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Residential Property
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LONDON RENT ASSESSMENT PANEL

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

Case Reference:	**LON/00BE/LDC/2011/0119**
Premises:	Flats 1-13 121 Denmark Hill Camberwell London SE5 8EN
Applicant(s):	Southern Land Securities Ltd
Representative:	Hamilton King Management Ltd
Respondent(s):	Mr Leroy Kraku
Representative:	In person assisted by Mr Thomas Johnson
Date of hearing:	13 January 2012
Appearance for Applicant(s):	Ms Janet Di of Hamilton King Management
Appearance for Respondent(s):	
Leasehold Valuation Tribunal:	Mr S Carrott LLB Mr W R Shaw FRICS
Date of decision:	16 January 2012

Decision of the Tribunal

(1) The Tribunal determines that it is reasonable to grant the dispensation from consultation under section 20ZA of the Landlord and Tenant Act 1985, in order to allow the Applicant to carry out works for the installation of a new ram/ hydraulic jack assembly, to include transport, to the lift serving Flats 1 to 13, 121 Denmark Hill, Camberwell, London SE5 8EN.

(2) This decision does not prejudice the rights of the leaseholders to challenge the costs of the above works pursuant to section 27A of the Landlord and Tenant Act 1985.

The application

1. This is an application under section 20ZA of the Landlord and Tenant Act 1985 for a dispensation from the consultation requirements imposed by S.20 of the Landlord and Tenant Act 1985.

The hearing

2. The Applicant landlord was represented by Ms Janet Di, Head of Operations of Hamilton King Management, the Applicant's managing agents.

3. The Respondent tenant appeared in person and was assisted by Mr Thomas Johnson, a friend.

The background

4. The property which is the subject of this application is 121 Denmark Hill, Camberwell, London SE5 and consists of a six-storey block comprising 13 flats.

5. The Applicant, Southern Land Securities Ltd, acquired the freehold interest in the block in December 2009 and since that date the block has been managed by Hamilton King Management Ltd.

6. In January 2011 the lift ceased to work and since at least February 2011 the Respondent and other owners and occupiers of flats in the block have complained to the managing agents about the situation.

7. CE Lifts, with whom the Applicant has a maintenance contract inspected the lift and provided a quotation for the necessary works on 2 February 2011. The works were for the installation of a new ram (hydraulic jack assembly) to include transport.

8. Ms Di told the Tribunal that due to the cost of the works, the fact that the lift was relatively new (having been installed some time during 2005), and because their had been problems in the past, the managing agents wrote to the leaseholders on 16 May 2011 informed them that they would be seeking a report from a company called International Lift and Escalator Consultants (ILECs) to carry out a condition survey, reporting on its condition together with recommendations on any works needed and to provide a planned refurbishment programme for the lift.

9. On 6 June 2011 the managing agents served notice of intention on the leaseholders to carry out works to the lift and by a further letter dated 27 June 2011 the cost of those works were put at some £46,500. Between June 2011 and October 2011 no further progress was made either in terms of the consultation procedure or making sure that the lift was put in working order.

10. Ms Di was employed by the managing agents in October 2011. She was in contact with a Mr Hamilton the leaseholder of Flat 6 and so had reports of the inconvenience that was being caused to the tenants. Upon taking up her post she reviewed the circumstances relating to the lift and noted that her predecessor Ms Toson had served a notice of intention. She was mindful of the costs as set out by ILECs and considered that it was more appropriate to carry out works simply to re-commission the lift and then to examine the question of whether action could be taken either against the developer, previous owner or the subcontractor who installed the lift for the developer. In those circumstances she considered that the landlord would have to embark

(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. Most of the arguments raised by the Respondent related solely to the liability to pay and reasonableness of the cost of the works now proposed by the Applicant. The present decision is not concerned with either the liability to pay or the reasonableness of the cost of the proposed works.

17. What was however significant was the argument raised in relation to delay. As an amenity for the building, the work is urgent because of the need for access by disabled persons, and people with young children. The fact that the work has been delayed through the Applicant's failure to take appropriate action in February 2011 does not in the present case detract from that proposition. There can be no doubt that given the complaints by the leaseholders and the occupiers, the managing agents should have acted more quickly bearing in mind that the course that the Applicant now seeks to adopt was that which was first recommended to it as along ago as 2 February 2011.

18. The Courts have long recognised the serious inconvenience which may arise where lifts are not maintained: see for example **Walker v Lambeth LBC September 1992 Legal Action 21, Lambeth County Court**. This Tribunal accepts the evidence as to inconvenience that it has heard from both parties.

19. Both parties have stated, and we accept, that all the leaseholders require the works to be carried out as soon as possible. This can only be achieved if dispensation is granted.

20. Although delay is clearly a relevant and important factor when considering an application for dispensation, we consider that on the facts of this particular case, the wishes of the leaseholders outweighs this. However the mere fact that we have arrived at this conclusion should not be taken as meaning that

wherever the leaseholders agree to dispensation it should necessarily follow that dispensation will be granted. We are mindful of the fact that wherever tenants are deprived of participating in the statutory consultation process that very real prejudice is caused. We have arrived at our conclusion solely on the basis of the evidence we have heard in this particular case. There may well be other cases where delay on the facts will necessarily mean that dispensation should be refused.

21. Further, in reaching the conclusion that we have in this case, we have had regard to the examples given by Gross LJ in **Daejan Investments v Benson and Others [2011] 1 WLR 2330** as to the limited circumstances in which dispensation will usually be granted. As Gross LJ pointed out, those limited circumstances are by no means closed and despite the unacceptable delay in this case we consider that the decision which we have arrived at falls within the ambit of our discretion under section 20ZA.

22. In those circumstances we consider that it is reasonable to grant the requested dispensation. Had the leaseholders objected then we may well have refused the application given the delay on the part of the Applicant.

23. Moreover, although the Respondent had objected to this application, as we have stated above, his objection related to solely to the cost of the works in terms of liability to pay and reasonableness. He too requires the works to be carried out as soon as possible and would not wish the works to be further delayed by the period of the consultation process.

24. Accordingly we grant the application for dispensation.

Chairman: S Carrott LLB

Date: 13 January 2012