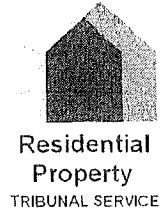


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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 20ZA OF THE LANDLORD AND TENANT ACT 1985

Case Reference: LON/00AU/LDC/2011/0118

Premises: 24 Crouch Hill, London N4 4AU

Applicant: Peter Jani (the landlord)

Respondents: (1) Marika Killiea and Tony Killiea
(2) Origin Housing Association

Date of determination: 24th January 2012

Leasehold Valuation Tribunal: Mr. A Vance (Chair)
Mr. P. Korn
Mr A. Lewicki

Date of decision: 24th January 2012

Decision of the Tribunal

1. The tribunal declines to grant dispensation from the consultation requirements for qualifying works requested in the Applicant's application made under section 20ZA of the Landlord and Tenant Act 1985.

Introduction

2. This is an application made under section 20ZA of the Landlord and Tenant Act 1985 ("The Act") for a determination permitting the Applicant to dispense with the consultation requirements set out in Section 20 of the Act and the regulations made under that section namely the Service Charges (Consultation Requirements) (England) Regulations 2003.
3. The Applicant describes the property at 24 Crouch Hill ("the Property") as being a Victorian building converted into two flats together with a ground floor shop.
4. No evidence of either the registered freehold or leasehold interests was before the Tribunal. However, it is the Applicant's case that the lessees of Flat A are Mr Tony and Mrs. Marika Killiea and that the lessees of Flat B are Origin Housing Association.
5. As requested by the Applicant and in the absence of any objection from either Respondent the Tribunal dealt with this matter by way of a paper determination. No inspection of the Property was requested by either of the Respondents and the Tribunal did not consider it necessary to conduct one.

The Application

6. In his application, made on 25th November 2011, the Applicant seeks dispensation from the consultation requirements on the basis that urgent works are required at the Property. He states that the condition of the roof terrace comprising the balcony of the first floor flat is such that water penetration is occurring into the ground floor shop below. This is causing damage to both the balcony itself and to the joists and ceiling of the ground floor shop.
7. The Tribunal notes that the Applicant has not ticked the relevant box on page 3 of the Application form indicating whether or not the qualifying works have started or been carried out but it appears to be his case that no works have commenced.
8. The Applicant also states that he served Notices under Section 20 on both lessees on 11th November 2011. Copies of these notices did not accompany his Application and were not submitted to the Tribunal.

9. He refers to the lessees of Flat A having agreed to pay 30% of the cost of works as per the terms of their lease and that the lessees of Flat B had agreed to contribute but that they required a dispensation from the Tribunal as a prerequisite to doing so.
10. Two estimates for replacement of the flat roof were attached to the Application. Aspect Maintenance Services Limited quoted the sum of £3728.66 plus VAT on 21st June 2011. It is unclear as to whether or not the quote by Residential Roofing Specialists dated 19th June 2011 in the sum of £2150 was inclusive or exclusive of VAT.
11. Also enclosed with the application was a copy of a counterpart lease for the first floor flat dated 29th January 1997 and made between Mustafa Onbinon and Sonay Onbinon (the Lessor) and Acorn Homes (UK) Limited (the Lessee). No evidence of a subsequent assignment of that lease to the First Respondents was before the Tribunal.

The Pre-Trial Review and Directions

12. Directions were issued by the Tribunal on 29th November 2011. These provided for the Respondents to write to the Tribunal by 13th December 2011 indicating whether or not (a) they consented to the application and (b) they were content for the Tribunal to deal with it by way of written representations and without an oral hearing as proposed by the Applicant.
13. The Applicant was directed to prepare and send to the Tribunal and to the Respondents a bundle including a statement setting out the full grounds for the Application, including the date and circumstances in which it first became apparent that the repair work had become necessary, what consultation may have taken place and why it was considered to be inappropriate to go through the full consultation procedure. This bundle was also to enclose copies of any documents that he relied on including any specifications, tenders and correspondence. The deadline for compliance with this direction was 6th January 2012.
14. On 13th December 2011, in compliance with the Tribunal's direction, the Tribunal received a fax from the First Respondents consenting to the Applicant's application and for the matter being dealt with by way of a paper hearing. The Second Respondents did not, however, comply and as at the date of this decision the Tribunal has not received any correspondence from them.
15. The Applicant failed to comply with the direction to prepare, file and serve a bundle and statement of grounds. The Tribunal did not receive anything further from him until the morning of the determination.

