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

Case Reference : **CHI/43UH/LDC/2015/0002**

Property : **Norman Court, Kingston Road,
Staines Upon Thames, Middlesex,
TW18 4NU**

Applicant : **Norman Flats Limited**

Representative : **UDL Estate Management**

Respondent : **Long leaseholders of Norman Court**

Representative : **No Attendance**

Type of Application : **Section 20ZA 1985 Act**

Tribunal Members : **Judge D Dovar
Mr N. Maloney FRICS FIRPM MEWI**

**Date and venue of
Hearing** : **22nd January 2015, Staines**

Date of Decision :

DECISION

1. This is an application under s20ZA of Landlord and Tenant Act 1985 ('the Act') for the dispensation of the consultation requirements of s20 of the Act and Schedule 4 Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987) ('the Regs'). The qualifying works are the replacement of the flat roof to the Property ('the Qualifying Works').

Inspection

2. The Tribunal inspected the Property on the morning of the hearing. It is a block of 7 flats built in the 1970s. It has a mix of pitched and flat roofs. The Tribunal was not able to go onto the roof but was provided with photographs which indicated that the flat area was covered with an older felt material and solar reflective paint; this may be original to the date the building was erected (with a number of subsequent repairs being visible). The Tribunal was given access to Flat 7, which is immediately under the flat roof. There were signs of water ingress staining on the ceiling in the bedroom where water appears to have entered through the roof covering above. Whilst the Tribunal could not see any evidence of water penetration in the bathroom, the extractor fan had been disconnected from the main electrical supply because of concerns that it otherwise represented a hazard to the health & safety of the occupier.

Background

3. Mr Kavanagh is the managing agent for the Applicant. He explained to the Tribunal the events that had led to the Application and the basis upon which dispensation was sought.
4. The Applicant is a tenant run freehold owning private limited company where each leaseholder has an interest in that company.
5. Until around 6 months ago, the leaseholders had managed the Property themselves. Mr Kavanagh had been brought in to deal with maintenance issues when one of the more active leaseholders sold their flat. He

intends to carry out a full survey of the Property as part of his management functions, but has not yet had the opportunity to do so. He had managed to establish a fund from the service charge provisions of the lease and collection of arrears to accommodate some maintenance as the building was clearly in need of attention.

6. On about 13th December 2014, the long leaseholder of Flat 7 reported a leak to that flat. As well as a leak in the bedroom, water was said to be coming into the bathroom through the electrical appliances. Mr Kavanagh obtained a quote for the repair of the roof and on inspection it appeared that a full replacement was required rather than patch repair.
7. Mr Kavanagh then sought additional quotes, including one from a firm that was recommended by the leaseholder of flat 7. That firm did provide a quote, but Mr Kavanagh did not consider that it was a credible quote as it did not provide for scaffolding and no insurance cover was confirmed.
8. Once he had received a second quote, he made this application to the Tribunal and at the same time wrote to the leaseholders informing them of:
 - a. The works that were intended;
 - b. The reason why they were needed;
 - c. That an application was being made for dispensation from the consultation requirements;
 - d. The two quotes that had been received and that it was intended to contract with the lower of those two.
9. Whilst the notice invited comments, it did not give any timeframe for doing so, nor did it invite the nomination of any contractors.
10. On receiving the application, the Tribunal sent out the directions in this matter which prompted two leaseholders to contact Mr Kavanagh to find out what they should do.

11. Dispensation is sought on the grounds that the water ingress poses a hazard to the occupiers of the building and in particular Flat 7 in that water appears to flow along the electrical installations in the bathroom. There was also some (albeit less) concern over the risk of a ceiling collapse.
12. The Tribunal has not received any communications from the leaseholders and Mr Kavanagh confirmed that the only enquiries he had had were to do with the paperwork from the Tribunal and what the leaseholders should do.

Legislation

13. Section 20 of the Act applies a limitation on service charges unless prescribed consultation requirements have first been carried out or dispensation has been granted in respect of any qualifying works.
14. Section 20ZA empowers the Tribunal to dispense with all or part of the consultation requirements. It provides:

(1) Where an application is made to the appropriate 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

...

(4) In section 20 and this section “the consultation requirements” means requirements prescribed by regulations made by the Secretary of State.

15. The Regulations set out those requirements. In respect of qualifying works the relevant passages have been set out in the appendix to this determination.

Dispensation

16. The Tribunal has a wide discretion as to whether to grant dispensation. The relevant considerations are what parts of the consultation have been complied with, what parts have not and why not, and whether there would be any prejudice to the leaseholders.
17. The Applicant has complied with some of the requirements. In particular, it has sent out information which complies with some of the requirements of a notice of intention.
18. It has also complied in part with the summary of estimates in that it has provided the leaseholders with information about the two estimates it has obtained.
19. In relation to the notice of intention, it has not complied with paragraphs 8 (2) (d) of the Regs in that it did not specify a date by which observations should be made. It also failed to comply with paragraph 8 (3) in that it did not invite nominations for contractors. The reasons for not doing so is said to have been because of the urgency of the situation and the risk of injury, particularly through the electrical hazard in the bathroom and the possibility of the ceiling collapsing. The Tribunal notes that the leaseholders have been notified, that one did actually nominate a contractor and that none have objected. The Tribunal also notes that this is a seven flat block, which each leaseholder having a one seventh share in the freehold. For those reasons the Tribunal considers that the requirements of 8 (2) (d) and (3) can be dispensed with.
20. Given the dispensation of the requirement to seek observations within a specified time and to invite nominations, it follows that paragraph 11 (5) has been complied with in that the two estimates obtained have been notified to the leaseholders. However, the leaseholders have not seen the

actual estimates or been given the opportunity to do so. On that basis, and in light of the urgency, paragraph 11(5) (9) and (10) are dispensed with on condition that the estimates are sent to the leaseholders and observations on the estimates are invited to be made within 7 days of that notification. Further the Applicant shall have regard to those observations. No contract shall be entered into before those conditions have been met.

Conclusion

21. The Tribunal grants dispensation from paragraphs 8(2) (d) and (3), 11(5) (9) and (10) of Part 2 of Schedule 4 of the Regs on condition that before entering into any contract to carry out the Qualifying Works, the Applicant shall send to the leaseholders copies of both estimates received and shall invite observations on them within 7 days.
22. This is solely a determination on the dispensation of the consultation requirements of the Act and Regs, it does not impinge on the leaseholders' rights under section 19 of the 1985 Act.



Judge D Dovar

Appendix

Schedule 4 Part 2 of the Service Charges (Consultation etc) (England) Regulations 2003 (SI 2003/1987)

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

(a) to each tenant; ...

(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) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

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 by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

4.—(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a

recognised tenants' association, the landlord shall try to obtain an estimate–

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)–

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out–

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord–

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director

or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by–

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)–

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify–

(i) the address to which such observations may be sent;

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.