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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 SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AK/LDC/2013/0025
Premises:	26-88 Cobham Close, Sketty Close, Enfield EN1 3SU
Applicant(s):	OM Property Management Limited
Representative:	Azmon Rankohi of Peverel Property Management
Respondent:	The leaseholders of the subject flats as set out in the schedule to the application
Representative:	Mrs P Ozkiral (Flats 46, 62, 64, 66 and 76)
Leasehold Valuation Tribunal:	Mr J P Donegan (Chairman) Mr L Jarero BSc FRICS (Valuer Member)
Date of Directions:	16 April 2013
Date of Hearing:	05 June 2013
Date of Determination:	30 June 2013

DETERMINATION OF THE TRIBUNAL

A. The application for dispensation under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") is granted.

BACKGROUND

1. By an application received on 16 March 2013 the Applicant seeks prospective dispensation from some of the consultation requirements imposed on the landlord by section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act").

2. The application relates to proposed repairs to the lift at 26-88 Cobham Close, Sketty Road, Enfield EN1 3SU ("the Premises"), which is a block of 32 flats over 3 floors. There is a single lift that stops at each of the 3 floors. The Applicant is the Manager of the Premises.

3. Directions were given on 16 April 2013 and the full hearing of the application took place on 05 June 2013. The Applicant filed a bundle of documents, in accordance with the directions.

4. The Applicant's bundle included a sample lease. The lease is tripartite and requires the Applicant to provide various services and for the leaseholder to pay for these services via a variable service charge.

5. The Applicant was represented by Mr Azmon Rankohi at the hearing. He is a solicitor and is employed by Peverel Property Group ("Peverel") as a legal consultant. Mr Richard Carpenter also attended the hearing. He is a employed as a Property Manager by the Applicant. Mr Carpenter manages the Premises. Statements from Mr Rankohi and Mr Carpenter were included in the bundle.

6. The leaseholder of Flat 38 filed an objection to the application, dated 30 April 2013. Mrs P Ozkiral attended the hearing and made oral representations on behalf of the leaseholders of Flats 46, 62, 64, 66 and 76, opposing the application. The remaining leaseholders have not responded to the application.

7. The relevant legal provisions are set out in the Appendix to this decision.

THE GROUNDS OF THE APPLICATION

8. The lift first failed on 01 October 2012. Since then the contractors, Amalgamated Lifts Limited ("Amalgamated") have attended the site on a number of occasions to deal with further problems with the lift. In late November 2012 Amalgamated recommended the replacement of the control panel/controller in the lift, rather than continue to spend money on short term repairs. The lift has not been in operation since November 2012.

9. Mr Carpenter wrote to all leaseholders on 07 December 2012, advising them of the problem with the lift and Amalgamated's recommendation. The letter provided details of the anticipated cost of the work (£29,168.10 plus lift consultant's fees). This figure included Amalgamated's fees for the lift repairs to that date.

10. Mr Carpenter's letter also supplied the leaseholders with brief details of the section 20 consultation procedure and stated "*This consultation procedure would take at least 3 months to complete and, in our opinion, the works cannot wait that long because of the impact not working*". The letter referred to a possible application to the Tribunal for dispensation. On being questioned by the Tribunal, Mr Carpenter stated that in his experience a full consultation procedure normally takes 3 ½ - 4 months.

11. Mr Carpenter obtained a report from an independent lift engineer, Mr Andy Sillett of ILECS Limited, dated 17 December 2012. This recommended the replacement of the controller with a VVF microprocessor controller with new wiring, shaft switches and positioning system. Mr Sillett provided a budget for this work of £15,000 plus VAT. In addition he proposed budgets of £7,000 plus VAT for health and safety items and £1,000 plus VAT for replacing the landing pushes (for the lift). This gives a total budget of £23,000 plus VAT.

12. Mr Carpenter referred the matter to the Applicant's insurance broker, to see if the cost of replacing the controller was covered on an engineering policy. Initially loss adjusters made encouraging noises. They subsequently informed the Applicant that they did not expect the claim to fall for consideration under the policy, as the damage had been caused by gradually occurring deterioration/wear and tear. This advice was given in an email dated 23 January 2013.

13. Mr Carpenter sent a further letter to leaseholders on 18 February 2013, advising that the insurers would not provide cover for the repair works to the lift. In that letter he gave details of a quotation obtained from Amalgamated in the sum of £19,846 plus VAT and stated that the Applicant intended to make an application to the Tribunal for dispensation.