The Determination

16. At 11.26 on the day of the Tribunal's determination, the Applicant sent the Tribunal an email in support of his application. In that email he stated that he had become the owner of the property in March 2011 and that in May 2001 a surveyor had informed him that urgent work was needed to repair the roof terrace. He then immediately contacted the two roofing contractors who had supplied the invoices submitted with his original application.
17. In that e-mail he asserts that repairs are needed urgently as the damage was getting worse. It is his case that it was inappropriate to follow the full consultation procedure as the extent of the problem was already known to the lessees of both flats and neither of the Respondents opposed his application. He asserts that the owners of Flat A had given their consent in writing and that Origin Housing had informed him, over the telephone, that it was supportive of his application but that its internal policy required an LVT determination in order to process its contribution towards the costs of the repairs.
18. Attached to that email were two photograph which he states were taken in July 2011 and which showed the damage caused to the ceiling and joists in the building

The Law

19. The Tribunal is being asked to exercise its discretion under section 20ZA of the Act to dispense with the consultation requirements in respect of qualifying works the Applicant wishes to carry out at the Property. The Tribunal may make that determination if it is satisfied that it is reasonable to dispense with the consultation requirements.
20. The relevant consultation requirements are set out in Part 2 of Schedule 4 of Service Charges (Consultation Requirements) (England) Regulations 2003 a copy of which is annexed to this decision.
21. The procedure has three stages. In outline these involve, at Stage 1, the landlord providing each lessee with notice of intention to carry out qualifying works and allowing them an opportunity to make observations about the proposals. This is followed by Stage 2 which requires that the landlord to provide the lessees with notice of the proposal to enter into an agreement for the works. Details of the estimates obtained from the contractors need to be provided, or made available, and a further period is allowed within which the lessees can make written observations on any of the estimates. Stage 3 (which requires provision of a notice of the reasons for entering into an agreement, a summary of the observations made and the landlord's response to these) is omitted if the lowest estimate is accepted or the contract is awarded to a person nominated by a tenant.

The Tribunal's Decision and Reasons

22. Having considered all of the documents provided to the Tribunal we do not consider it reasonable to make a determination dispensing with the consultation for the proposed works.
23. The Tribunal was not satisfied, on the basis of the evidence before it, that the remedial works in question are sufficiently urgent to warrant dispensing with the statutory consultation requirements.
24. On his own evidence, the Applicant became the freehold owner of this property in March 2011. He was aware of the water penetration problem by at least May 2011. The two quotes from roofing contractors accompanying his Application are dated as long ago as 19th June and 21st June 2011.
25. There is no evidence from the Applicant as to why he has been unable to complete the statutory consultation process and why this Application was not made until 25th November 2011. He asserts that the works are urgent but if that is the case we would have expected the Applicant to act more expeditiously than he has done.
26. He claims to have served Section 20 notices on both of the lessees but copies have not been provided to the Tribunal and we are therefore unable to identify when those notices were served and the extent to which the consultation requirements have been complied with, if at all. Nor do we know if the two quotes from the contractors are still valid and which contractor the Applicant proposes engaging.
27. The Applicant's non-compliance with the Tribunal's directions does not assist his case that these works are so urgent to warrant dispensation. The Tribunal has not had the benefit of a detailed statement of his case and the Applicant's brief e-mail to the Tribunal, received shortly before making its determination, does little to establish the urgency of the works in question. By his own indication, the photographs attached to his email were six months old. No recent photographs have been provided nor is there any correspondence or other documentation from the occupiers of the ground floor shop to support the need for immediate repair.
28. The Tribunal recognises that the First Respondents have notified the Tribunal that they support this Application. It is regrettable that the Second Respondents did not comply with the Tribunal's direction to confirm whether or not they too consent. We note the Applicant's evidence that they provided him with qualified consent over the telephone but in the absence of documentary evidence supporting that assertion there is uncertainty as to the scope and terms of that consent.
29. Taking all of the available information and relevant circumstances into account, the Tribunal does not consider it reasonable to dispense with the statutory consultation procedures. These procedures provide leaseholders, who will ultimately have to pay the costs of the works in question, with

important safeguards which, in the Tribunal's view, should not be dispensed with readily.

30. Overall, the Tribunal was of the view that there was insufficient evidence that the works are so urgent as to dispense with the consultation procedures. Nor do we consider that there is evidence that delay in commencement of those works, whilst the consultation procedure is complied with, is likely to cause prejudice to the leaseholders.
31. Indeed, if, as the Applicant asserts, he has already served notices under Section 20 it may be (provided that the relevant statutory requirements have been complied with) that he can move quickly on to Stage 2 of the consultation procedure. If the quotes obtained in June are still valid and both Respondents provide written consent to his choice of contractor then it would appear that works could commence within an appropriate time-scale.

Chairman: _____
Mr. A. Vance

Date: 24th January 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

20ZA. Consultation requirements: supplementary

- (1) 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.

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

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) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

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.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4. (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.
- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
 - (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

- (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
- (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
 - (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
- (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
- (a) each tenant; and

- (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—
- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.
- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.