



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

**Case Reference** : LON/00AY/LDC/2014/0044

**Property** : 171 and 173 Sternhold Avenue,  
London SW2 4PF

**Applicant** : Mrs Patricia Ann Lee

**Representative** : None notified

**Respondents** : Mr David William Rees and Mrs  
Gail Rees

**Representative** : None notified

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

**Tribunal** : Judge Goulden

**Date and venue of  
Hearing** : Wednesday 16 April 2014 at 10  
Alfred Place, London WC1E 7LR

**Date of Decision** : 12 May 2014

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**DECISION**

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## **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 20 March 2014 and was received on 21 March 2014.
2. Directions of the Tribunal were issued on 27 March 2014.
3. The case was listed for an oral hearing which took place on 16 April 2014.

## **The hearing**

4. The Applicant, Mrs Patricia Ann Lee, appeared in person and was unrepresented. The Respondents, Mr David William Rees and Mrs Gail Rees, did not appear and were not presented.

## **The background**

5. 171/173 Sternhold Avenue, London SW2 4PF (“the property”) which is the subject of this application is described in the application as a Victorian house comprising one two bedroom and one three bedroom purpose built maisonettes. The Applicant landlord occupies the upper maisonette.
6. The issue relates to proposed repairs to the roof, guttering and front gable to the property said to be urgent because leaking water had damaged the interior of the property.
7. A lease of the ground floor flat (173 Sternhold Avenue) dated 5 November 1976 was in the case file. Mr Rees only was named as the lessee, but Mrs Lee said that she understood that both Mr and Mrs Rees were the lessees. The lease required the landlord to provide services and each tenant to contribute towards the costs by way of a variable service charge.
8. A formal Notice of Intention under the Act dated 13 March 2014 had been sent to the Respondents. The Applicant stated that informal notice

had been given to the Respondents when the damage had been noticed some three weeks earlier.

9. 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. Photographs dated March 2014 had been supplied by the Applicant.

### **The issues**

10. The issue is as set out in paragraph 6 above.

### **The Applicant's submissions**

11. No formal written submissions have been received by or on behalf of the Applicant.
12. In the application, it was stated, "*water is entering and damaging the interior rooms at back and front of building. When rain starts again there will be more damage. Danger of water getting into the loft and damaging the roof structure, as has happened previously. Repairs should start as soon as possible, waiting for the S20 consultation could be catastrophic*".
13. At the hearing, Mrs Lee said that due to the age of the building, she required builders experienced in restoration since she said that lime mortar would be required, rather than cement. She said that she had had great difficulty in obtaining quotations from appropriate contractors. She handed to the Tribunal coloured photographs taken in March 2014 which she said showed damage to the gable end roof.
14. Mrs Lee provided copies of the quotations which she had obtained and said that she had to arrange scaffolding independently. The quotations which she supplied were from:

JPC Lofts. This quotation was for the front of the property only, including scaffolding, at a sum of £2,900. No VAT was payable and lime mortar was not used.

London Repointing and Restoration Ltd. This quotation was for the rear of the property only and was in the sum of £5,000 plus VAT (no mention of scaffolding)

Apollo Stone Ltd. This quotation was for the front and rear of the property and was in the sum of £6,750 plus VAT and plus scaffolding costs (which Mrs Lee had not obtained).

15. Mrs Lee said that Mr and Mrs Rees wanted to proceed as quickly as she did, since they were intending to sell their property and she felt that they would agree to dispense with the consultation requirements. The Tribunal explained that the evidence which she had provided was insufficient, and she accepted this. She said that she had not fully understood the Tribunal's procedures, and thought that since the case had been listed she should attend. She asked for further time to provide further evidence.
16. Following the hearing, at the request of the Judge, the Case Officer wrote to Mrs Lee on 23 April 2014 explaining, as at the hearing, that the evidence was insufficient. This letter set out the Applicant's options, namely further evidence was to be supplied, including scaffolding costs or, if the Respondents were, as she stated, keen to proceed, then they could confirm that they were not challenging the application and Mrs Lee would be expected to withdraw the present application before the Tribunal. The letter also reminded Mrs Lee of the Tribunal's power to dismiss applications.
17. On 25 April 2014, Mrs Lee wrote to the Tribunal enclosing a statement of estimates dated 17 April 2014 in relation to proposed works with quotations from Apollo Stone Ltd. in the sum of £10,672 including VAT and from Guy Lawrence in the sum of £9,830 (no VAT payable). The quotations from the scaffolders were Lee Scaffolding (LNDN) Ltd in the sum of £1,200 including VAT and Whitewood Scaffolding Co. Ltd. in the sum of £2,630 plus VAT.
18. In her letter of 25 April 2014, a copy of which she had sent to the Respondents, Mrs Lee said *"I choose Guy Lawrence to do the work. He is a restoration builder with excellent references experienced at restoration and re-pointing work to old buildings in Devon and London. He uses only lime mortar and does not use power chisels, raking out by hand which is the traditional method. He is also patient dealing with queries and sensitive to the concerns of nearby neighbours. Over all his quote includes more work than Apollo Stone Ltd. I choose Lee Scaffolding to erect the scaffold back and front of the building. Their quote is very reasonable and they are a well known established local firm with good references"*.

### **The Respondents' submissions**

19. No formal written representations have been received by the Tribunal from or on behalf of either of the Respondents.

### **The Tribunal's Determination**

20. 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.

21. 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”**

21. 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.**

22. 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.
23. 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.
24. The Respondents have not challenged the consultation process. No formal written submissions have been received from or on behalf of either of the Respondents.
25. The Tribunal is concerned that the Applicant must arrange her own scaffolding contractor, which is somewhat unusual. However, she appears to be willing to undertake this obligation and is clearly, and understandably, concerned about the water ingress to the property, as described in paragraph 6 above, particularly after recent heavy rains.
26. The Tribunal is satisfied that, in the particular circumstances of this case, and taking into account the sums involved, the Respondents 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.

27. **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. The Tribunal's determination is limited to this application for dispensation of consultation requirements under S20ZA of the Act.**

**Name: J Goulden**

**Date: 12 May 2014**