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

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| **Case Reference** | : | **LON/00BE/LSC/2015/0380** |
| **Property** | : | **107A East Dulwich Grove, London SE22 8PU** |
| **Applicant** | : | **Humphrey Bode Associates Limited** |
| **Representative** | : | **Mr W Hilaire** |
| **Respondent** | : | **Mr Edmond Rhys Jones** |
| **Representative** | : | **In person** |
| **Type of Application** | : | **Liability to pay service charges and dispense with consultation requirements** |
| **Tribunal Members** | : | **Judge W Hansen (chairman)**<br>**Mr M. Taylor FRICS** |
| **Date and venue of Hearing** | : | **8 January 2016 at 10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **12 January 2016** |

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**DECISION**

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Decisions of the Tribunal

(1) The tribunal determines that the Respondent is liable to pay a total of £237.60 by way of service charge in respect of water and electricity supply works for the year 2015-16 including management charges in respect of such works.

(2) The tribunal refuses to dispense with the consultation requirements in respect of such works but such conclusion does not affect the Respondent's liability to pay the above sum because it is less than the appropriate amount.

(3) The tribunal is not satisfied that the Lease permits the recovery of legal costs through the service charge but if it is wrong it considers that it would be just and equitable to make a section 20C costs order in favour of the Respondent and does so.

The Applications

1. There are two applications before the Tribunal, both made by the Applicant. The first in time, dated 11 August 2015, seeks a determination that the Respondent is liable to certain services charges alleged to be due in respect of the service charge year 2015/16. The second, dated 3 September 2015, seeks an order dispensing with the consultation requirements provided for in regulations made under section 20 of the Landlord and Tenant Act 1985.

The Issues

2. The parties are agreed that the service charge dispute relates to 3 items as follows: a claim for £1,440 in relation to alleged water supply repairs (Item 1); a claim for £490.00 in relation to repairs/alterations to the electricity supply (Item 2); a claim for a management charge of 10% on the total of the above sums, i.e. 10% of £1,930 = £193.00 (Item 3). Although the application refers to other items, the parties confirmed at the hearing that these did not arise for determination. The other issue relates to the dispensation application.

Background

3. The Respondent is the lessee of 107A East Dulwich Grove, London SE22 8PU ("the Flat"). The Flat is situate on the first, mezzanine and second floors of the building. He holds under a long lease dated 9 February 1990 ("the Lease"). Clause 4(1)(a) of the Lease makes provision for the payment of a service charge by the lessee, being "*the Leaseholder's Proportion*" of the Expenditure described in paragraph (4) of the Schedule to the Lease. Under paragraph (4) the Expenditure comprises "*the costs properly incurred by the Landlord in respect of the Building in discharging its obligations under Clause 5(3) and (4)...*" The Leaseholder's Proportion is three-fifths of the Expenditure, with one irrelevant exception. By Clause 5(3) the landlord covenants to repair the roof, foundations and main structure of the Building and "*to repair renew and maintain the gas electricity water and drainage systems in the Building except such parts of them as form part of the Flat*". Under Clause 3(5)(vi) the Flat includes "*any equipment pipes drains and wires which solely serve the Flat*".

4. The Respondent acquired his leasehold interest in the Flat in or about June 2014. He told the Tribunal and we accept that he had encountered no problems with the electricity or water supply to the Flat. In or about February 2015 the Applicant acquired the freehold and ground floor flat and in or about March 2015 commenced work to convert the ground floor flat into two flats. By letter dated 8 April 2015 the Applicant purported to give notice of its proposed works to the Respondent. The letter said that "*we are now preparing a specification of works*" and promised to send them estimates for their comments. The material part of the letter concluded: "*If you have any comments on the proposed essential repairs, or a nominated contractor, please let us know at the earliest to prevent delays*". That letter is relied on by the Applicant as constituting what it describes as "Section 20 Notice" and/or its compliance with at least some of the requirements contained in the regulations made under section 20 of the 1985 Act.

5. The Respondent replied in detail by way of a letter dated 7 May 2015 with his comments in which he made the point that the works to the water and electricity supply appeared to be unnecessary and were being carried out to facilitate the Applicant's conversion works, not because of any need for maintenance or repair. He also asked the Applicant to obtain quotes from a number of named contractors.

6. The Applicant replied on 11 May 2015 contending that the repairs to the water supply were necessary because of leaks and that "*the pipe had to be changed from the existing damaged lead pipe entering the building ... and to open up parts of the building where the supply was running in order to replace and leave watertight*". The letter justified the electrical work by reference to health and safety concerns and the location of the service head in the basement, the proposal being that this should be relocated in the communal entrance hall. This was said to be a maintenance issue in accordance with the lease.

7. Correspondence between the parties continued thereafter in which the Respondent reminded the Applicant of its obligations under the general law relating to consultation and during which time the Applicant appears to have simply pressed on with the work. Significantly, it is clear from the Applicant's letter dated 29 June 2015 that all the plumbing and electrical work had been completed by the time that the Applicant supplied the Respondent with the various estimates that it had obtained.

Conclusions: Payability and Reasonableness

8. *Water Supply Works.* The Applicant relies on a quotation from LJ Plumbing and Heating Service in the sum of £1,440. It describes works to replace a damaged cast iron mains supply pipe. However, it also describes other work, including works to "*remove existing mains tee off to upstairs toilet room*" and to "*create new supply route ... to supply upstairs flat only*".

