

8318



**HM Courts  
& Tribunals  
Service**

**LEASEHOLD VALUATION TRIBUNAL**  
case no. CAM/12UB/LDC/2012/0011

**Properties** : 71, 73, 75 and 77 Scholars Walk,  
St. Andrews Road,  
Chesterton,  
Cambs. CB4 1EJ

**Applicant** : (1) Spenrent Ltd.  
(2) Vie (Cambridge) Management Ltd.

**Respondents** : Mr. H. Pang (71)  
Mr. T. Teresa & Ms. A. Lun (73)  
Mr. Y. French (75)  
Mr. L. Swann (77)

**Date of Application** : 21<sup>st</sup> August 2012

**Type of Application** : for permission to dispense with  
consultation requirements in respect of  
qualifying works (Section 20ZA Landlord  
and Tenant Act 1985 as amended)

**Tribunal** : Bruce Edgington – lawyer chair  
David Brown FRICS MCI Arb

---

## DECISION

---

1. The tribunal determines that it is reasonable to dispense with the full statutory consultation requirements of s.20 of the Landlord and Tenant Act 1985 ("the Act") in relation to the work to replace the water booster serving the 4 flats on the upper floors of the 5 storey apartment block. Dispensation is therefore granted.

### Reasons

#### Background

2. This is a retrospective application made by landlord and management company because a water booster pump serving the 4 flats on the upper floors of the building in which the flats are situated failed leaving those flats with insufficient water pressure and therefore with little or no running water.

3. Procedural directions orders were made on the 29<sup>th</sup> August 2012 which included a direction that if any of the lessees wanted to file and serve a statement of reply to the application, this should be done by the 12<sup>th</sup> September 2012. None was received.
4. The directions also pointed out that the Tribunal did not intend to inspect the premises and considered that this application could be determined on a consideration of the papers only. However, it was pointed out that if anyone wanted the Tribunal to inspect the properties or hold an oral hearing then arrangements would be made. It was pointed out that in the absence of any such request the case would be determined on or after the 27<sup>th</sup> September 2012. No request for either an inspection or an oral hearing was received. The only reason why this decision has not been made before now is because the Tribunal has been waiting for the name of the management company and a bundle of documents.
5. The application states that all the affected leaseholders have consented to the work being undertaken. There are copies of 2 estimates with the papers and the applicants have chosen the lower.

#### **The Law**

6. The purpose of Section 20 of the 1985 Act as now amended by the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act") and the Regulations is to provide a curb on landlords incurring large amounts of service charges and, now, entering into long term agreements, which would involve tenants paying large amounts of money.
7. The original regime meant that if service charges were over a certain limit, then the landlord had to either (a) provide estimates and consult with tenants before incurring such charges (b) have such service charges 'capped' at a very low level or (c) try to persuade a judge to waive the consultation requirements.
8. The 2002 Act which came into effect on the 31<sup>st</sup> October 2003 tightened up these provisions considerably and extended them to qualifying long term agreements i.e. agreements involving a tenant in an annual expenditure of more than £100 and which will last for more than 12 months. The limit on qualifying works which is relevant to this application is £250 per flat per contract for such works.
9. The 'usual' consultation requirements in the Regulations are extensive and include:-
  - (a) The service of a notice on each tenant of an intention to undertake works. The notice shall set out what the works are and why they are needed or where particulars can be examined. It shall invite comments and the name of anyone from whom the landlord or the landlord's agent should obtain an estimate within a period of not less than 30 days.

- (b) The landlord or landlord's agent shall then attempt to obtain estimates including from anyone proposed by a tenant.
- (c) At least 2 detailed proposals or estimates must then be sent to the tenants, one of which is from a contractor unconnected with the landlord, and comments should be invited within a further period of 30 days
- (d) A landlord or landlord's agent must take notice of any observations from tenants, award the contract and then write within 21 days telling everyone why the contract was awarded to the particular contractor.

10. The 2002 Act transferred jurisdiction for the waiving of these requirements from the courts to Leasehold Valuation Tribunals.

### **The Leases**

11. The 2<sup>nd</sup> Applicant submitted a copy of the lease of flat 71 and said that the other 3 flat leases are in identical terms. They provide that the management company shall keep the estate, structure and services in good repair and then collect 10% of the building charge and .5% of the estate charge from the leaseholder.

12. The Applicant claims that there is an arrangement for each of the 4 flats named in the application to provide 25% each of the cost of maintaining the pump in question. The Tribunal could not see where the lease made such a provision. However, this is not an application to decide the payability of service charges. Should such an application be made, the landlord/management company would have to provide evidence of such an agreement which applied to the payment of service charges.

### **Conclusions**

13. In the circumstances and in the absence of any objection, the Tribunal finds that the work was urgent and, on the balance of probability, that the Respondents will not suffer any undue prejudice by dispensing with the consultation requirement. They will need to check to see whether they are liable for as much as a quarter of the expense. If the cost is to be shared amongst the 10 flats, then no consultation would be required in any event.

.....  
**Bruce Edgington**  
**Chair**  
**26<sup>th</sup> October 2012**