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

Case Reference : LON/OOAJ/LDC/2013/0135

Property : 28 Birch Grove, Acton, London W3
9SS

Applicant : Hardeep Singh

Representative : None notified

Respondents : Lucy Neil (Flat 2) and Patricia
Thompson (Flat 3)

Other Tenants : Kathy Hall (Flat 1)
Mr and Mrs Amin Alidina (Flat 4)
Angela Sebastianeli (Flat 5)

Type of Application : For dispensation of all or any of the
consultation requirements

Tribunal : Judge Goulden

**Date and venue of
Hearing** : Tuesday 11 March 2014 at 10 Alfred
Place, London WC1E 7LR

Date of Decision : 11 March 2014

DECISION

Decision of the Tribunal

The Tribunal determines that those parts of the consultation requirements provided for by Section 20 of the 1985 Act which have not been complied with are to be dispensed with.

The application

1. The Applicant seeks a determination pursuant to S20ZA of the Landlord and Tenant Act 1985 (“the Act”) for the dispensation of all or any of the consultation requirements provided for by Section 20 of the Act. The application was dated 14 November 2013 and was received on 25 November 2013.
2. Directions of the Tribunal were issued on 7 January 2014.
3. The case was listed for a paper determination. No request had been made by any of the parties for an oral hearing.

The hearing

4. The matter was determined by way of a paper hearing which took place on Tuesday 11 March 2014.

The background

5. 28 Birch Grove, Acton, W3 9SS (“the property”) which is the subject of this application is described in the application as a house which had been converted into 5 flats.
6. There had been a previous paper hearing relating to the same property, and the Tribunal had issued its Decision which was dated 29 July 2013. That Decision, in which the Applicants had been the present Respondents, had been for a determination in respect of the reasonableness of and the liability to pay a service charge under S27A of the Act.
7. The issue relates to roof repairs to the property which had been completed in April 2013.
8. As stated in the Tribunal’s Directions of 7 January 2014 in respect of the present application, *“By a decision...dated 29 July 2013 (the Tribunal) decided that each of the respondents was only liable to contribute £250 towards the cost of roof repairs completed in 2013 because the applicant had failed to comply with the statutory consultation requirements of section 20 of the Landlord and Tenant*

Act 1985. The applicant now seeks dispensation from those requirements. If dispensation is granted each of the respondents would be liable for the full contribution of £409.19. The respondents have by letter of 27 November 2013 confirmed that they oppose the application”.

9. The other tenants have been notified of the present application since they are likely to be significantly affected by the application in that the Decision in the present case before the Tribunal will affect all of the tenants at the property.
10. No formal Notice of Intention under the Act had been sent to the lessees, but a letter of explanation to the tenants dated 11 March 2013 was provided to the Tribunal (see paragraph 28 below).
11. Neither side requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
12. A copy of the lease of Flat 2 at the property was provided to the Tribunal. The lease required the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge. With no evidence to the contrary, it is assumed that all residential leases were in essentially the same form.

The issues

13. The issue is as set out in paragraph 7 above.

The Applicant's submissions

14. No formal written submissions were received on behalf of the Applicant.
15. In the application, it was stated, “ *There was an urgent need to repair the roof, as water was seeping into the flat. We gave notice of works to all owners. There is no dispute of this. Due to wet weather, we had to give the builders green light. The builders started work on the roof, but it was a few days before the 30 days statutory period.*”
16. In respect of the consultation which had been carried out, in the application it was stated that estimates/quotations had been sent to all the tenants.
17. Dispensation was sought because the contractors were instructed to start work during a break in the weather following “*constant rain*”. In the application it was stated “*we acted not out of malice. We acted with*

the interest of the flat owners who had water leak. The Respondent is not disputing the fact that work had to be done, but the fact we did not allow the 30 day consultation period”.

