



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

Case Reference : **LON/OOBK/LDC/2014/0050**

Property : **18 St Georges Square, London
SW1V 2HP**

Applicant : **Southern Land Securities Ltd.**

Representative : **Hamilton King Management Ltd.**

Respondents : **Mr P Sargent and Ms E Van den
Arend
Ms S Brandram
Ms M-A Pilot
Ms Klasing
Mr G and Miss V Steven**

Representative : **None notified**

Type of Application : **For dispensation of all or any of the
consultation requirements**

Tribunal : **Judge Goulden**

**Date and venue of
Hearing** : **Thursday 8 May 2014 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **8 May 2014**

DECISION

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with.

The application

1. The Applicant seeks a determination pursuant to S20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Act. The application was dated 1 April 2014 and was received on 4 April 2014.
2. Directions of the Tribunal were issued on 7 April 2014.
3. The case was listed for a paper determination. No request had been made by any of the parties for an oral hearing.

The hearing

4. The matter was determined by way of a paper hearing which took place on Thursday 8 May 2014.

The background

5. 18 St Georges Square, Pimlico, SW1V 2HP (“the property”) which is the subject of this application is described in the application as a 1900’s built conversion over four storeys.
6. A copy of the lease of the basement flat at the property, dated 27 September 1979 and made between New Estates Ltd (1) and A Bossom (2) is in the case file. From that lease, it appears that the property has been divided into four flats and one maisonette.
7. The lease requires the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge. With no evidence to the contrary, it is assumed that all residential leases are in essentially the same form.
8. The issue relates to damp works required to the basement flat at the property.
9. A formal Notice of Intention under the Act had been sent to the lessees on 11 September 2013. A further Notice, together with estimates, had been sent to the lessees on 14 October 2013.

10. Neither side requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The issues

11. The issue is as set out in paragraph 8 above.

The Applicant's submissions

12. In written submissions received on behalf of the Applicant, it was stated, inter alia, "*Following the consultation process for rising damp works at the above property, we received the go ahead on 11 January 2014 to proceed and soon after that we instructed contractors Protech Property Solutions to proceed with their quotation for the preparatory works, Cure It to carry out the rising damp treatment and Avalon 3 to redecorate after all those works had been completed. On 18 February we received a start date from Protech for 3 March 2014 and we notified the owner/occupier of the affected flat accordingly. It was agreed the preparatory works would be carried out on the 3 and 4 March and this will follow with the damp works for the 5, 6 and 7 March 2014. Protech were to return on the 10 March to reinstate all the works as part of the preparatory works and then this would conclude soon after with Avalon's quote for the redecoration of the recently treated areas*"
13. It transpired that Protech did not attend site as required on 3 March 2014 and the Applicant stated that Protech "*had overlooked the appointment and had not arranged for someone to attend on that date*". Since the plumber (who had been briefed) had not been booked for the required dates, he was unavailable for the new dates and a substitute sub contracted plumber was able to undertake the works "*however, he was not fully briefed and therefore was unaware of the complexity and the extent of the works required. They eventually attended on the 4 March (a day behind schedule) and commenced with the works. They did not complete the works in time for the damp specialist to attend*".
14. The Applicant stated that various complaints had been received from the owners/occupiers of the affected flat. The Applicant supplied copy correspondence together with information as to various setbacks encountered. The Applicant stated "*due to these setbacks and the service provided the owner/occupiers refused to allow Protech to return to their property to complete their works because they had lost confidence in their professional ability to complete the works. We therefore instructed Avalon 3 who originally provided us with the second quotation for the preparatory works as we considered it prudent to do so. Avalon was instructed to attend site on an emergency basis to complete the reinstatement works and to make*

good damages caused by Protech. The cost of the damages and the rest of the works that have now been completed exceeded the amount on our statement of estimate by £2,250. We have referred this matter to the freeholder's solicitors who have now written to Protech notifying them of this. We require retrospective consent....so that we can have authorisation for the additional funds that have been incurred and charged to the service charge account”.

15. The Tribunal has been provided with, inter alia, a copy of correspondence relating to the basement flat, Protech's quotation for preparation works, Avalon 3 Ltd's quotation for the preparation works and their invoice, formal complaint from the landlord's managing agents to Protech and photographs in support.

The Respondents' submissions

16. No formal written representations were received from or on behalf of any of the Respondents in accordance with the Tribunal's Direction 5.

The Tribunal's Determination

17. S20 of the Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

18. Dispensation is dealt with by S 20ZA of the Act which provides:-

“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”

19. The consultation requirements for qualifying works are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

(2) The notice shall –

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
 - (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
 - (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
 - (e) specify-**
 - (i) the address to which such observations may be sent;**
 - (ii) that they must be delivered within the relevant period;**
- and**
- (iii) the period on which the relevant period ends.**

2(1) where a notice under paragraph 1 specifies a place and hours for inspection-

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

- 20. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.
- 21. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being

proposed, the cost thereof and have the opportunity to nominate contractors.

22. The Respondents have not challenged the consultation process. No formal written submissions have been received from or on behalf of any of the Respondents.
23. There appears to be no dispute that there were ongoing problems of damp penetration to the basement flat at the property, and the Tribunal has noted the damp report dated 17 December 2012 prepared by Cure It, stated on its letter head as being experts in rising damp, woodworm and dry rot.
24. There also appears to be little dispute that there were problems due to the fact that the initial contractors failed to attend on the first day of a series of works, which created a domino effect in that subsequent works were delayed. The Tribunal has noted, in particular, the formal email of complaint sent to the first contractor by the landlord's managing agents on 13 March 2014.
25. The Tribunal is satisfied that, in the particular circumstances of this case, and taking into account the sums involved, the Respondents are not unduly prejudiced.
26. The Tribunal is not wholly persuaded that an application for dispensation under S20ZA of the Act was required in the particular circumstances of this case. However, insofar as it is required, the Tribunal considers that it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.
27. **It should be noted that in making its determination, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

Name: J Goulden

Date: 8 May 2014