14. Mr Carpenter obtained a further quotation for the lift repairs from PIP Lift Services Limited, dated 19 February 2013, in the sum of £21,516 plus VAT. Amalgamated subsequently reduced their quotation to £18,00 plus VAT and Mr Carpenter supplied leaseholders with details of the further quotations in a letter dated 12 March 2013. That letter reiterated that the section 20 consultation would take at least 3 months, the works could not wait that long and that the Applicant would seek dispensation from the Tribunal.

15. The water engineers instructed by the Douglas & Gordon, Thomson Environmental Service Limited ("Thomson") recommended the

replacement of the hot water system in a risk assessment dated 08 January 2013. Thomson also provided an advisory/guidance letter to be issued to all residents at the Premises setting out the connection between low hot water temperatures and the positive legionella results and the risk of Legionnaires' disease. The letter also advised against showering, as the primary route of infection in a residential building would be via the inhalation of aerosolised particles created by showering.

16. The Applicant has not complied with all of the consultation requirements set out in part 2 of schedule 4 of the Service Charges (Consultation etc) (England) Regulations 2004 ("the 2004 Regulations"). In particular it has not served a formal notice of intention or statement of estimates.

17. At the hearing Mr Rankohi made the point that, with the exception of serving the formal notices, the Applicant had largely followed the section 20 consultation procedure. It has obtained an independent expert's report on the need for repairs and has obtained two quotations for the repairs, which have been benchmarked against the budget provided by the expert. Further the Applicant had kept the Respondents fully informed regarding the need for the repairs and the likely cost of the work. It had also supplied the Respondents with details of the quotes.

18. Mr Rankohi argued that it was reasonable to dispense with the full consultation procedure, given that the lift has already been out of action for over 6 months and given the additional time that full consultation would take. He pointed out that none of the Respondents had disputed the need for the lift repairs or the scope of the repairs. Rather their objections related to payment for the repairs.

OBJECTIONS

19. Mr Malde of Flat 38 wrote to the Tribunal on 30 April 2013, objecting to the application. He contends that the lift repairs should be deferred for the following reasons:

19.1 The Applicant has stated that the Respondents will contribute to the lift repairs in the proportions specified in their leases. Mr Malde, whose flat is on the ground floor, considers it unreasonable for the ground floor flats to pay similar contributions to those flats on higher floors. He asks the Applicant to consider alternative approaches to apportioning the costs, to be agreed by "*..all related parties..*" before the work is approved.

19.2 A majority of the Respondents have expressed concerns about the quotes. He asks that the Applicant obtains further quotes from independent contractors. Mr Malde referred to a petition signed by a number of the Respondents. During a short adjournment, Mr Rankohi obtained a copy of the petition and provided copies to the Tribunal and

Mrs Ozkiral. The petition is headed *"If you disagree with paying an additional £1,000 for replacing the Lift in this block, as requested in Richard Carpenter's letter dated the 07-Dec-12. Please could you complete the petition to show support..".* It appears to have been completed in December 2012. Leaseholders of 19 flats have made comments on the petition. None of them have objected to the lift repairs. Rather they have objected to contributing to the cost of the repairs or say that the repairs should be covered by insurance or paid from the reserve fund.

19.3 Mr Malde asks what work has been performed by the Applicant to justify its administration charge of 10%, which *"..seems very high and excessive*".

20. Mrs Ozkiral made oral representations at the hearing, on behalf of the leaseholders of Flats 46, 62, 64, 66 and 76. She is not a leaseholder at the Premises. Her daughter, Ms Enver, is the leaseholder of Flat 62. Her mother, Mrs Hussein, is the leaseholder of Flat 66 and her auntie, Mrs Halil, is the leaseholder of Flat 46. The leaseholder of Flat 64, Mr Dawes, is Mrs Hussein's neighbour. Mrs Ozkiral supplied the Tribunal with a letter signed by Ms Enver, Mrs Hussein, Mrs Halil and Mr Davies, dated 04 June 2013. This confirmed that they had asked Mrs Ozkiral to represent them at the hearing. The letter did not set out any grounds for opposing the dispensation application.