18. The Tribunal has been provided with a copy of an invoice number 1277 dated 11 April 2013 from Ranjit Roofing Company Ltd. This stated *“Suppl the scaffolding right hand side alley way install flat roof label. Strip off second flour (sic) dormer flat roof and rear the house 1st flour (sic) flat roof. Supply and install new 4mm high performance torchen felt both flat roofs. Replace any missing and damage (sic) tiles near the flat roof and pitch roof joint area. Strip off old lead flashing around the 1st flour (sic) wall side. Clean and tidy the work place”.*

The Respondents’ submissions

19. No formal written representations were received from or on behalf of either of the Respondents in accordance with the Tribunal’s Direction 5.

The other Tenants’ submissions

20. No formal written representations were received from or on behalf of the other tenants at the property. However, in a letter from the tenant of Flat 1 to the Tribunal dated 10 February 2014, it was stated, inter alia *“I wish to support Mr Singh’s application for dispensation. I...have always found Mr Singh to be an approachable, courteous and fair minded person. I have full records of work done and arranged by Mr Singh since the early 90’s and all works were discussed, annotated and satisfactorily completed.....Why would Mr Singh want to hold up necessary works? He is not an exploitative freeholder but he has to make sure that everyone is correctly informed about the work and as there are 5 owners in the house this can take time. Quotations are hard to getI would prefer Mr Singh to use his own contacts as the longer the work takes to agree the greater the damage and the higher the cost.....Mr Singh has sent me a cheque for the difference in the disputed roof repair and the amount he has been able to charge at present but I am more than willing to pay the full amount if the case is decided in his favour as I wish to continue my satisfactory relations with him”.*

The Tribunal’s Determination

21. S20 of the Act 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.

22. 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”

23. The consultation requirements for qualifying works 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.

24. 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.
25. 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.
26. The Respondents have challenged the consultation process. No formal written submissions have been received from or on behalf of either of the Respondents. A letter in support of the application was received from the tenant of Flat 1 (see paragraph 20 above).
27. The bundle prepared by the Applicant was not of great assistance in that it referred to matters unrelated to this application, some of which go back many years. There was no formal statement of case.
28. However, it appears that there is no dispute that the roof was leaking, and by a letter dated 11 March 2013 from the Applicant addressed to all the tenants at the property, it was stated, "*we have been told that the roof is leaking and water is seeping through Flat 5. Due to the bad weather we could not have this problem checked out. We have contacted a number of buildings (sic) and the consensus is that they all need scaffolding to access the roof. To pay for the scaffolding and then get quotes from other builders would mean extra cost. So we are giving the green light to have the scaffolding put in place and the roof problem repaired. The cost of the scaffolding is £500 + VAT. The cost of the repair will only be known when the builders assess the roof. We will keep you all updated*".
29. A further letter dated 22 March 2013 was sent by the Applicant to the tenants which stated "*kindly note the work on the roof by Ranjit Roofing will commence on 2nd April 2013 Tuesday*".

30. The Tribunal is satisfied that, in the particular circumstances of this case, and taking into account the sums involved, the Respondents and the other tenants are not unduly prejudiced and 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. However, the Applicant is urged to ensure that the statutory requirements as set out in paragraph 23 above where the cost of works exceed the threshold are met in future.
31. For the avoidance of doubt, and since it appears that the Applicant has refunded to the Respondents and the other tenants amounts over the sum of £250, following the Tribunal's Decision of 29 July 2013, the Tribunal by this Decision determines that all the tenants at the property must pay their full contribution towards the cost of the roof repairs, namely, £2,154. In the Respondents' case, this appears to be £409.26 each. The handling charge was disallowed in the Tribunal's earlier Decision of 29 July 2013.
32. **It should be noted that in making its determination, this application does not concern the issue of whether any service charge costs are reasonable or indeed payable by the lessees. However, there has already been a Decision in this respect by the Tribunal's Decision of 29 July 2013. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

Name: J Goulden

Date: 11 March 2014