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

**Case Reference** : LON/00AG/LDC/2013/0113

**Property** : 92 Haverstock Hill, London NW3  
2BD

**Applicant** : Everclear Investments Ltd.

**Representative** : Residential Management Group  
Ltd.

**Respondents** : Various lessees of 92 Haverstock  
Hill

**Representative** : None provided

**Type of Application** : S20ZA of the Landlord and Tenant  
Act 1985 – dispensation of all or  
any of the consultation  
requirements

**Tribunal** : Judge Goulden  
Mr L Jarero BSc FRICS

**Date and venue of  
Hearing** : 10 Alfred Place, London WC1E 7LR

**Date of Decision** : 4 December 2013

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**DECISION**

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**Background**

1. The Applicant, Everclear Investments Ltd. has, through its agents, Residential Management Group Ltd., applied to the Tribunal by an application under S20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation of all or any of the consultation requirements contained in S20 of the Act. The application was dated 11 October 2013 and was received by the Tribunal on 14 October 2013. The Respondent tenants of the three flats, together with the tenant of the shop are those set out in the schedule to the application.

2. 92 Haverstock Hill London NW3 2BD (“the property”) is described in the application as a “*conversion of 3 flats and one shop*”.

3. A copy of the lease of the top floor flat, Flat 3 at the property dated 31 May 2002 and made between Temple Green Investments Ltd (1) and Christopher William Lawson (2) has been supplied to the Tribunal. The lease contained details of the landlord’s repairing covenants and the lessees’ covenants to contribute thereto. With no evidence to the contrary, it is assumed that all the residential leases are in essentially the same form.

4. The application stated, inter alia, that urgent works had started with the erection of a scaffold and water testing to ensure that the proposed repair was correct in order to remedy water ingress into the property. Dispensation was sought as “*works could not be delayed as water ingress was causing damage to the top floor flat*”.

5. Directions of the Tribunal were issued on 22 October 2013 without an oral Pre Trial Review in which it was stated “*the applicant contends that urgent roof works are required to the property. A water test is to be carried out to ensure that the damage is properly located following the erection of scaffolding. Two quotations have already been supplied to lessees. Notices of intention have already been served following which agreement has been made with two lessees*”.

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 had been made for 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 Wednesday 4 October 2013.

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. In written submissions dated 2 July 2013, Ms A Miller, Major Works Manager of Residential Management Group Ltd., the Applicant's managing agents, stated, inter alia, that the works were required following receipt of a complaint from the lessee of the top floor flat on 27 August 2013 complaining of water penetration. A quotation had been obtained from a company who had recently carried out roof repairs at the property together with another quotation from another contractor. It was stated "*the company who had previously carried out works, Rooftops, advised that the cause of the water penetration was due to lead around an outlet pipe failing. The other company provided a quotation for more extensive works. We duly notified all leaseholders by way of Notice of Intent and also advised that these works were of an urgent nature. The leaseholders were asked if they were happy for works to proceed with the appointment of Rooftops to carry out the proposed works and water test on completion, to prevent further water penetration. All flat owners confirmed that they were happy for works to proceed, no communication was received from the shop owner. It is our belief that if full consultation had been undertaken, there would have been extensive additional damage to the top floor flat hence our decision to proceed with the works. Following completion of the works there have been no reports of any further water penetration*".

9. Copies of the quotations, Notice of Intention, correspondence and responses from lessees were supplied to the Tribunal.

### **The Respondents' case**

10. It appears from the case file that none of the Respondents had requested an oral hearing. The tenants of Flat 1 had submitted signed and dated forms which indicated that she supported the landlord's application for dispensation from full consultation, and were content for the Tribunal to make a determination on the basis of written representations. From the correspondence submitted, it appeared that the lessee of Flat 3 also supported the application. No written representations were received by the Tribunal from or on behalf of any of the Respondents.

### **The Tribunal's determination**

11. 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.

12. 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”**

13. 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.**

14. 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.

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. No evidence has been produced that any of the Respondents have challenged the consultation process and no written submissions have been received.

17. The contractors' invoices have been considered. The invoice from Rooftops, the contractor who has been appointed by the Applicant, was dated 30 August 2013 and was in the sum of £1,800 plus VAT.

18. The quotation does not appear to have been excessive and it is accepted that if full S20 consultation had been entered into, the damage caused by water ingress could have increased and the costs could well have escalated, to the prejudice of the tenants.

19. 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.

**20. It should be noted that in making its determination, and as stated in paragraph 3 of the Tribunal's Directions of 22 October 2013, 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.**

**Name: J Goulden**

**4 December 2013**