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

Case Reference : **LON/00AF/LDC/2013/0124**

Property : **Dukes Court, 250 Croydon Road,
Beckenham, Kent BR3 4DA**

Applicant : **Dukes Court Residents (1991)
Limited**

Representative : **Rogers and Hambridge (managing
agents)**

Respondent : **Various Leaseholders**

Representative : **Unrepresented**

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

Tribunal Members : **Jeremy Donegan (Tribunal Judge)**

**Date and venue of
Paper Determination** : **09 December 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **09 December 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal grants dispensation under section 20ZA of the Landlord and Tenant Act 1985 (“the 1985 Act”) in respect of the following works (“the Qualifying Works”) to the gable end walls at Dukes Court, 250 Croydon Road, Beckenham, Kent BR3 4DA (“the Building”):
 - Erect scaffolding – one end at a time
 - Remove all render. Treat, re-render and paint
 - Attend to any minor ancillary works as necessary – for example replace lead flashing
- (2) No terms are imposed on the grant of dispensation.

The application

1. The tribunal received an application for dispensation under section 20ZA of the 1985 Act on 08 November 2013.
2. Directions were issued on 15 November 2013. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 09 December 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The Building is a purpose built block consisting of 13 flats arranged over 4 floors. The tribunal understand that the Applicant is the current management company and the Respondents are the leaseholders of the flats.
5. The leases for the flats are tripartite and the lessor and the management company are obliged to “..keep the Reserved Property and all fixtures and fittings therein and additions thereto in a good and tenable state of repair decoration and condition...” (clauses 3 and 6 and paragraph 4 of seventh schedule).
6. The Applicant seeks prospective dispensation in relation to the Qualifying Works, which have not yet commenced (save for the erection of scaffolding around each gable end and covering the right hand side gable with temporary sheeting).

7. The Applicant set out brief grounds for seeking dispensation in their original application. Further details were contained in their statement of case dated 25 November 2013 and supporting bundle of documents. The grounds can be summarised as follows:

(a) Both gable ends have cracks to the external render, which are allowing water to penetrate into the structure. The cracking to the right hand side gable is particularly severe).

(b) On 16 October 2013 the managing agents, Rogers and Hambridge ("RH") received reports of water ingress to Flats 7 and 11 at the Building. Emergency repairs were undertaken to the lead flashing on the roof.

(c) In late October 2013, part of the kitchen ceiling in Flat 11 collapsed. Further emergency repairs were undertaken. A few days later, another section of the kitchen ceiling fell down. Investigations by a roofing contractor suggest that the cracked external render in the gable ends is allowing water to penetrate to the blocks behind, which are becoming saturated with water. The contractor believes that water is travelling down the Building and across the steel beam, soaking into the plasterboard in the kitchen ceiling.

(d) On 04 November 2013 RH served Notice of Intention on the leaseholders in relation to the Qualifying Works. They have obtained 3 quotations for these works dated 06, 09 and 12 November 2013, ranging from £4,260 to £9,600 (including VAT where appropriate). It is not clear if all of the quotes were given on a like for like basis, as one of them does not include the cost of erecting scaffolding.

(e) The Applicant seeks dispensation upon the grounds that the Qualifying Works are urgent, given the water ingress to Flats 7 and 11 and the partial collapse of the kitchen ceiling in Flat 11. RH make the point that further inclement weather will continue to cause damage to these flats and there is the risk that sections of blown render could fall down. Given the nature of the damage, the health and safety risk and the time of year, RH want to undertake the Qualifying Works quickly rather than embark on a full consultation exercise.

8. Paragraph 8 of the directions required the Respondents to complete and file response forms with the tribunal, indicating whether they supported the application. The leaseholders of 5 of the flats have indicated their support. None of the Respondents has opposed the application, identified any prejudice or proposed any terms as a condition of granting dispensation. The leaseholders of 2 of the flats stated that they intended to send written representations to the tribunal and the Applicant by 02 December 2013 but did not do so.

9. The tribunal has determined the application based upon the Applicant's statement of case and bundle, the information set out in the original application form and the completed response forms.

The tribunal's decision

10. The tribunal grants the application for dispensation under section 20ZA of the 1985 Act, in respect of the Qualifying Works (as detailed in the Notice of Intention dated 04 November 2013). No terms are imposed on this grant of dispensation.

Reasons for the tribunal's decision

11. The Qualifying Works are urgent, given the water ingress to two of the flats and the partial collapse of the kitchen ceiling in Flat 11. Embarking upon a full consultation exercise is likely to take 3 months or longer and this would delay the Qualifying Works until early next year. There is a substantial risk of further damage to Flats 7 and 11 if the works are delayed, given the time of year and the likelihood of heavy rainfall during the winter months. Further there is a health and safety risk from possible falls of blow render.
12. The leaseholders of 5 flats have indicated their support for the application. There have been no objections and none of the leaseholders have suggested that they will be prejudiced if dispensation is granted. Furthermore, none of the leaseholders have suggested that any terms should apply to the grant of dispensation.
13. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for the Qualifying Works. However nothing in this decision prevents the leaseholders from seeking a determination of their liability to contribute to the cost of these works, at a later stage, pursuant to section 27A of the 1985 Act.

Name:
Jeremy Donegan

Date: 09 December 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,

- (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with

proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 20ZA

- (1) Where an application is made to the appropriate tribunal for a determination to dispense with all of 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.