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**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/00AW/LDC/2012/O108**

**Address: 72 Eaton Square, London SW1X 9AS**

**Applicant: 72 Eaton Square Ltd.**

**Represented by: S L Property Consultants Ltd.**

**Respondents: The lessees of 72 Eaton Square London SW1X 9AS**

**Tribunal: Mrs JSL Goulden JP**

**Date of Tribunal's Decision: 6 November 2012**

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1 The Applicant, who is the landlord of 72 Eaton Square, London, SW1X 9AS ("the property"), has applied to the Tribunal by an application dated 21 September 2012, and received by the Tribunal on 24 September 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"). A schedule of the Respondents was provided to the Tribunal.

2. The property is described in the application as a "*residential block of flats*". It is understood that there are 11 flats in the block.

3. A copy of the lease of Flat 10 at the property was 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. The application stated, inter alia, that the works were "*to remove the badly corroded and dropped flue lining. The area is dangerous as the complete flue is not lined to the roof and there is a risk that carbon monoxide could leak into the building....we have written to all the Respondents to inform them of this application together with a copy of the estimate. The reasons for the urgency has also been set out clearly for them. The works are of extreme urgency as the flue cannot be repaired and does not comply with current regulations. Further there is a serious safety risk for the residents in the building*". A copy of a report and estimate from E A Fuller Ltd., Builders, Decorators, Plumbing, Electrical and Mechanical Heating Engineers, dated 7 September 2012 was provided.

5. Directions of the Tribunal were issued without an oral Pre Trial Review on 2 October 2012.

6. The Applicant had requested a paper determination although the Tribunal's Directions had listed the matter for an oral hearing if any party had requested an oral hearing. 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 6 November 2012.

7. 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**

8. It is a matter of some regret that neither the Applicant nor the Applicant's agents have complied with the Tribunal's Directions of 2 October 2012, and in particular Direction 8. This is considered unhelpful.

9. In a letter to the Tribunal dated 3 October 2012, the landlord's agents confirmed that the Tribunal's Directions had been sent to the lessees and a copy of the Directions had been placed in the hall at the property. No objections have been raised by or on behalf of any of the Respondents, and a report from the contractor has been provided. It is not known whether the works have commenced.

10. In the report from E A Fuller Ltd. dated 7 September 2012, it was stated, *inter alia*, "whilst carrying out regular boiler and hot water maintenance we found a section of flue had slipped (Boiler No. 1). After investigation this was found to be due to wearing of fixings. However, the rivets securing the flues had become badly corroded and on further investigation the main flue was found unlined and dangerous should any products of combustion filter from the unlined flue and into the building. Please find our estimate below for replacing the separate flues of the two boilers and hot water generators in the boiler room, also lining the communal flue from the boiler room up to the roof terminal. We have allowed to fit a "balloon" type of liner within the flue, which would then be inflated whilst in position." It appeared from the report that there were 3 boilers and the works would take 4 days to complete. The cost was stated to be £14,605 plus VAT.

### **The Respondents' case**

11. It appears from the case file that none of the Respondents had requested an oral hearing. The lessees of flats 4, 7, 11 and 12 had submitted forms which indicated that they supported the landlord's application for dispensation from the full consultation process. The lessees of Flats 4, 11 and 12 stated that they were content for the Tribunal to make a determination on the basis of written representations, although they did not submit written representations.

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

## The Tribunal's determination

13. S 18(1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S20 provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements apply where the works are qualifying works (as in this case) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with. Dispensation is dealt with by S 20ZA of the Act which provides:-

**“Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements”**

14. The consultation requirements for qualifying works under qualifying long term agreements are set out in Schedule 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 as follows:-

**1(1) The landlord shall give notice in writing of his intention to carry out qualifying works –**

- (a) to each tenant; and**
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.**

**(2) The notice shall –**

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;**
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;**
- (c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;**
- (d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure**
- (e) specify-**
  - (i) the address to which such observations may be sent;**
  - (ii) that they must be delivered within the relevant period; and**
  - (iii) the period on which the relevant period ends.**

**2(1) where a notice under paragraph 1 specifies a place and hours for inspection-**

- (a) the place and hours so specified must be reasonable; and**
- (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.**

**(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.**

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made state his response to the observations.

15. The scheme of the provisions is designed to protect the interests of tenants, and whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and its purpose.

16. 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.

17. In this case, no evidence has been produced that any of the Respondents have challenged the consultation process. From consideration of the contractor's report dated 7 September 2012, the work appears to be urgent and could involve health and safety concerns.

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 in making its determination, and as stated in paragraph 3 of the Tribunal's Directions of 2 October 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 .....6 November. 2012.....