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

Case References : LON100301LDC/2014/0139

Property : Raphael House 250 High Road
Ilford IG1 1YT

Applicant : Herondeal Ltd (in liquidation)

Representative : Lucas McMullen Jacobs

Respondent : Various leaseholders of Raphael
House as set out on the application

Representative : n/a

Type of Application : S20ZA Landlord and Tenant Act
1985

Tribunal Members : Judge F J Silverman Dip Fr LLM
Mr P Tobin FRICS

**Date and venue of
paper determination** : 9 December 2014
10 Alfred Place London WC1E 7LR

Date of Decision : 10 December 2014

DECISION

The Tribunal determines that it will exercise its discretion to dispense with the consultation requirements imposed by s.20 of the Landlord and Tenant Act 1985.

REASONS

1. The Applicant landlord seeks a determination of its applications for dispensation from the consultation requirements imposed by s. 20 of the Landlord and Tenant Act 1985.
2. The Application to the Tribunal was made on 14 October 2014.
3. Directions were issued by the Tribunal on 23 October 2014.
4. A paper determination took place in London on 9 December 2014 at which the Tribunal considered the Applicant's application and accompanying documents together with the representations made by two of the Respondent tenants.
5. The property which is the subject of this application is a recently constructed and purpose built block of 154 flats. The Directions issued by the Tribunal and sent by the Applicant to all Respondents only required those who objected to the application to respond. Only five replies were received by the Tribunal and of those only two made representations objecting to the application. In accordance with Direction 9 the Tribunal makes the assumption that the remaining 149 Respondents had no major objection to the Applicant's proposals.
6. The Tribunal did not inspect the property because to do so would have been disproportionate.
7. During the year 2013 the Applicant became aware that the boiler flues serving the property were malfunctioning. Some temporary repairs were effected but in December 2013 it became apparent that replacement flues would have to be fitted and a decision was taken to proceed with the work immediately. A delay in commencing the work caused by engaging in a consultation process as required by s20 Landlord and Tenant Act 1985 would have left the tenants without heating over the winter months. The work to replace the flues was estimated to cost about £148,000 (under £1000 per flat) and was completed in February 2014.
8. It is common ground that the Applicant has a repairing obligation in respect of the structure, exterior and common parts of the premises imposed on it by the lease.

9. The Applicant sought the Tribunal's consent to dispense with the consultation requirements imposed by s20 Landlord and Tenant Act 1985 in respect of the now completed works to the boiler flues.
10. In view of the fact that the overwhelming majority of the Respondent tenants have not objected to the application, and that the proportion of the total cost to be charged to each Respondent is not excessive, the Tribunal is minded to grant its consent to the application. It does however question why the Applicant did not make the application before or at the time when the repair work was being carried but chose instead to apply several months after the works had been completed. It also notes that the bundle of papers prepared by the Applicant for the Tribunal's determination contained no statement of case and few documents which were of relevance to the application under consideration.
11. The Tribunal notes that the Applicant is presently investigating the validity of a warranty for the boilers and flues given by the original sub-contractor to the freeholder .
12. In support of their application the Applicant did supply the Tribunal with copies of a survey report which recommended the works which were carried out and which indicated that the work was urgent.
13. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) 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* (emphasis added).”

14. The Tribunal understands that the purposes of the consultation requirements is to ensure that leaseholders are given the fullest possible opportunity to make observations about expenditure of money for which they will in part be liable.
15. Having considered the submissions made by both parties the Tribunal is satisfied that the works carried out by the Applicants were sufficiently urgent and necessary to permit them to exercise their discretion in the Applicant's favour.
16. This determination does not affect the tenants' rights to apply to the Tribunal challenging the payability or reasonableness of the service charges.

Judge F J Silverman as Chairman
Date 10 December 2014

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.