behchet informed the tribunal that he considered these works urgent as the Basement Flat was suffering from extreme damp. He accepted that this was unlikely to have happened overnight and that the Basement Flat must have been suffering from damp issues for some time.
15. The Applicant relied on various photographs to evidence what it said were severe damp problems in the Basement Flat. The majority of the photographs were undated although some were dated 31 October 2013, it was unclear whether this was the date upon which they were taken or printed. These showed variously mildew growing on items of clothing, flaking paintwork and internal walls in disrepair. It was agreed that the photographs evidenced problems occurring due to both damp and condensation caused by the failure of the occupier to properly ventilate the flat.
16. The tribunal spent some time considering the recommendations made in the surveyor's report and the quotations obtained from the various contractors. It became clear that neither the various contractors who had provided quotations nor the surveyor agreed on the scope of the works required to remedy the problems.

The Respondents' position

17. The directions provided for any Respondent who wished to oppose the application for dispensation to serve a statement of case. None of the leaseholders served any statements of case. The leaseholders of flats 42A, 42B and 42D returned forms to the tribunal indicating that they did not oppose the landlord's application. The leaseholder of Flat 42C . Mr Watson, has indicated in the reply form that he opposes the application but did not serve a statement of case as directed in advance of the hearing. A statement of case was provided at the commencement of the hearing and Mr Behchet was given a brief adjournment to read this.
18. Mr Watson informed the tribunal that Flat B is owned by the freeholder. Flats A and D are currently in the hands of receivers. He suspected that the freeholder was attempting to push through works without proper consultation before the flats were sold. This was denied by Mr Behchet.
19. Mr Watson's main submission is that it had not been shown that the works which are the subject of the application are urgent. He further argued that there should be a full consultation process which would enable leaseholders to take a full part in the major works programme.

20. The tribunal also heard evidence from Mr Watson in relation to his conversations with the tenants of the basement flat and he alleged that he had been informed that the problems with the Basement Flat were minor. However as this evidence was hearsay the tribunal could place no weight on this.

The Tribunal's decision

21. The Tribunal determines that in the circumstances of this case no order from dispensation under section 20ZA of the 1985 Act shall be made dispensing with all of the consultation requirements in relation to the works outlined above.

Reasons for the Tribunal's decision

22. The tribunal has the jurisdiction to grant dispensation under section 20ZA of the 1985 Act "*if satisfied that it is reasonable to dispense with the requirements*".
23. We were not satisfied that the works identified were of such an urgent nature that we should use our discretion to dispense with the consultation requirements. The tribunal had very little evidence to show the urgent nature of the works. The surveyor's report had not identified the works as being of an urgent nature and portrayed a picture of a property in general disrepair due to lack of proper maintenance. It was clear that there had been a damp problem at the property for some considerable time. However the Basement Flat had been recently let. No evidence had been obtained directly from the tenants to inform the tribunal as to their experience of living at the property.
24. In addition the tribunal was concerned that the landlord had approached the problem in the wrong way. It was clear that there are issues with damp and water leaks at the property which require attention. However rather than having a scope of works prepared when the problems became evident in July 2013, Mr Behchet obtained a number of quotations. All of these sought to deal with the problems in different ways. It was not until 31 October 2013 that the landlord obtained a full specification by a surveyor which set out a recommended scope of works.
25. In his submissions Mr Behchet for the Applicant also asked the tribunal to make various other rulings in relation to costs. It was unable to do so under the present application. On an application under section 20ZA the Tribunal would stress that it is not making any assessment of the reasonableness of the charges and any associated costs and a challenge to those charges may be raised pursuant to section 27A of the 1985 Act in the future.

26. Although the issue of payability is not before the tribunal in this application the tribunal would note that issues may arise as to whether part of the cost of the proposed damp works fall as the responsibility of the leaseholder of Flat 42A. If this issue cannot be agreed between the parties this together with the reasonableness of the costs may also form the basis of a separate application under section 27A of the 1985 Act at a later date.
27. The tribunal hereby orders that the Applicant shall serve a copy of this decision on each leaseholder.

Name: S O'Sullivan

Date: 14 November 2013