



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

Case reference : LON/00AW/LDC/2017/0132

Property : 47 Cathcart Road, London SW10 9JE

Applicant : 47 Cathcart Road (No2) RTM Co Ltd

Representative : Fry & Co, managing agents

Respondents : Mr G and Mrs I Crisci
Olecrose Ltd
Amanda & John Durack
Dr A Froushan
Edward Bartlett

Representative : Mr Michael Bartlett for his son, Mr
Edward Bartlett

Type of application : To dispense with the requirement to
consult lessees about major works

Tribunal : Judge Nicol
Mr SF Mason BSc FRICS FCI Arb

Date of decision : 8th January 2018

DECISION

The Tribunal has determined that the Applicant shall be granted dispensation from the statutory consultation requirements in relation to works additional to those originally consulted on, namely to the roof at a cost of £4,189 plus VAT.

Reasons

1. The Applicant is a company formed by the lessees to exercise their right to manage the subject property, a semi-detached house converted into 5 flats. The property is managed on their behalf by Fry & Co.

2. The lessees exercised their right to manage because they were dissatisfied with the management of their lessor, CA Daw & Son Ltd, and their agents. As soon as the Applicant took over, they instructed a building surveyor to undertake a survey of the subject property and draw up a specification of any required works. They then undertook consultation for those works in accordance with the statutory requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.
3. Unfortunately, the lessees have not been all of one mind. The Fifth Respondent's father, Mr Michael Bartlett, has entered into extensive correspondence with the Applicant objecting to various aspects of the works. Resolution of any issues has been complicated by the fact that Mr Bartlett had carried out some works which were allegedly unauthorised, the existence of arrears of service charges sought from the Fifth Respondent and, it appears to the Tribunal, the somewhat intemperate nature of the way Mr Bartlett expresses himself. However, no application has been made to the Tribunal as to the reasonableness or payability of any charges arising from these works.
4. After the commencement of the works, the contractor, Millane, identified the need for further work to the roof to address water ingress at a cost of £4,189 plus VAT. In the final account totalling £27,884.99, the additional work cost £3,262 plus VAT after a credit had been given from the original specification. The additional works were carried out and completed without further consultation. The Applicant has now applied for dispensation from the statutory consultation requirements for the additional works.
5. The Tribunal made directions on 23rd November 2017 requiring the Applicant to display and send to each lessee both the application and the directions. Compliance was confirmed by email dated 30th November 2017. In response, lodged an objection supported by representations in letters dated 6th and 21st December 2017.
6. The Tribunal was provided with the lease for one of the flats which, it is assumed, is standard. Under that lease, the Applicant is obliged to maintain the property and keep it insured and the lessees are obliged to pay a proportionate share of the costs incurred.
7. In accordance with the Supreme Court's decision in *Daejan Investments Ltd v Benson* [2013] 1 WLR 854, the primary issue when considering dispensation is whether any lessee would suffer any financial prejudice as a result of the lack of compliance with the full consultation process.
8. Unfortunately, Mr Bartlett appears to have misunderstood the nature of this application. His objections mostly relate to the reasonableness of both the original and the additional works. He has asserted that the need for the additional works should have been identified in the original survey so that they could have been included in the original specification but he has presented no evidence as to why that should be the case. He baldly asserted that the defects would have been easily apparent on inspection but provides

nothing in support – presumably the water ingress would only have been apparent to an occupier of one of the flats, not to a surveyor carrying out an internal inspection.

9. Even if Mr Bartlett had been able to make his point during an additional consultation process, he has not sought to explain how the outcome would have been different. He has asserted that the cost of the additional works was inflated but has provided nothing to support this which means that it is unlikely he would have influenced the outcome.
10. There appears to be no dispute that the work needed to be done. It is also in the nature of water ingress that it needs to be done urgently and, work having already started, it is logical to address additional matters at the same time rather than incur the delay of further consultation. Full consultation had been carried out on the majority of the works, including consideration of the identity of the contractor and the reasonableness of their tender price.
11. Given the lack of proven prejudice, the Tribunal is satisfied that it is reasonable to dispense with the statutory consultation requirements.

Name: NK Nicol

Date: 8th January 2018