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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AL/LDC/2012/0045

Premises: 13 Vicarage Park, Plumstead,
London SE18 7SX

Applicant: Freehold Securities Ltd

Representative: GH Property Management Services Ltd

Respondents: Mr GB Ward (Flat A)
Ms LJ Davies (Flat B)
Mr A Tallett (Flat C)

**Leasehold Valuation
Tribunal:** Mr NK Nicol
Mr JF Barlow JP FRICS

Date of decision: 18th June 2012

Decision of the Tribunal

The Tribunal has decided not to grant to the Applicant's application for dispensation from the statutory consultation requirements.

The application

1. The Applicant is the freeholder of the subject property at 13 Vicarage Park, Plumstead, London SE18 7SX and the Respondents are the lessees of the three flats in that property.
2. By letter dated 21st November 2006 Sylvia Purnell, the owner of a neighbouring property, number 14, complained that her property had suffered from extensive damage due to water emanating from Flat C at the subject property.
3. According to a letter dated 18th September 2011 from Aneta and Fabio Granja, the residents of Flat 1 at number 14, they started to smell damp in their home in March 2011 which they identified as coming from a broken sewage pipe at the subject property. They say they tried on numerous occasions in April 2011 to contact Leasehold Property Management who they understood to be responsible for the management of the subject property, but "with no luck". They complained to the local authority, the London Borough of Greenwich, who also contacted Leasehold Property Management about the issue. Mr and Mrs Granja asked for the problem to be fixed as soon as possible.
4. Mr and Mrs Granja wrote again on 2nd October 2011, apparently in reply to a letter dated 26th September 2011, specifically identifying the problem as a broken sewage pipe running from the third floor to the ground floor.
5. By e-mail dated 11th October 2011, Kayleigh Cretten of Leasehold Property Management wrote to a Robert Gunstone asking him to attend the subject property to inspect the guttering/pipe issue there. Mr Gunstone replied on 20th October 2011 that there had been a delay because he had been waiting for scaffolding to quote the cost to renew all woodwork to barge boards and soffit boards, plus renewing guttering including downpipes and hopper at a cost of £3,875.
6. Works were then carried out in November 2011 apparently resulting in the following invoices:-
 - a) On 23rd November 2011 Drips and Drains Plumbing & Drainage Services invoiced Leasehold Property Management c/o GH Property Services for £2,640, including VAT, "To carry out repairs to inside drain internal of flats in hallway."
 - b) On 9th December 2011 RJ Dyer Building & Maintenance Services invoiced GH Property Management Services Ltd for £85 for an "Inspection and consultancy fee" following a site visit to inspect work carried out to a soil pipe.

- c) On 9th December 2011 Leasehold Property Management Ltd invoiced 13 Vicarage Park Management Co Ltd c/o GH Property Management Services Ltd for £2,640, including VAT, for "Maintenance Charge Repairs to 13A-C Vicarage Park".
 - d) On 12th January 2012 Leasehold Property Management Ltd invoiced GH Property Management Services Ltd for £3,420, including VAT, for "Maintenance Charge".
 - e) On 1st February 2012 GH Property Management Services Ltd invoiced Leasehold Property Management Ltd for £606, including VAT, for fees for supervising external repair works, calculated at 10% of the total net contract sum of £5,050.
7. On 24th April 2012 the Applicant ("c/o Leasehold Property Management Ltd c/o GH Property Management Services Ltd") made the current application under s.20ZA of the Landlord and Tenant Act 1985 for dispensation from the consultation requirements under s.20 of the Act and the Service Charges (Consultation Requirements) (England) Regulations 2003. The Tribunal issued directions on 1st May 2012 providing for the application to be determined on the papers without a hearing. No-one requested a hearing so the Tribunal proceeded to determine the application on the basis of papers sent in by the Applicant from which the above information has been taken.
8. The Tribunal's directions also provided for the Respondents to indicate whether they opposed the application and to make representations. Only one of the Respondents, Ms L Davies of Flat B, took that opportunity. By letter dated 12th May 2012, she indicated that she did not oppose the application but made a series of complaints about the management of the maintenance of the property, including that she had been unable to get satisfactory responses from Leasehold Property Management in relation to problems she was having with water leaks from Flat C and insurance claims resulting from them over a period of 2½ years.

The Tribunal's consideration

9. The Tribunal has the power to dispense with the statutory consultation requirements if satisfied that it is reasonable to do so. This is not a power to be taken lightly. The consultation requirements do not only provide protection for lessees in relation to what can be substantial expenditure but also provide for a rational decision-making process which should enable better decisions to be made by landlords and their agents about the maintenance of relevant properties. On the other hand, if dispensation is not granted from the requirements in circumstances where they have not been complied with, the recoverable expenditure is limited to £250 per flat, which can leave a landlord seriously out of pocket.
10. As the Tribunal understands it, the Applicant's case is that necessary works had to be carried out in a timescale too short to allow for full compliance with

the statutory consultation requirements. However, there is a number of problems with the evidence in support:-

- a) It is not clear what the Applicant believes the relevant problem to have been. The papers refer to a sewage pipe, apparently running down the outside of the building. However, the Applicant appears to have been notified of this problem some time between April and September 2011, in plenty of time to have complied with the statutory consultation requirements before the works were actually carried out in November 2011.
 - b) Further, the invoice from Drips and Drains (paragraph 6a above) refers to internal, not external works.
 - c) The invoice from RJ Dyer (paragraph 6b above) would appear to overlap with the supervision fees charged by GH Property Management Services Ltd (paragraph 6e above).
 - d) There is an invoice from Leasehold Property Management Ltd to 13 Vicarage Park Management Co Ltd c/o GH Property Management Services Ltd (paragraph 6c above). The amount would appear to replicate that from Drips and Drains but the description of what the charge is for is so brief that it is impossible to tell whether the two relate to each other. Further, it is not clear why there is a reference to a management company – this is the only reference so the Tribunal does not know if this is a mistake or there is another party involved.
 - e) There is a further invoice from Leasehold Property Management Ltd to GH Property Management Services Ltd (paragraph 6d above). The Tribunal has no idea what this is for. E-mails refer to work to barge boards and soffit boards (paragraph 5 above) but there is no evidence that these works were in any way urgent.
 - f) Further, there is no explanation as to why the Applicant's two agents are invoicing each other or even why there are two.
11. Even where works have to be done urgently, that is not a sufficient reason for all of the statutory consultation requirements to be junked in their entirety. Landlords will always be more likely to obtain dispensation the closer they match the requirements. However, in this case there is no evidence of any specification of works (which could also be used in a tendering process), any pre-works estimates or quotes or of any consultation of any kind with any of the Respondents other than an unspecified threat of legal action and an oblique reference from Ms Davies to being harassed by Leasehold Property Management.

Conclusion

12. Paragraph 3 of the Preliminary section of the Tribunal's directions order specifically warned the Applicant that the Tribunal may be reluctant to grant dispensation in the absence of more detailed information. In the Tribunal's opinion, the Applicant has failed to have proper heed to this warning. Their evidence falls woefully short of establishing that it would be reasonable to dispense with the statutory consultation requirements.

Chairman: N.K. Nicol
NK Nicol

Date: 18th June 2012