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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 SECTION 20ZA

LON/00BK/LDC/2010/0119

Property: 7A Durham Terrace, London W2 5PB

Applicants: Mr Michael Sheinberg and Ms L Burton (Tenant, Flat 7A)

Respondents: Marshglen Property Management Ltd (Freeholder); Mr M Baldwin; Mrs Meehan; Mr J Cunningham-Davis (the other Tenants)

The Tribunal: Mr Adrian Jack (Chairman), Ms S Cloughlin MCIEH and Ms R Emblin

Procedural

1. This is an application by Mr Sheinberg and Ms Burton for a dispensation with the requirements for a consultation under section 20 of the Landlord and Tenant Act 1985 in respect of works of damp-proofing the basement flat, Flat A, of which Mr Sheinberg and Ms Burton are the tenants.
2. The application was issued on 17th November 2010 on behalf of Mr Sheinberg and Ms Burton by Ms Delores O'Reilly, of Encore Estates, the managing agent. Directions were given on 3rd December 2010 and these were substantially complied with.
3. The Tribunal held a hearing on 20th December 2010. Mr Sheinberg, Ms Burton and the freeholder were represented by Ms O'Reilly. None

of the other tenants appeared, although one tenant's representative, Ms Dudek had made comments to Ms O'Reilly by email.

The facts

4. The property is a house built in the early 20th century comprising a basement, ground floor and four upper storeys. At some point in the past the house was converted into four flats. Flat A comprises the basement and ground floor and the garden at the back. The other three flats are on the upper floors.
5. Mr Sheinberg and Ms Burton acquired the long lease of Flat A in the course of 2010. They intend to carry out major works, including the erection of a conservatory in the garden. As part of those works they want works of damp-proofing to be carried out in the basement part of their flat. Their works are due to commence early in 2011.
6. They obtained quotations for the work in the middle of the year and then spoke to Ms O'Reilly of the managing agents. She in turn obtained a further quotation in October 2010. She then contacted the other tenants
7. On 17th November 2010 the current application was issued.

The issues and decision

8. Under section 20 of the Landlord and Tenant Act 1985 a landlord intending to carry out works costing more than £250 per flat is obliged to carry out a two stage consultation exercise on pain of being unable to recover more than £250 from each flat-owner.
9. Section 20ZA of the 1985 Act gives the Tribunal the power to dispense with these requirements, if it is "satisfied that it is reasonable to dispense with the requirements."
10. In general the applicant for such an order is the landlord (or the other person under the obligation to carry out the works). In the current case Mr Sheinberg and Ms Burton are the tenants of one of the flats. In order to avoid any difficulties over jurisdiction, Ms O'Reilly applied on behalf of the landlord, for the landlord to be added as an applicant and the Tribunal granted that application.
11. One of the matters which the Tribunal does not determine on a section 20ZA application is whether the cost of the works is either payable in principle or whether the amount claimed is reasonable. This is likely in due course to be a live issue in the current case. The damp-proofing in question in this case (essentially tanking the walls) may or may not be something which the landlord is obliged to carry out under the terms of the leases and thus may or may not be an expense recoverable from the generality of the tenants under the terms of the lease.
12. Ms O'Reilly explained that Mr Sheinberg and Ms Burton intended to carry out the damp-proofing at their own expense and then recover the excess over their 33.5 per cent proportion from the landlord under the service charge. The landlord may well make such a payment only after establishing its liability to do so under the terms of the lease in an application to this Tribunal under section 27A of the 1985 Act.
13. This is not in our judgment a relevant matter to consider under section 20ZA. Rather in exercising its discretion whether to grant the section

20ZA application the Tribunal has asked itself whether the cost and delay associated with a section 20 consultation would bring any material benefit to the other tenants in the block or if there is an other reason for holding a section 20 consultation.

14. In our judgment there is not. There has been a reasonable attempt to obtain quotations. There has been a consultation. The only issue raised is whether the damp-proofing does fall within the landlord's repairing covenant under the lease, but (for the reasons we have given) that is not relevant to the current application.
15. In these circumstances we dispense with the requirement to consult in accordance with section 20 of the 1985 Act.
16. Ms O'Reilly made no application in relation to the fees payable to the Tribunal and indicated that Mr Sheinberg and Ms Burton agree to bear those costs themselves. In these circumstances we make no order in respect of the fees payable to the Tribunal.

DECISION

The Tribunal grants dispensation from the requirements of section 20 of the Landlord and Tenant Act 1985 in respect of the works of damp-proofing contemplated in Flat 7A Durham Terrace. The Tribunal makes no order in respect of the fees payable to the Tribunal in respect of these application.



Tribunal: Adrian Jack, Chairman
20th December 2010