8095

**LEASEHOLD VALUATION TRIBUNAL for the LONDON RENT ASSESSMENT PANEL**

**DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL**

**APPLICATION UNDER S 20ZA OF THE LANDLORD AND TENANT ACT 1985, as amended**

**REF: LON/00AA/LDC/2012/0065**

**Address:** **60 to 63 West Smithfield, London, EC1A 9DY**

**Applicant:** **Honorbond Ltd.**

**Represented by: London Residential Management Ltd., Managing Agents**

**Respondents: Various lessees of 60 to 63 West Smithfield, EC1A 9DY**

**Tribunal:** **Mrs JSL Goulden JP**
**Mr N Martindale FRICS**

---

1. The Applicant, who is the landlord of 60 to 63 West Smithfield, London, EC1A 9DY ("the property"), has applied to the Tribunal by an application dated 11 June 2012, and received by the Tribunal on 13 June 2012, for dispensation of all or any of the consultation requirements contained in S20 of the Landlord and Tenant Act 1985, as amended ("the Act"). The Respondents are the lessees of the flats at the property as listed on the schedule attached to the application.

2. The property is described in the application as a *"17 apartments above a commercial unit. Passenger lift serves residential only".*

3. A copy of the lease of Flat 16 in the case file. With no evidence to the contrary, it is therefore assumed that all the residential leases are in essentially the same form.

4. Directions of the Tribunal were issued without an oral Pre Trial Review on 15 June 2012. In those Directions it was stated, inter alia, *"The application was described as urgent since it was stated "lift currently out of service. Lift served 17 apartments over 3 floors".*

5. The Applicant had requested an oral hearing, although the Tribunal had been of the view that the matter had been suitable for a paper determination. However, upon written representations to the Tribunal from the landlord's managing agents, London Residential Management Ltd, and dated 20 June 2012, the hearing was re-listed for a paper determination at the request of the Applicant. No application

was made for or on behalf of any of the Respondents for an oral hearing. This matter was therefore determined by the Tribunal by way of a paper hearing which took place on Tuesday 17 July 2012.

6. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

**The Applicant's case**

7. The qualifying works were described in the application as *"Schindler has attended (7 June 2012) and confirmed the lift requires a new driver and cannot be returned to service until this new part has been fitted. Cost to replace is £6,413.80 (incl VAT) (ie over £250 for any one of 17 units). NB Commercial unit will not contribute as lift does not serve the commercial unit".*

8. In the statement of facts sent on behalf of the Applicant by its managing agents, it was stated:-

*"7 June 2012 – contacted ILEC who are the appointed lift consultants on all our blocks who reviewed the Schindler quote and advised that it is reasonable and managed to negotiate a reduction of almost 15% - £6413.80 inc VAT*

*11 June 2012 - Wrote to leaseholders to confirm why the lift cannot be returned to service.*

*11 June 2012 – made application to the LVT for dispensation*

*22 June 2012 – wrote to all leaseholders as advised by LVT*

*We made the decision to fasttrack the works due to the lift serving 3 floors and informed the leaseholders of this decision ".*

9. In support of the application, copies of the correspondence referred to in paragraph 8 above were provided.

10.London Residential Management Ltd. also provided within their bundle, inter alia:-

- A copy of a 'Repair Offer', (quotation) dated 7 June 2012, for repairs to the lift from Schindler Ltd at £7508.20 inc VAT.
- A copy of a 'Repair Offer', (quotation) dated 8 June 2012, for repairs to the lift from Schindler Ltd at £6413.80 inc VAT.
- A copy of the email dated 8 June 2012 from ILECS Ltd lift consultants, to Honorbond Ltd., confirming their work in negotiating Schindler's lift price for the proposed repair works down from £7508.20 to £6413.80.
- A copy of the note dated 11 June 2012 that the Applicant states was sent to leaseholders.
- A copy of the note dated 22 June 2012 that the Applicant states was sent to leaseholders.
- A copy of the 'Basic Maintenance Contract Elevators' dated 21 March 2012, between Schindler Ltd. and Honorbond Ltd.1 year.

## The Respondents' case

11. It appears from the case file that none of the Respondents had requested an oral hearing.

12. No written representations were received by the Tribunal from or on behalf of any of the Respondents.

## The Tribunal's determination

13.The Tribunal is critical of the Applicant in respect of some aspects. Direction 4(a) has not been complied with. The information provided on behalf of the Applicant was sparse and of little probative value. As an example of this, the bundle contained the Tribunal's own guidance on procedure in its entirety. The bundle was not paginated, and such correspondence as was included was not arranged in date order. As at the date of the Tribunal's determination, it is unclear whether the works have already been commenced/completed.

14. The Tribunal would have expected, at the very least, that the first formal Notice of Intention under the Act should have been served (giving the leaseholders the right to nominate their own contractor) and to comment on the extent and nature of the works. No reason has been supplied to the Tribunal as to why this was not done. There is no indication in the Grounds for Seeking Dispensation, within the application itself at paragraph 2 thereof, that any parts of the statutory consultation process had been entered into. An application under S20ZA under the Act is not to be regarded by landlords as an alternative to consultation.

15. The Tribunal must have a cogent reason for dispensing with the consultation requirements, the purpose of which is that leaseholders who may ultimately foot the bill are fully aware of what works are being proposed, the cost thereof and have the opportunity to nominate contractors.

16. It is noted, from an email dated 8 June 2012, that ILECS Ltd, the lift consultants, had stated, inter alia, *"The thyristors, main PCB and relay have completely blown with the unit and they are unable to repair. We agree that the board is beyond repair and a replacement is required".* The Tribunal accepts that the qualifying works are required.

17.The financial burden on the leaseholders is potentially onerous but in this particular case, the Tribunal determines that the leaseholders would not be substantially prejudiced by the Applicant's failure to consult fully or at all. In particular, the Tribunal notes that no objections have been received from or on behalf of any of the Respondents.

18.On that basis, the Tribunal is satisfied that it is reasonable to dispense with requirements and determines that those parts of the consultation process under the Act as set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 which have not been complied with may be dispensed with.

19. It should be noted that the Applicant maintains that the commercial unit would not be expected to contribute *"as lift does not serve the commercial unit"*. This statement will not suffice. The Tribunal does not intend to comment on whether or not the commercial unit should contribute towards the qualifying works. This would depend on the wording in the relevant leases.

20. **It should also be noted that in making its determination, and as stated in paragraph 7 of the Tribunal's Directions of 15 June 2012, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

**CHAIRMAN**.....

**DATE**.....**17 July 2012**.....