21. Mrs Ozkiral also supplied the Tribunal with a letter of objection from the leaseholders of Flat 76, Mrs Nita Mukim, dated 04 June 2013. During the short adjournment, Mrs Ozkiral supplied Mr Rankohi with copies of the letters dated 04 June 2013. He did not object to the letters being considered by the Tribunal but made the point he might not be in a position to respond to the matters raised in the letters, as he had not seen this previously.

22. The letter from Mrs Mukim explained that she and her husband had lived at Flat 76 (on the third floor) for 8 years and that she suffers from scoliosis and is disabled. The letter stressed the discomfort and inconvenience she has suffered since the lift has been out of order. She has had to take time off work, as she struggles to get up and down the stairs. Mr and Mrs Mukim allege that the Applicant has *"...not managed our money efficiently and if they had we would not be in this situation at present..".*

23. Mrs Ozkiral did dispute the need for the lift repairs. Rather she objected to the Respondents being charged for the cost of this work and argued that the Applicant should have sufficient monies in the reserve fund to cover the cost of the work. Mrs Ozkiral also alleged that the Applicant had wasted service charge funds on the recent redecoration of the exterior of the Premises. She contended that the lift repairs should have been prioritised, given the inconvenience suffered by the Respondents.

24. The Tribunal asked Mrs Ozkiral on several occasions if granting dispensation would prejudice any of the leaseholders that she represented. She advised that it would but could not identify any prejudice that would be suffered. Rather her concern is how the cost of the repairs will be paid and why there are insufficient monies in the reserve fund to meet this cost.

DECISION

25. In coming to their decision, the Tribunal considered the Applicant's bundle, the letters of objection and the oral representations made at the hearing. The Tribunal also considered the principles established by the Supreme Court in ***Daejan Investments Limited v Benson [2013] UKSC 14*** and focussed on any prejudice that might be suffered by the Respondents, if dispensation were granted.

26. The Tribunal concluded that the repair of the lift is urgent, given that it has been out of action since last November. The Premises are a three storey building and residents on the upper floors rely on the lift to get to and from their flats. The Tribunal considers that it was reasonable for the Applicant to investigate a claim on the engineering insurance policy before obtaining quotations for the repair of the lift and making the application for dispensation.

27. The Tribunal carefully considered the objections put forward by Mr Malde, Mrs Mukim and Mrs Ozkiral. They do not dispute that the lift needs to be repaired. Indeed Mrs Mukim criticised the length of time taken to repair the lift and Mrs Ozkiral argued that the repairs should have been prioritised. The Tribunal concluded that the repair of the lift is urgent. Further the Tribunal consider it reasonable to proceed with the work, given the recommendations made by the independent lift engineer, Mr Sillett.

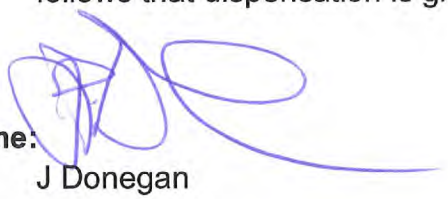
28. The Tribunal could not identify any prejudice that would be suffered by the Respondents if dispensation is granted. To the contrary they will be prejudiced if dispensation is refused, as the lift will not be repaired for several months. In the Tribunal's experience a full section 20 consultation procedure takes at least 3 months, often much longer.

29. The objections regarding the cost of the lift repairs and how these repairs should be funded can be pursued separately, in an application under section 27A of the 1985 Act, if any of the Respondents remain aggrieved. This decision does not prevent the Respondents from seeking a determination of their liability to pay for the repairs or the external redecoration work.

30. The point raised by Mr Malde, regarding the allocation of the repair costs, is a contractual matter and has no bearing on the dispensation application. The leases fix each flat's service charge contribution. There is no application before the Tribunal to vary the leases. The Applicant has no power to vary the fixed service charge contributions

unless all leaseholders agree. If there was to be a reduction in the contributions to the lift repairs for the ground floor flats then it follows that some or all of the leaseholders on the upper floors would have to pay higher contributions.

31. For the reasons set above the Tribunal have concluded that it is reasonable to dispense with the full consultation requirements in section 20 of the 1985 Act. The Tribunal also considered whether the grant of dispensation should be conditional upon the Applicant complying with any specific terms. Given that the Tribunal could not identify any prejudice that will be suffered by the Respondents, it is inappropriate to impose any conditions on granting dispensation. It follows that dispensation is granted unconditionally.



Name: J Donegan **Date: 30 June 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 20 (1)

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contribution 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

Section 20ZA (1)

(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.

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.