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

Case Reference : LON/00BK/LDC/2013/0108

Property : Vestry Court, 5 Monck Street,
London SW1P 2BW

Applicant : Vestry Court Limited

Representative : Rendall and Rittner Limited

Respondent : The leaseholders of the 67 flats
As set out in the annex to the
application

Representative : Hill Maithieson (Flats 8, 10, 13, 18,
20, 23, 24, 25, 27, 35, 39, 59 only, as
managing agent)

Type of Application : For dispensation from statutory
consultation requirements

Tribunal Members : Judge F Dickie
Mr A Manson FRICS

Date of Decision : 22 November 2013

DECISION

Decisions of the tribunal

The application

- 1) The Applicant landlord seeks dispensation from some of the consultation requirements imposed by Section 20 of the Landlord and Tenant Act 1985 in respect of work to completely renew the communal heating and hot water boiler. The subject premises are a building comprising 67 flats. The application was received on 11 October 2013 and directions were issued by the Tribunal on 16 October 2013 and copied by the Applicant to all the Respondent leaseholders.

- 2) The Tribunal has received written confirmation from or on behalf leaseholders of 28 of the flats that they support the application. One leaseholder, Ms Volodeva of flat 14, has objected in writing to the application. There has been no response to the application from the remaining leaseholders. The matter is for determination on the papers, no party having requested an oral hearing.
- 3) The building was completed in 1992 and the Applicant explains that these are the original boilers and that they have reached the end of their useful life. There are two boilers serving the building and it is advised that one is no longer in service due to a fault with the burner assembly unit, which is putting considerable pressure on the second boiler and as a result this boiler cuts out regularly.
- 4) Rendall and Rittner, the managing agent, obtained a report from Henshall and Sheehy Support Services which recommended replacement of the boilers rather than repair. In that report the cost of replacement of the heating plant was estimated to be £85,000 plus VAT. The option of a Combined Heat and Power scheme was also discussed in that report.
- 5) Since the Applicant understands there to be a possibility that the current system might not last beyond the New Year, an application has been made for dispensation from the statutory consultation requirements. The Applicant states that there are a number of elderly residents in the building and, in order to avoid a period without heating, the landlord wishes to do the works as soon as possible.
- 6) Two quotations were obtained, and a Notice of Intention issued to the leaseholders dated 2 October 2013. The lower quotation is for £110,336.51 plus VAT and is from Henshall & Sheehy themselves. The higher quotation is for £169,702.00 plus VAT and is from Lynton Services Mayfair (1994) Ltd., 3rd Floor, Tubs Hill House, London Road, Sevenoaks, Kent TN13 1BL. The landlord has not served a formal Notice of Estimates pursuant to section 20 of the Act, but copies of the two quotations have been served on the leaseholders.
- 7) Ms Volodeva has set out her objections in a letter dated 7 November, observing that the problem with the boiler system was first reported back in early August and she considers the managing agents remiss is having done next to nothing for the following months. She notes the wide variation in terms of the cost of the two estimates, and considers that the agents have not been thorough enough in exploring the matter.

Decision and Reasons of the Tribunal

- 8) 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”*.
- 9) The tribunal is persuaded that there is sufficient urgency to merit curtailing the consultation process in order that a contract can be placed for these works as soon as possible. Given the lead time for such works, it is not clear that they can be completed before Christmas, but the winter is expected to be long and hard, and the complete failure of the heating and hot water system appears to be a real risk and would present considerable hardship to the residents. There appears to be no dispute that the works are urgent.
- 10) Dispensing with the remaining consultation would prevent the leaseholders from making observations on the quotations. They have been invited in the tribunal's directions to make representations about what observations they would have made, and only one leaseholder has given a response, which the tribunal has considered, none have proposed an alternative contractor, and there is substantial support for the curtailment of dispensation. The landlord's agent has been engaged in obtaining expert opinion and has partially completed the statutory consultation process. The tribunal is satisfied that the leaseholders would not be prejudiced by dispensation with further consultation and that it would be reasonable to grant the application.
- 11) The tribunal has received no representations as to whether it may be appropriate for the tribunal to grant dispensation 'on terms', and considers terms are necessary.
- 12) **The tribunal's decision does not affect the right of the leaseholders to bring an application to it under section 27A of the Landlord and Tenant Act 1985 to determine whether the service charges are payable (including being reasonable in amount).**

F. Dickie

22 November 2013