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

**Case Reference** : **LON/00BG/LDC/2013/0013**

**Property** : **38 Waterford Road, London SW6  
2DR**

**Applicant** : **Shepherd's Bush Housing Group**

**Representative** : **Unrepresented**

**Respondent** : **Alison Down (38A)  
Charlotte Garner (38B)  
Ned Truman (38C)**

**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** : **17 September 2013  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **17 September 2013**

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**DECISION**

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## **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 proposed repairs to the entrance steps at 38 Waterford Road, London SW6 2DR (“the Building”).

## **The application**

1. The tribunal received an application for dispensation under section 20ZA of the 1985 Act on 11 July 2013.
2. A pre-trial review took place on 16 July 2013 when directions were given. The directions 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 application or requested an oral hearing. The paper determination took place on 17 September 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

4. The Building consists of three flats (Flats A, B and C). The Applicant is the freeholder of the Building and the Respondents are the leaseholders of the flats.
5. The Applicant seeks dispensation in relation to proposed repairs to the external, entrance steps to the Building. Works are required to remedy water leaks into Flat A, below.
6. The Applicant briefly set out the grounds for seeking dispensation in the application form, which can be summarised as follows:
  - (a) Works were originally proposed to seal over cracks and gaps in the steps. The anticipated cost of these works was £557.64 plus VAT, which is below the consultation threshold.
  - (b) Contractors were instructed to undertake the works and discovered on removing the render that there were structural issues and that more extensive works were required. Advice will be required from a

structural engineer or surveyor and the cost of the works and professional fees will now exceed the consultation threshold.

(c) The Applicant has placed a temporary cover over the exposed steps but feels that the steps cannot be left as they are for 3 months, whilst a section 20 consultation process takes place.

7. Paragraph 2 of the directions required the Respondents to complete and file response forms with the tribunal, indicating whether they consented to the application. All three leaseholders complied with this direction and consented to the application. The leaseholder of Flat A (Alison Down) also stated that she intended to send written representations to the tribunal and the Applicant by 30 August 2013. The leaseholders of Flats B (Charlotte Garner) and C (Edward Truman) stated that they would not be sending any representations.
8. The Applicant has not filed a bundle of documents with the tribunal, in accordance with paragraph 3 of the directions. Ms Down has not filed any representations with the tribunal in accordance with her response form but there was no real need for her to do so, given that she has consented to the application.
9. The tribunal has determined the application based solely upon the information set out in the original application form and the three completed, response forms.

### **The tribunal's decision**


10. The tribunal grants the application for dispensation under section 20ZA of the 1985 Act.

### **Reasons for the tribunal's decision**

11. The repairs to the entrance steps are clearly urgent, given that water is leaking into Flat A. A full section 20 consultation will take 3 months or longer. The Applicant has covered the steps but this is only a temporary solution and is far from ideal. A permanent repair is required in the near future, given that autumn is on its way with the likelihood of increased rainfall. This cannot wait 3 months.
12. All three leaseholders have consented to the application. No doubt Ms Down is particularly eager for the repairs to take place, so as to prevent further water leaks to her flat (Flat A).

13. Having regard to the particular facts of this case it is reasonable to dispense with the consultation requirements for major works. However nothing in this decision prevents the leaseholders from subsequently seeking a determination of the final cost of the repairs to the steps, should they wish to do so, pursuant to section 27A of the 1985 Act.

**Name:**



Jeremy Donegan

**Date:**

17 September 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.

### **Commonhold and Leasehold Reform Act 2002**

#### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.



- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
  - (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).