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

Case Reference : LON/00BG/LDC/2014/0086

Property : 42 Campbell Road, London E3 4DT

Applicant : Genesis Housing Association Limited

Representative : None

Respondent : Mr Simon Edkins

Representative : None

Type of Application : Section 20ZA Landlord and Tenant Act 1985 – dispensation with section 20 consultation requirements

Tribunal Members : Judge John Hewitt
Mr Neil Martindale FRICS

Date of Decision : 6 August 2014

DECISION

Decision of the Tribunal

1. The Tribunal determines that it dispenses with the obligation on the part of the applicant to comply with the consultation requirements set out in section 20 Landlord and Tenant Act 1985 (the Act) in connection with qualifying works proposed to be carried out at the property to make good the defect in the structure of the property which has given rise to rising damp and lateral penetration of ground water, by injecting a chemical damp proof course as appropriate and associated works (the proposed works).
2. The reasons for our decision are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. On 2 July 2014 the applicant made an application to the tribunal pursuant to section 20ZA of the Act. The applicant sought dispensation from all of the section 20 consultation requirements in respect of the proposed works.
4. The subject property is period property originally constructed as a house and subsequently converted to comprise two self-contained flats one on the ground floor and one on the first floor; Flats A and B.
5. The respondent is the long lessee of Flat A which is the ground floor flat. We have not been provided with a copy of the lease but evidently the respondent is obliged to contribute one half of the costs incurred by the applicant landlord in carrying out works of repair to the structure of the property.
6. Directions were given on 8 July 2014 and subsequently the dates for compliance were varied to accommodate the parties.
7. The directions sought written representations from the parties and the parties were notified of the intention of the tribunal to determine the application on the papers to be filed and served pursuant to the directions and without an oral hearing pursuant to Rule 31.
8. The tribunal has not received a request from the applicant for an oral hearing.
9. On 18 July 2014 the tribunal received a bundle of documents from the applicant, page numbered [1-44].
10. On 23 July 2014 the tribunal received representations from the respondent. We assume the respondent sent a copy of them to the applicant. If he did not do so he should do so straightaway. The respondent stated that he supported the landlord's application for dispensation, wished to make written representations in connection

with the application and that he agreed the tribunal should decide the matter on the basis of written representations (no oral hearing).

The gist of the issue

11. The respondent purchased the lease of Flat A at auction in June 2013. By a report dated 11 October 2013 [37] Regency Preservation reported to the applicant that Flat A suffered rising damp and lateral penetration of ground water and that repairs were required to deal with it. Evidently the respondent and his wife were then expecting the birth of their child and were anxious that remedial works should be carried promptly.
12. By notice dated 21 January 2014 the applicant served on the respondent a notice of intention to carry out remedial works.
13. Thereafter the project moved forward slowly, for a number of reasons. There were some issues over the extent of the specification for the proposed works and the cost of estimates obtained by the applicant. The respondent nominated contractors to be invited to submit estimates but the applicant raised concerns over the suitability of those contractors and from reading the correspondence there appears to have been a lack of some flexibility on the part of the applicant and a preference for a rigid adherence to its procurement procedures.
14. Eventually contractors were to be awarded the contract but became insolvent and went into administration before the commencement of the proposed works.
15. By letter dated 27 June 2014 [33] the applicant accepted a complaint made by the respondent of a failure to deal with the repair in a timely manner. The complaint was upheld on the following grounds:
 - Protracted delay in obtaining appropriate quotations for the work
 - Protracted delays in dispatch of the original initial section 20 notice;
 - The selection of an incomplete tender.

In the light of that position the applicant gave consideration as to how to commence works without further delay. The view was taken that an instruction for the proposed works to commence could not be given without obtaining a dispensation from the tribunal – hence the application now before us.

16. Evidently the applicant has decided to forego its usual 15% supervision fee for this project and is now keen to get contractors on site shortly. In its submission the applicant expressed a wish to arrange a full inspection of the works to take place by 6 August 2014 with a proposed start date by its preferred contractor set for 26 August 2014. The applicant also expressed the hope that dispensation would be granted

so that no further delays will be incurred and distress to the respondent and his family is minimal.

17. In his representations to the tribunal the respondent has agreed that dispensation should be granted so as to avoid a three month delay in the project but has raised concerns about the reasonableness of the estimate submitted by Regency Preservation, which he says is far in excess of other quotes and which he believes is not a fair price. He has also asked the applicant if he can resubmit a quote from a contractor nominated by him. Attached to his representations received on 23 July 2014 is a quote dated 19 July 2014 prepared by London PDP, the trading name of London Plastering & Damp Proofing Limited. The respondent urges the applicant to give serious consideration to placing the contract with this company.

The law

18. Section 20ZA of the Act provides that the tribunal may dispense with all or any of the consultation requirements in relation to qualifying works if it is satisfied that it is reasonable to do so.

Discussion

19. The subject property comprises two flats. The applicant lets out one flat, as part of its function as a housing association. The other is owned by the respondent.
20. The respondent does not object to the application; indeed the respondent, understandably, is anxious that appropriate remedial works are carried out at the earliest opportunity now that his child has been born.
21. The applicant has recognised that the delay in concluding this project and undertaking the requisite remedial works has been unacceptable.
22. Against this background we do not hesitate to grant the dispensation that has been sought. We consider it reasonable to do so.
23. In doing so we make it plain to the parties that we make no finding as to whether the scope of works is a reasonable scope or specification and we make no findings as to whether any of the costs of the proposed works intimated in the papers before us is a reasonable cost.
24. In the papers the respondent expressed criticism of the applicant as regards his nomination of contractors including the failure of the applicant to chase up one nominee who did not submit an estimate in a timely manner.
25. We make no findings on the approach taken by the applicant to the contractors nominated by the respondent and whether to adopt a rigid and inflexible procurement policy is reasonable in the light of the circumstances and the purpose of the legislation which gives a tenant

the right to nominate a contractor from whom who the landlord should try to obtain an estimate.

26. The matters raised in paragraphs 23 -25 above are matters open for challenge by the respondent later when the applicant seeks to recover from him a contribution to the cost of the proposed works. If, at that time, the parties are unable to arrive at an agreement on the amount of the contribution payable, it will be open to either party to make an application to the tribunal under section 27A of the Act for the amount of that contribution to be determined.
27. Attention is drawn to section 19 of the Act and the cap on the amount of service charges recoverable which is limited to the reasonable cost of works carried out to a reasonable standard. Where competitive estimates are before a landlord from reasonable, comparable and competent contractors, having regard to the nature and extent of the works to be carried out, the tribunal will generally consider it unreasonable for a landlord not to accept the lowest estimate unless the landlord can discharge the burden of proof to satisfy the tribunal that there was a good reason for doing so.

Judge John Hewitt
6 August 2014