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Residential Property TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DETERMINATION BY LEASEHOLD VALUATION TRIBUNAL for the LONDON RENT ASSESSMENT PANEL

Landlord and Tenant Act 1985 S 20ZA

LON/00/BK/LDC/2011/0116

Premises: 9 Gloucester Street, London SW1V 2DB

Applicants: Crown Management UK Limited

Respondents: The lessees of the six flats in the building

Tribunal: J C Avery BSc FRICS

Date of determination 15 February 2011

Preliminary

A. On 23 November 2011 the Tribunal received an application for dispensation of all the consultation requirement contained in s 20 of the Landlord and Tenant Act 1985 in respect of works in July 2010 to repair a flat roof of the building.

B. The works have been completed and the Applicant claims that the work was urgent to avoid further internal damage and enable internal repairs to be done.

C. On 28 November 2011 the Tribunal issued directions, which required the Respondents to tell the Tribunal whether they support or oppose the application. No one requested an oral hearing but several lessees opposed the application.

D. In submissions to the tribunal, particularly by Mr Berens and Colonel Cole it was contended that if the need for the work had been detected earlier the job would have been cheaper and there would have been time for the landlord to follow the consultation process.

E. The landlord asserts that the need for the work was only discovered when loss adjusters for the insurance company were validating claims made in respect of other defects, and the urgency of the work only then became known.

F. From the contents of the letters from the opposing lessees it is clear that there is a lack of confidence by some of them in the quality of the management of the building.

Determination

1. The parties have referred in their submissions to past events in respect of which there were disagreements and involved a continuation of bad relations. This is regrettable but must not be allowed to cloud the issue of whether the landlord acted properly in respect of the repair of the flat roof.

2. The Applicant Company has provided evidence of positive action earlier in 2011 to discover and deal with a number of damp problems in the building, including a blocked gully and defective sanitary ware. Problems were discovered and dealt with, and insurance claims submitted.

3. In the tribunal's experience it is notoriously difficult to trace the internal manifestation of dampness back to the external cause and the landlord is found to have acted properly in investigating and attempting to solve the problems.

4. When the flat roof was found to be defective the landlord knew it had the choice of delaying the renewal of the roof until the consultation process was complete, or doing the work as soon as possible and applying for dispensation.

5. The first option would have resulted in continuing ingress of dampness and further delay in the restoration of the affected premises.

6. The Court of Appeal in a recent case – *Daejan Investments Ltd v Benson & Ors [2011] EWCA Civ 38* – in considering whether dispensation should be granted, albeit not on the grounds of urgency, postulated that "the need to undertake emergency works" might commend the grant of dispensation.

7. The tribunal determines that the landlord acted reasonably in treating the work as urgent and proceeding without consulting the lessees, and accordingly makes the order dispensing with the requirement to consult.

Jurisdiction

8. This determination deals solely with the dispensation of the consultation requirement and makes no finding as to the contractual liability of any lessee for any contribution to the cost, or as to the reasonableness of the cost or standard of the work, which matters, if in dispute, are capable of determination in proceedings under section 27A of the Act

Section 20C

9. The tribunal finds no justification for making an order that the costs of the proceedings may not be include in a service charge (without making any finding that the lease allows for the inclusion of such costs) The landlord is obliged to either follow the consultation process or apply for a 20ZA order, and furthermore has succeeded in obtaining it.

Chairman .....Mr J C Avery B Sc FRICS Date: 15 February 2011