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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/00BE/LDC/2013/0037

Premises: 49-51 Tanner Street, London SE1 3PL

Applicant(s): 49-51 Tanner Street Management Limited

Respondent(s): All leaseholders of 49-51 Tanner Street (see List using full names in annexe]

Date of paper Determination: 26 June 2013

Leasehold Valuation Tribunal: Ms M W Daley LLB (hons)
Mrs A Flynn MA MRICS

Date of decision: 26 June 2013

Decisions of the Tribunal

The Tribunal determine that the Application to Dispense with consultation requirements be granted.

The Tribunal accordingly grants an order under section 20ZA of the Landlord and Tenant Act 1985.

The application

1. The property, which is the subject of this Application, is a purpose built block of 12 flats, situated above two shops and an office, at 49-51 Tanner Road London SE1.
2. The Applicant by an Application to the Leasehold Valuation Tribunal dated 18 April 2013 sought a dispensation from all of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985.
3. The Applicant sought a retrospective dispensation for works which had been undertaken of (in short) overhauling the Lift. The cost of the work was £3390.00 plus vat of £678.00 (total cost of £4068.00).

The Background

4. The Tribunal received the Application on 19 April 2013. Directions were given on 22 April 2013. The Directions stated that -: ... (1) *The Applicant must no later than 6 May 2013 serve on each residential leaseholder a copy of these directions. Any leaseholder who wishes for an oral hearing of the Application or who wishes to oppose the application must, no later than 20 May 2013, write to the tribunal and to the applicants informing them of his or her wishes in these respects and must send to the applicant a statement setting out in full the reasons for opposing the application, to which must be attached copies of any relevant documents.*
5. *The Directions also provided that in the event of a leaseholder indicating their objection to the cost, the Applicant would prepare a Statement (by 3 June 2013) in reply."*
6. The relevant legal provisions are set out in the Appendix to this decision.

The Issues

7. The only issue for the Tribunal is whether or not it is reasonable to dispense with all of the consultation requirements. This Tribunal does not determine any issues concerning the reasonableness of the service charge or the payability of the service charges.

The paper Determination

1. The Applicant provided The Tribunal with a bundle of documents in accordance with the directions on 12 June 2013. The Tribunal noted that none of the leaseholders, or representatives on their behalf, indicated that they opposed the application.
2. The Tribunal noted that on 5 April 2013, Defries and Associates, Managing agents for the Applicant wrote to the Leaseholders in the following terms- "*We have been informed by Technical Elevator Services that the pump motor to the lift needs a major overhaul, which will take at least four days to complete. TES removed the hydraulic oil from the tank and sent the motor for inspection by a specialist engineering company...Due to the cost involved and that these works are urgently required to get the lift working again, we will be applying to the Leasehold Valuation Tribunal for dispensation from the usual consultation process...*"

The managing agents on 16 April 2013, sent a section 20 notice in respect of their intention to carry out works. The works stated were -:

- *Remove the pump motor*
- *Rewind the motor and carry out a bench test*
- *Return the pump motor to site and reconnect*
- *Remove and replace the contaminated hydraulic oil*
- *And to dispose of the oil in an environmentally safe manner*

3. The Tribunal noted that there were no details of the occupants to the premises or any details of whether any tenants were particularly effected by the lack of lift in the premises, the only information was that provided in the Application form. In answer to the reason why dispensation was sought, the Applicant had stated that: "*... the lift is required for use, particularly by the flats on the upper floors of the building.*"
4. The Applicant had provided a copy invoice in the total sum of £4068.00
5. There was no information from the Leaseholders setting out any opposition to the work, or objections to the Application for Dispensation, or details of any any prejudice having been suffered by them as a result of the landlords not consulting in accordance with section 20 of the Landlord and Tenant Act 1985.
6. The Tribunal having considered all of the documents provided have made the following determination.

The Tribunal's decision

7. The Tribunal having considered all of the circumstances of this Application have decided that it is reasonable to dispense with the Section 20-consultation requirements.

The Reason

8. The Tribunal determine on a balance of probabilities that it is reasonable to dispense with the consultation requirements, the Tribunal note that the nature of the works were urgent. All of the leaseholders in the premises were likely to have been effected to some degree or the other by the lack of a working lift. The Tribunal also note that despite being given the opportunity to object, that no objections, have been received from the leaseholders, accordingly the Tribunal finds that there is no prejudice to the leaseholders in granting the Application for dispensation.
9. Given this, and that the Tribunal are satisfied that the works were considered to be urgent and have now been carried out, the consultation procedure ought to be dispensed with. This decision of the Tribunal is limited to the need to consult under section 20 of the Landlord and Tenant Act 1985, The Tribunal have not made a determination on the reasonableness and payability of the

service charges under section 27 A of the 1985 Act or of the cost of the Application under section 20 C of the Landlord and Tenant Act 1985.

10. The Tribunal noted that, should these matters be in issue, either party was at liberty to seek a determination from the Tribunal on these issues.

Chairman: Ms M W Daley

[name]

Date: 26 June 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

8. . S20ZA Consultation requirements: supplementary

- (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.
- (2) In section 20 and this section—
 - "qualifying works" means works on a building or any other premises, and
 - "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 - (a) if it is an agreement of a description prescribed by the regulations, or
 - (b) in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 - (a) to provide details of proposed works or agreements to tenants or the Recognised tenants' association representing them,
 - (b) to obtain estimates for proposed works or agreements,
 - (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 - (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 - (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
 - (a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament. [...]

9. The relevant Regulations referred to in section 20 are those set out in Part 2 of Schedule 4 of the Service Charge (Consultation etc) (England) Regulations 2003.

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.

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).

Mr Sutaria	Flat 1 Tanner Street
Mr Michael Lekan and Ms Patricia Mao	Flat 2 Tanner Street
Mr Timoth Monger	Flat 3
Ms Kate Hillery	Flat 4
Mr Michael Bell	Flat 5
Mr Michael Nunan	Flat 6
Mr & Mrs Flynn	Flat 7
Mr J Fensom & Mr A Oliver	Flat 8
Mr Michael Fairbairn	Flat 9
Mr A Fowles & Ms R Hurst	Flat 10
Mr Ian Shaw	Flat 11
Mr David Ellis	Flat 12