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

Case reference : **LON/00BE/LDC/2017/0098**

Property : **72 Peckham Road, Camberwell,
London, SE5 8PU**

Applicant : **Leaf House RTM Ltd**

Representative : **Drivers & Norris, Managing Agent**

Respondent : **The Lesees**

Representative : **In person**

Type of application : **For dispensation under section
20ZA of the Landlord & Tenant Act
1985**

Tribunal members : **Judge I Mohabir**

**Date and venue of
determination** : **6 November 2017
10 Alfred Place, London WC1E 7LR**

Date of decision : **6 November 2017**

DECISION

Introduction

1. The Applicant makes an application in this matter under section 20ZA of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for dispensation from the consultation requirements imposed by section 20 of the Act.
2. 72 Peckham Road, Leaf House, Camberwell, London, SE5 8PU (“the property”) is a four storey Victorian building comprised of 8 residential flats. All of the flats are held on long residential leases granted in the same terms. The Applicant is the freeholder owner of the property.
3. The Tribunal was told that the roof of the property has been leaking since 2012, which has caused water ingress to Flat 8 that is located on the top floor. This has been a particular problem for the leaseholder in the last two years. It seems that several temporary repairs have been attempted since then, which have proved to be unsuccessful. The last of these appears to have been around the beginning of 2013.
4. It is now proposed to replace the roof of the property in its entirety. This will involve removing the old promenade tiling and felt. The existing roof will be primed and felt re-applied. All areas including up-stands are to be covered and dressed in lead flushings where required.
5. One estimate has been obtained by the Applicant for the proposed remedial works from G Jackson Drainage & Property Maintenance in the sum of £8,695. The estimated cost of the works does not fall within the scope of this application. The Tribunal’s determination is limited to whether or not dispensation for the requirement to consult with the Respondents should be granted.
6. By a letter dated 17 August 2017, the Applicant’s managing agent, Drivers & Norris, served a Notice of Intention on each of the Respondents inviting observations from them in relation to the proposed works. So far as the Tribunal is aware, none were received by the Applicant.
7. On the same day, the Applicant made this application. The basis on which it was made is that multiple sources of the water ingress have been identified resulting in leaks to the ceiling and walls of Flat 8. In particular, it is said that the kitchen ceiling in Flat 8 is close to collapse. Dispensation is sought because the situation is becoming worse daily leading to further damage to the property and the health and safety of the resident in Flat 8. The time taken to carry out statutory consultation will only matter worse.
8. On 29 August 2017, the Tribunal issued Directions and directed the lessees to respond to the application stating whether they objected to it in any way. The Tribunal also directed that this application be determined on the basis of written representations only.

9. The only Respondent who opposes the Application is a Daniel Joyce, the lessee of Flat 3. He did so on 12 September 2017. However, the Applicant's statement of case states that he approved the application on 18 September. Perhaps this is the reason why he has failed to file any evidence setting out the basis on which he opposes the application.

Relevant Law

10. This is set out in the Appendix annexed hereto.

Decision

11. The determination of the application took place on 6 November 2017 without an oral hearing. It was based solely on the statement of case and other documentary evidence filed by the Applicant. No evidence was filed by any of the Respondents.
12. The relevant test to be applied in application such as this has been set out in the Supreme Court decision in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
13. The Tribunal granted the application the following reasons:
 - (a) the fact that each of the leaseholders had been informed of the need to carry out the proposed remedial works and the reasons why at the relevant time.
 - (b) possibly, save for Mr Joyce of Flat 3, no other leaseholder has objected to the proposed works and appear to (tacitly) support the application.
 - (c) that carrying out the additional works in a timely fashion may provide the Respondents with a cost saving by preventing further potential damage from being caused to the building.
 - (d) the health and safety of the occupier of Flat 8 is a relevant consideration..
 - (e) importantly, any prejudice to the Respondents would be in the cost of the works and they have the statutory protection of section 19 of the Act, which preserves their right to challenge the estimated or actual costs incurred.
14. The Tribunal, therefore, concluded that the Respondents would not be prejudiced by the failure to consult by the Applicant and the application was granted as sought.

15. It should be noted that in granting this part of the application, the Tribunal does not also find that the scope and estimated cost of the repairs are reasonable. It is open to any of the Respondents to later challenge those matters by making an application under section 27A of the Act should they wish to do so.

Name: Judge I Mohabir

Date: 6 November 2017

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions 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) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in

accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(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.