

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : Chiltern Court
Milton Road,
Harpenden,
Herts AL5 5LY

Applicant : Urbanpoint Property Management Ltd.
(on behalf of the freeholder COS Services Ltd.)

Respondents : The Leaseholders of flats at the property as listed in the Schedule attached to the application

Case number : CAM/26UG/LDC/2007/0004

Date of Application : 4th April 2007

Type of Application : Application to dispense with consultation requirements in respect of major works (Section 20ZA Landlord and Tenant Act 1985 as amended ("the 1985 Act"))

Tribunal : Bruce Edgington – lawyer chair
Neil Martindale FRICS

Date and place of hearing : 3rd May 2007 at Harpenden House Hotel,
18 Southdown Road, Harpenden, Herts.

DECISION

1. The tribunal determines that it is reasonable to dispense with the statutory consultation requirements of s.20 of the Landlord and Tenant Act 1985 ("the Act") in relation to the repairs to make the lift at the property operational.

REASONS

Background

2. The tribunal received the application under Section 20ZA of the Act for dispensation from all or any of the consultation requirements contained in

Section 20 in relation to repairs to the only lift at the property. It was dated 4th April 2007 but was only received on the 18th April 2007.

3. Notice of the application together with information from the Residential Property Tribunal Service was given to the leaseholders of the 16 flats at the property although it is only 12 of the flats which are actually affected. A Directions Order was made on the 23rd April 2007 including a direction that any Leaseholder who wanted to make representations do respond by 4.00 pm on the 2nd May 2007.
4. Within the time limit set, responses had been received from Mr. and Mrs. Stewart-Smith (flat 10 lessees) and Mr. Turnbull (flat 13 lessee). They were in favour of the works proceeding now although Mr. and Mrs. Stewart-Smith raise a management issue over payment which is not the concern of this Tribunal.
5. The Tribunal informed the parties that it considered that this matter was urgent enough to warrant an abridgement of the normal 21 day notice period for a hearing in accordance with Regulation 14(4) of the **Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003** bearing in mind that the property was said to be occupied by a number of elderly persons and the repairs related to the only lift.

The Law

6. Section 20 of the Act limits the amount which tenants can be charged for major works unless the consultation requirements have been either complied with, or dispensed with by a leasehold valuation tribunal. The detailed consultation requirements are set out in Schedule 4, Part 2 to the **Service Charges (Consultation Requirements) (England) Regulations 2003** ("the Consultation Regulations"). These require a Notice of Intention, facility for inspection of documents, a duty to have regard to tenants' observations, followed by a detailed preparation of the landlord's proposals. The landlord's proposals, which should include the observations of tenants, and the amount of the estimated expenditure, then has to be given in writing to each tenant and to any recognised tenant's association. Again there is a duty to have regard to observations in relation to the proposal, to seek estimates from any contractor nominated by or on behalf of tenants and the landlord must give its response to those observations.

7. 20ZA of the Act allows a Leasehold Valuation Tribunal to make a determination to dispense with the consultation requirements if it is satisfied that it is reasonable.
8. The Tribunal was supplied with a copy of the Lease to Flat 8 which is a first floor flat. It is dated 24th March 1969 and is for a term of 999 years commencing on the 29th September 1967. It contains a right to use the lift subject to the tenant paying a 'proportionate share' of maintaining it. Clause 3(e) requires the landlord to keep the lift in repair subject to the tenant paying a one twelfth share of the cost. If the lift does go out of commission there is an obligation on the landlord to use its best endeavours to secure the resumption of the lift service as soon as possible.

The Facts Found

9. The Application states that the lift broke down "a few weeks ago". 2 quotations for repair were obtained. One was from Crown Elevators Ltd. dated 26th March 2007 in the sum of £11,893.00 plus VAT and the other is from Abbey Lift Care dated 27th March 2007 in the sum of £12,467.00 plus VAT. Both quotations set out the work to be undertaken in some detail and both anticipate replacing the control panel, some rewiring and replacement of operating buttons. Each quotation then refers to other works which will be done. Abbey Lift Care quote a further £8,584.00 plus VAT for a recommended new door operating system, although they accept that the basic works would enable them to hand over the lift 'in full working order'.
10. On the 10th April 2007 a notice appears to have been sent to all tenants which is in the form of a Notice of Intention to repair the lift and encloses the 2 quotations. The notice then notifies the tenants that an application is being made to this Tribunal for dispensation of the need to consult.

The Inspection

11. The members of the Tribunal inspected the property in the presence of Fleur Erich from the managing agents and Mr. Tom McCarthy from Flat 15. They found it to be a purpose built block of flats built in the 1960's of partially faced brick construction under a flat roof. There was a single lift serving the 12 flats on the 1st, 2nd and 3rd floors. There appears to be no dispute that the lift is not working. There is a staircase.

12. It appeared that a contractor was working at the site and the Tribunal was able to see into the lift motor room. It appeared clear that it was necessary to move the control panel, install a longer ladder and upgrade the wiring. The plug sockets were for round pin plugs which is a clear indicator as to the age of the wiring.

The Hearing

13. The hearing was attended by Fleur Erich from Urbanpoint Property Management Ltd. and Mr. McCarthy. Mr. McCarthy was in favour of the work proceeding. He said that there had been a residents' meeting after the quotations had been sent out and everyone was happy for the work to go ahead. He had spoken to both companies who had provided the quotations and was satisfied that they were doing the minimum needed to put the lift in good working order. He thought the quotations were reasonable and was happy that the managing agents had instructed Crown Elevators Ltd.
14. They both said that there is at least one resident on the first floor who has obvious difficulty with stairs and there are others on the upper floors who would also have difficulty.
15. When asked what the managing agent had asked the contractors to do, Ms. Erich said that she had simply asked them to provide a quotation to put the lift into good working order.


Conclusions

16. The Tribunal was a little concerned that if this case was so urgent then the application should have referred to the lift breaking down a few weeks prior to the 4th April and that it should then take a further 2 weeks to reach the Tribunal office.
17. Having said that, the lift is clearly not working and the managing agent has obtained 2 quotations from what appear to be specialist companies which are similar in terms of what needs doing and the cost. There is no suggestion that the managing agents or the landlord on the one hand or the companies from whom the quotations have been obtained on the other hand are connected in any way. The inference which the Tribunal draws from this is that going through the prolonged consultation procedure is unlikely to produce a much cheaper quotation which is relevant when considering this issue.

The whole basis for the consultation procedure is to ensure that tenants are not charged excessive amounts for major works.

18. As the evidence is that the 1st, 2nd and 3rd floors of this block do include occupants who are likely to have physical difficulty in using the stairs, particularly carrying shopping and other day to day necessities, the Tribunal considers that it is reasonable to dispense with the statutory consultation requirements.

19. As was said in the Directions Order mentioned above, this application only asks the Tribunal to dispense with the consultation requirements. It is not an application to consider the reasonableness of the works or the reasonableness or payability of the service charge which will arise from this expenditure. If there is any dispute about those matters, then it will have to form the basis of an entirely separate application.



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Bruce Edgington

Chair

3rd May 2007