9. The existing water supply entered the Building at ground floor level. We were told and accept that the pipe was an old cast iron pipe that entered the property at ground floor level and rose up to service Flat A as well as the ground floor flat. The Applicant stated that there were leaks in the pipework causing dampness in the basement area and that the pipework was therefore in need of repair and/or renewal. There was a dearth of evidence before us but we accept that part of the old pipe probably required renewal, namely "*the existing damaged ... pipe entering the building*". However, we find that only a limited part of the pipework required renewal, probably just the section entering the building, certainly not the whole. As the estimate makes clear, we find that the majority of the work was not necessary repair or renewal but reflected the fact that the existing supply was inconveniently located for the Applicant's proposed conversion works and had to be adapted to suit those works. The Tribunal finds as a fact that the vast majority of the water supply works related to re-routing the supply to suit the Applicant's requirements for the purposes of its conversion works. In addition, we note that the terms of the Lease exclude from the landlord's repairing obligation pipes which solely serve the Flat and some of the pipework clearly falls into this category.

10. Doing the best we can on the limited evidence available, we consider that approximately 25% of the total costs of £1440.00 are reasonably attributable to necessary repair/renewal. The Respondent is liable for the Leaseholder's Proportion of this. Accordingly, we find that the Respondent is liable to pay £216.00 in respect of this work, being three-fifths of £360.00, which is 25% of the total sum claimed.

11. *Electricity Supply Works*. The Applicant relies on an estimate from R A Brown Electrical Contractors for £490.00 "*To run and extend new Armoured cable for Upper Flat A in new meter cupboard*". The evidence from the Respondent, which we accept, was to the effect that he had had no problems with his electricity supply and that the existing cable was in sound condition. There was no proper evidence before the

Tribunal to indicate that the armoured cable or service head was in need of repair or maintenance. Mr Hilaire admitted on behalf of the Applicant that it had no electrical report from a certified electrician which advised of the need for this work. Mr Hilaire suggested that the primary issue was accessibility but the Respondent has always had a right of access under the terms of the Lease for the purposes of repairs to any cables and we are not satisfied that this provided a reasonable justification for the works. It is clear to us that the works to the electricity supply and cable were for the benefit of the landlord and his conversion works and were carried out to facilitate the conversion works; they did not represent reasonable or necessary repairs or maintenance works. Accordingly, we consider that the cost was not reasonably incurred and is not chargeable to the Respondent.

12. *Management Charge*. Clause 4(i) of the Schedule refers to the proper fees and expenses of the Landlord's surveyor and any other person or firm employed by the landlord for the management of the Building. We are therefore satisfied that this charge is permissible but in the circumstances ought to be limited to 10% of the sum which is properly payable by the Respondent, being 10% of £216 = £21.60.

13. Accordingly, the Respondent is liable to pay a total of £237.60 in respect of the electricity and water supply works which form the subject of this claim.

14. In the light of this conclusion, and having regard to the fact that the appropriate amount for the purposes of section 20 LTA 1985 is £250, the dispensation application is academic. We therefore express our views very briefly.

Conclusions: Dispensation

15. Section 20 of the 1985 Act, which is supplemented by section 20ZA, provides for mandatory consultation with tenants, and limits the sum recoverable by a landlord to "*the appropriate amount*" in the event of

non-compliance. The appropriate amount is currently £250 for each tenant, irrespective of the cost of the work or services, but that limit is avoided if the statutory consultation requirements are dispensed with by a leasehold valuation tribunal. Provision for dispensation is made by section 20ZA(1), as follows:

> *"Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any part 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."*

16. The purpose of the consultation requirements is to ensure that tenants are protected from (1) paying for inappropriate works or (2) paying more than would be appropriate, and the issue which should be focussed on when an application for dispensation is received "*must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the Requirements*": see Daejan Investments Ltd v. Benson [2013] UKSC 14 at [44].

17. The burden of identifying some relevant prejudice falls on the tenants seeking to resist the application for dispensation.

18. The Tribunal may grant dispensation unconditionally, grant it on terms or refuse it: Daejan Investments Ltd v. Benson [2013] UKSC 14 at [54].

19. In the circumstances of this case the Tribunal is satisfied that there has been a significant failure on the part of the Applicant to comply with the consultation requirements, in particular Stage 3 of those requirements. We are further satisfied that this was not an urgent problem which required an urgent response. However, the touchstone is prejudice. We asked the tenant to identify any relevant prejudice and he put his case on the basis that the consequence of the landlord's various failures was that it was "*very difficult to obtain clarity about the extent and quality of the work, its cost, and the rationale for it*". We consider that there is

substance to the Respondent's complaint and in the circumstances we would not grant dispensation. However, for the reasons set out above, this finding does not alter the overall conclusions as to the amount which the Respondent is liable to pay.

20. At the conclusion of the hearing the Respondent applied for an order under section 20C of the 1985 Act that the Applicant should not be entitled to add the costs incurred in connection with these proceedings to his service charge. The Tribunal has a discretion in the matter which must be exercised having regard to what is just and equitable in all the circumstances: *Tenants of Langford Court v. Doren Ltd* (LRX/37/2000). We start by considering the terms of the Lease because the question of discretion only arises if the Applicant is, in principle, entitled to recover legal costs via the service charge. There must be a clear and unambiguous provision to this effect in the Lease. The Tribunal is not satisfied that there is any such provision in the Lease which would entitle the Applicant to recover legal costs via the service charge. However, if we are wrong, we consider that it would be just and equitable to make a section 20C order in favour of the Respondent having regard to our findings above.

21. There were no other costs applications made by either party.

**Name:** Judge W Hansen **Date:** 12 January 2016