



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

Case Reference : LON/00AE/LSC/ 2017/ 0114

Property : 84 Blenheim Gardens Willesden Green, London NW2 4 NT

Applicant : Southerland Securities Limited

Representative : Together Property Management

Respondent : LESSEES AS PER APPLICATION

Representative : n/a

Type of Application : For dispensation from the consultation requirements required by section 20 of the Landlord and Tenant Act 1985

Tribunal Members : Judge Carr
Mr Shaw FRICS

Date of Decision : 24th October 2017

DECISION

Decision of the Tribunal

1. The Tribunal determines to exercise its discretion to dispense with the consultation requirements contained in Part 2 of Schedule 4 to the

Service Charges (Consultation Requirements) England) Regulations 2003.

The Application

2. The freeholder of the premises, by its representative, Together Property Management applied on 19th September 2017 under section 20ZA for dispensation from the consultation requirements contained in Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) England) Regulations 2003.

Procedure

3. The Tribunal held a pre-trial review of this matter on 28th September 2017 and issued directions on the same date. In those directions it was decided that in view of the urgency of the application the matter should be determined on the basis of written representations and without an oral hearing.
4. The Directions gave an opportunity for any party to request an oral hearing. They also gave an opportunity for any leaseholder who wishes to oppose the application from the landlord to provide a statement to the Tribunal setting out his or her reasons for so doing. No requests for an oral hearing have been received therefore the matter is being determined on the basis of the papers.

Determination

The Evidence

5. The evidence before the Tribunal indicates as follows:
 - a. Following the discovery of a roof leak which affected the top floor flat the Applicant organised repairs to be carried out which included scaffolding. The initial report was received on April 2017 and the recommended work was carried out by Aldenham Roofing. At this stage the costs of the works fell below the consultation threshold. The Managing Agents decided to leave the scaffolding in place so that the repair could be monitored and to confirm that there was no further water ingress.
 - b. In July 2017 the Managing Agent received complaints of further water ingress on the opposite side of the roof and the scaffolding was therefore moved to the other side of the property and the requisite further works were carried out. It was only at this stage that the consultation threshold was crossed.

6. It is on this basis that the freeholder has made the application for dispensation.
7. The Tribunal has received a response from the lessees of flats A and B of the property.
8. Mr and Mrs B Cuttler of Flat A and Mrs S Cuttler of Flat B argue that they were first informed of the leak to the top flat by the lessee of Flat C and then received quotes from the Applicant on 1st December 2016. They responded by stating that they could not afford the works and that they thought the quotes were overpriced. At this point the Applicant characterised the works as urgent. In March 2017 the tenants of the flats complained to the Cuttlers that scaffolding had been erected to the side of the property. They therefore believe that there was no real urgency justifying a failure to consult.
9. Towards the end of June 2017 following a further complaint from the tenant, it appeared that the scaffolding was still in place more than 3 months after its erection. The managing agent was contacted who informed the Cuttlers that the scaffolding would be moved across and over the front door, and that the scaffolding had been left in place to ensure that the leak repair was successful.
10. The lessees set out a summary of their objections: (a) the passage of time to start the works does not amount to or support urgency (b) the period of time, in excess of three months, for the scaffolding to remain in place is excessive, (c) the leak referred to as 'second' leak is actually the same leak from a different source and therefore could have been repaired in a much shorter timeframe, (d) the excessive time for the scaffolding to be in place has led to unnecessary costs (e) this would set a precedent.
11. The lessees also ask that the Tribunal ensure that no further costs are levied on the lessees of the remaining flats.
12. The Tribunal also notes an email sent from Mr and Mrs Cuttler on behalf of flats A and B pointing out alleged errors in the Applicant's bundle.

The Law

13. The Tribunal is being asked to exercise its discretion under s.20ZA of the Act. The wording of s.20ZA is significant. Subs. (1) provides:
14. "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” (emphasis added).

The Tribunal’s decision.

15. The Tribunal determines to grant the application.

The reasons for the Tribunal’s decision.

16. The Tribunal determines that the works were necessary and urgent and that any delay to carry out consultation at the stage of the discovery of the further leak may well have resulted in additional costs.
17. The lessees points are noted. However, the Tribunal notes that it is often difficult to effectively repair a leak on the first attempt, that consultation was not required until further leakage (either from a second leak, or from a continuation of the first leak) was discovered. Their points may be relevant however in connection with any challenge to the reasonableness of the service charges demanded.
18. **The parties should note that this determination does not concern the issue of whether any service charge costs will be reasonable or indeed payable. The Respondents are able, if it appears to them to be appropriate, to make an application under s.27A of the Landlord and Tenant Act 1985 as to reasonableness and payability.**

Signed Judge Carr

Dated 24th October 2017