



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

Case reference : **LON/00BK/LDC/2020/0102**

HMCTS Code : **P:Paper remote**

Property : **14-15 Ennismore Gardens, London SW7
1AA**

Applicant : **Bracehart Limited**

Representative : **HML Property Management**

Respondents : **Leaseholders of the Property**

Type of application : **To dispense with the requirement to
consult leaseholders about works**

Tribunal members : **Judge Ian Mohabir
Mr Kevin Ridgeway MRICS**

Hearing venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **15 September 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the Applicant and not objected to by the Respondents. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same.

The application and determination

1. On 24 July 2020 the Applicant applied to the Tribunal for dispensation from the consultation requirements provided by section 20 of the Landlord and Tenant Act 1985 in respect of the replacement of the existing hot water cylinder, which has failed and cannot be repaired, leaving some flats without hot water. The Applicant obtained two quotes for replacing the cylinder and has accepted the lower quote of £10,000. The Applicant consented to the application being determined on the papers alone and without an oral hearing.
2. The Tribunal gave directions on 28 July 2020. The directions provided for a paper determination unless any party requested an oral hearing by 4 September 2020. It is apparent that no such request was received by the tribunal.
3. The directions required the Applicant by 11 August 2020 to send to each Respondent a copy of the application form and these directions and to display a further copy in a prominent place in the common parts of the Property. By email of 12 August 2020 the Applicant's representative confirmed that it had complied with this requirement.
4. The directions required those Respondents who opposed the application to complete the reply form attached to the directions and return it to the tribunal by 9 September 2020 (amended from 4 September). The reply form requested the Respondents to say whether they supported or opposed the application and if they wished to attend an oral hearing. No completed reply forms have been received by the tribunal.
5. As a result of the Covid-19 Pandemic the applicant was required to submit digital papers by email. We were given remote access to those papers that included the application form, a specimen lease and a statement of case. Having reviewed those documents we are satisfied that the case is suitable for a paper determination. It is on the basis of those documents that we find the facts recorded in the following sections of this decision.
6. ***Relevant Law***
This is set out in the Appendix annexed hereto.

Decision

7. The relevant test to be applied in an application such as this has been set out in the Supreme Court decision in *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14 where it was held that the purpose of the consultation requirements imposed by section 20 of the Act was to ensure that tenants were protected from paying for inappropriate works or paying more than was appropriate. In other words, a tenant should suffer no prejudice in this way.
8. For each of the following reasons we dispense with the consultation requirements provided by Section 20 of the Landlord and Tenant Act 1985, in so far as they relate to proposed replacement of the hot water cylinder.

Reasons

9. The hot water cylinder has failed. This has resulted in some flats not receiving hot water. The works to replace the communal cylinder and associated works are therefore said to be urgent. Two quotes for the works have been obtained and the applicant has accepted the lower quote. No objections to the application from any of the Leaseholders of the property.
10. We remind ourselves that we are not concerned with the reasonableness of the cost and that the respondents will still be able to challenge the actual cost of the proposed work should they consider it unreasonable.
11. None of the respondents have objected to the application despite being given the opportunity to do so.
12. Under the terms of the respondents' leases the applicant is responsible for maintaining the hot water cylinder.

Name: Tribunal Judge I
Mohabir

Date: 15 September 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(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.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises.