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

Case Reference : **MAN/00FF/LDC/2015/0002**

Property : **Emperors Wharf, Skeldergate York YO1 6DQ**

Applicant : **Emperors Wharf (York) Management
Company Limited**

Represented by : **Action Property Management
(Mr Matthew Ward)**

Respondents : **Leaseholders of apartments at the Property**

Type of Application : **Landlord & Tenant Act 1985 – Section 20ZA**

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Jonathan Holbrook (Tribunal Judge)**

Date of Decision : **6 March 2015**

DECISION

Application

1. Action Property Management on behalf of Emperors Wharf (York) Management Company Limited applies to the Tribunal under Section 20ZA of Landlord and Tenant Act 1985 (the Act) for dispensation from the consultation requirements of Section 20 of the Act and the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987) in respect of works to the lifts at the Property.
2. The Respondents are Leaseholders of apartments at the Property.

Grounds and Submissions

3. The application was received by the Tribunal on 14 January 2015.
4. The Applicant is the Management Company, a party to the Leases of the apartments at the Property and also stated as successor Freeholder.
5. On 27 January 2015 Judge Bennett made directions which provided that in the absence of a request for a hearing the application would be determined upon the parties' written submissions.
6. The Property is a purpose built block comprising 48 apartments across 2 blocks connected at ground level.
7. The Applicant stated in the application form that the work is required to urgently rectify repeated lift failures, almost daily.
8. Further information provided gives details of the problems and previous works. Copies of correspondence with engineers, quotations, estimates and specifications have been provided.
9. The applicant states no formal consultation has been carried out save for contact with a Leaseholder who happens to own a lift maintenance company.
10. The Tribunal received a submission from one Leaseholder in accordance with directions. Mrs M J King of apartment 33 was content that dispensation be given. Neither the Applicant nor a Respondent requested a hearing.
11. The Tribunal convened without the parties to make its determination on 25 February 2015.

Law

12. Section 18 of the Act defines "service charge" and "relevant costs".
13. Section 19 of the Act limits the amount payable by the lessees to the extent that the charges are reasonably incurred.
14. Section 20 of the Act states:-
"Limitation of service charges: consultation requirements
Where this Section applies to any qualifying works..... the relevant contributions of tenants are limited..... Unless the consultation requirements have either:-

- a. complied with in relation to the works or
 - b. dispensed with in relation to the works by a leasehold valuation tribunal.
- This Section applies to qualifying works, if relevant costs incurred on carrying out the works exceed an appropriate amount”.

15. “The appropriate amount” is defined by regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) as “..... an amount which results in the relevant contribution of any tenant being more than £250.00.”
16. Section 20ZA(1) of the Act states:-
"Where an application is made to a Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

Tribunal’s Conclusions with Reasons

17. We considered the written evidence accompanying the application.

Our conclusions are:-
18. It is not necessary for us to consider at this stage the extent of the service charges that would result from the works payable under the terms of the Respondent’s leases. If and when such is demanded and if disputed, it may properly be the subject of a future application to the Tribunal.
19. We accept from the details of the work proposed and the obvious consequences of lift failure that it is necessary for it to commence without delay. The lack of repair and service has potential to impact on the health, safety, utility and comfort of occupiers and visitors to the apartments at the Property.
20. Although no form of consultation has taken place nor is there evidence that information has been given to the Respondents, we have not identified a specific prejudice to them in the circumstances. Dispensation from consultation requirements does not imply that the resulting service charge is reasonable.
21. We conclude it reasonable in accordance with Section 20ZA(1) of the Act to dispense with the consultation requirements, specified in Section 20 and contained in Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987).
22. Nothing in this determination or order shall preclude consideration of whether the Applicant may recover by way of service charge from the Respondents any or all of the cost of the work undertaken or the costs of this application should a reference be received under Section 27A of the Landlord and Tenant Act 1985.

Order

23. The Applicant is dispensed from complying with the consultation requirements in respect of the work specified in the application.