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**LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

**DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL**

**APPLICATION UNDER S 20ZA OF THE LANDLORD AND TENANT ACT 1985,  
as amended**

**REF: LON/00BK/LDC/2012/O113**

**Address: 15 St. Georges Square, London SW1V 3QN**

**Applicant: 15 St Georges Square Ltd.**

**Represented by: Crabtree Property Management Ltd.**

**Respondents: The lessees of Flats 1 to 5, 15, St Georges Square  
London SW1V 3QN**

**Tribunal: Mrs JSL Goulden JP**

**Date of Tribunal's Decision: 12 November 2012**

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1 The Applicant, who is the landlord of 15 St Georges Square, London, SW1X 9AS ("the property"), has, through its agents, Crabtree Property Management Ltd., applied to the Tribunal by an application dated 3 October 2012, and received by the Tribunal on 5 October 2012, for dispensation of all or any of the consultation requirements contained in S20 of the Landlord and Tenant Act 1985, as amended ("the Act"). A schedule of the Respondents was provided to the Tribunal.

2. The property is described in the application as a "*traditional five storey townhouse converted into five flats (one basement flat)*". The application referred to the Respondents as the leasehold owners of Flats 1 to 5, 53 St Georges Square, but the Tribunal has been informed that this is a typographical error and the correct property address is as set out in paragraph 1 above.

3. A copy of the lease of the second floor flat at the property has been supplied to the Tribunal. With no evidence to the contrary, it is therefore assumed that all the residential leases are in essentially the same form.

4. The application stated, inter alia, that the works were required since "*there is an ongoing leak into Flat 1 from the flat roof, which is causing damage to the flat, the tenant's personal contents and the building fabric. The repair has been instructed to prevent further damage.....the Applicant requests dispensation from Section 20 consultation requirements in order to save time and prevent further damage resultant from the ongoing roof leak, before the weather deteriorates*". A

copy of a report and projected budget costs from Regents Property Consultants, dated 28 September 2012 was provided.

5. Directions of the Tribunal were issued without an oral Pre Trial Review on 5 October 2012.

6. The Applicant had requested a paper determination although paragraph 7 of the Tribunal's Directions stated that any or all of the Respondents were entitled to request an oral hearing. No application was made for or on behalf of any of the Respondents for an oral hearing. This matter was therefore determined by the Tribunal by way of a paper hearing which took place on Monday 12 November 2012.

7. The Tribunal did not consider that an inspection of the property would be of assistance and would be a disproportionate burden on the public purse.

### **The Applicant's case**

8. In the application, it was stated "*Notice of Intention to be sent to all lessees advising what qualified works are to be carried out and the reason for this. Also advising lessees that an application for dispensation has been made*". It is not known whether the works have commenced.

9. In an undated statement from the agents for the Applicant, Crabtree Property Management Ltd., which was received by the Tribunal on 1 November 2012, it was stated:

*"During routine maintenance works in July 2012, we were notified by a contractor that the flat roof felt 'spongy', suggesting that the fabric was in a weakened state. Further to investigation we were advised that extensive repairs are required to the flat roof and parapet, in order to prevent continued water ingress into the ground floor flat, and further damage to the building fabric. Therefore we have made leaseholders aware of our intent to carry out the required repairs as follows:-*

- *Overlay the asphalt covering with a liquid applied system including up stands*
- *Install weathered copings to the parapets with the Decothane system dressed under the coping*
- *Place a damp proof course under the copings*
- *Repair any cracked render to inside face of parapets*
- *Repoint and repair the external face of the parapet walls as required*

*We estimate that one (or more) leaseholder(s) will have to pay more than £250,00 to the planned works, and all leaseholders at the property have to be formally consulted. In this instance, however, on behalf of our client, we have made an application to the Leasehold Valuation Tribunal for dispensation from any or all consultation requirements as required by Section 20 of the Landlord & Tenant Act 1985, to prevent further damage as a result of the leak.*

*We have received two tenders for the required works... The lowest cost received for repairs only is £8,750.70 plus VAT. The cost, and associated surveyor's and administrative fees will be taken from the existing reserve fund, and we do not anticipate that supplementary funds will be required"*

10. A report dated 28 September 2012 from Mr N Sparks BSc MRICS, Project Surveyor, of Regents Property Consultants stated, inter alia, " *The roof is flat with an asphalt finish and rendered brick parapets to roof edges. The roof is drained via an outlet to the corner which discharges into a hopper head. Discharging onto the roof is also a rainwater pipe from an upper level roof. The asphalt is crazing with evidence of numerous patch repairs. In addition the roof is showing signs of ponding to the left hand side. One of the parapets is also showing signs of movement. The parapet is starting to crack and lean inwards towards the flat roof. Upon inspection it was found that the mortar to the brickwork is extremely friable and loose.....without tendering the project accurate budget costs are difficult to provide. However a broad cost estimate would be approximately £10-15k"*

11. Photographs have been supplied, together with estimates both addressed to Finnegan Associates Ltd. from Alpha Specialist Roofing Ltd. dated 22 October 2012 and Essential Building Services Ltd (EBSL) dated 24 October 2012.

12. In addition, within the bundle were drawings and a specification in respect of the works to property dated 19 October 2012 where the Client was stated to be Finnegan Associates.

### **The Respondents' case**

13. It appears from the case file that none of the Respondents had requested an oral hearing.

14. No written representations were received by the Tribunal from or on behalf of any of the Respondents.

### **The Tribunal's determination**

15. S 18(1) of the Act provides that a service charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent, which is payable for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the costs incurred by the landlord. S20 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. 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"**

16. The consultation requirements for qualifying works under qualifying long term agreements 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.**

17. 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.

18. 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.

19. The information supplied on behalf of the Applicant was poor for the following reasons:-

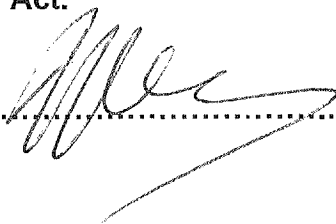
- No copy of a specimen lease had been provided with the application. The Tribunal's case officer had to remind the Applicant's representatives to submit the same on the date of the determination.
- The application stated that there was an ongoing leak into Flat 1 from the flat roof which was causing damage to the flat and the tenant's personal belongings, as well as the fabric of the building. The Tribunal would have expected a witness statement from the affected tenant.
- The application stated that a Notice of Intention was to be sent to all lessees. The Tribunal has been provided with copies of a letter sent to the lessees dated 31 October 2012. This does not fulfil the requirements of a Notice of Intention (see paragraph 16 above).
- The report dated 28 September 2012 was prepared by Mr N Sparks, Regents Property Consultants Ltd, a member of the Crabtree Property Group, as are, presumably, the Applicant's managing agents. The specification dated 19 October 2012 stated that the Client was Finnegan Associates Ltd. The estimates were also sent to Finnegan Associates Ltd. for the attention of Mr N Sparks. No clarification and/or explanation was provided.
- It is not known who took the photographs supplied to the Tribunal or on what date such photographs were taken.

20. Notwithstanding the Tribunal's criticisms as set out in the paragraph 19 above, no evidence has been produced that any of the Respondents have challenged the consultation process and no written submissions have been received. The Tribunal has taken into account that it will shortly be the winter season with deteriorating weather conditions.

21. On that basis, the Tribunal is satisfied that 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.

**22. It should be noted that in making its determination, and as stated in paragraph 5 of the Tribunal's Directions of 9 October 2012, 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.**

CHAIRMAN.....



DATE .....12.. November. 2012.....