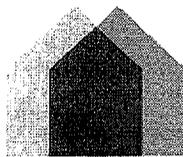


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**Residential
Property
TRIBUNAL SERVICE**

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

REF: LON/00BK/LSC/2006/0404

FLAT 1, 97 BOUNDARY ROAD, LONDON NW8 0RG

AREA ESTATES LIMITED

Applicant

MR A. FARAHANI

Respondent

Tribunal: Mr M Martynski (Solicitor)
Mr P Tobin FRICS MCI Arb
Mr O N Miller BSc

Present at hearing: Mr P. Gunby MRICS (Surveyor for the Applicant)
Mr A. Farahani (Landlord)

Date of hearing: 12 April 2007

Date of decision: 12 April 2007

Decision summary

1. No section 20 Landlord and Tenant Act 1985 consultation was carried out in respect of the work carried out to the ground floor shop premises at a total cost of £23,941 and accordingly the amount claimable by the Respondent from the Applicant is limited to the sum of £250.00.
2. The Respondent must reimburse the Applicant in the sum of £350.00 for the fees paid to the Tribunal.

3. An order is made under section 20C Landlord and Tenant Act 1985 in respect of the Respondent's costs of these proceedings.

Introduction

4. The building in question is a three-storey Victorian mid-terrace property with three self-contained units namely, ground floor shop premises and two self contained flats on each of the upper storeys.

5. This application relates to the second floor flat owned by the Applicant.

6. Directions were issued following a document review, which took place on 31 January 2007. Those directions included a direction that should the landlord want to make an application under section 20ZA Landlord and Tenant Act 1985 he should do so forthwith so that it could be heard with the tenant's application. No such application was made.

The issues

7. At the hearing Mr Farahani explained that he had been refurbishing the shop premises and it was only at an advanced stage of those works when the fascia sign had been removed and the shop ceiling exposed, that it became apparent that the property was structurally weak. He consulted a structural engineer who prepared a scheme of works to arrest deterioration and repair the structure. At the time, Mr Farahani regarded the works as urgent and took the view that it would be more economical to incorporate these works while his contractors were on site than to follow the statutory consultation procedure under section 20. He was at the time unaware of his right to apply for a statutory dispensation of the consultation procedure.

8. The works totalling £23,941 were finally completed in or about February 2006. Mr Farahani served two invoices for the structural work dated May 2006 on the Applicant. At the hearing Mr Farahani confirmed that he was claiming a one-third contribution toward those costs from the Applicant.

9. Mr Gunby's client had been aware that the shop was being refurbished but was not expecting to be asked to contribute to the cost. Mr Gunby was therefore surprised to receive the invoices in May 2006 without explanation as to liability or apportionment. The works had been undertaken without consultation. Mr Gunby did not consider the works to have been an emergency or that consultation was not necessary. He sought the Tribunal's decision that the Applicant should not be liable for the costs of the work because no satisfactory consultation had taken place and there had been no application for dispensation. He doubted whether the majority of the works were his client's responsibility under the lease.

10. Mr Farahani admitted that he had not served any consultation notices in respect of the structural work; neither had he applied to the Tribunal for dispensation on grounds of urgency, notwithstanding the express invitation for him to do so in the directions of 31 January 2007.

The law

11. Section 20 Landlord and Tenant Act 1985 and the regulations made under that section, *The Service Charges (Consultation Requirements) Regulations 2003 [SI 2003/1987]*, provide that where a landlord intends to carry out works to a building in respect of which a tenant is going to be asked to contribute £250 or more, a consultation process has to be followed.

12. Section 20ZA of the Landlord and Tenant Act 1985 allows a landlord to make an application to a Leasehold Valuation Tribunal to dispense with the need to go through the section 20 consultation process.

13. If a landlord neither complies with the section 20 consultation process nor makes an application under section 20ZA (or makes an application post the work being done which is refused) then the maximum contribution that the landlord can ask a tenant to pay in respect of the costs of the works in question is set at £250.00.

The Tribunal's decisions

14. The Tribunal concluded that there was no evidence before it that the structural works were so urgent as to preclude the usual consultation process and in any event there was no application for dispensation before it.

15. The Tribunal is satisfied that no section 20 consultation procedure having been followed, any claim for a contribution to the cost of structural works by the Respondent from the Applicant is limited to the statutory maximum of £250.00.

16. Given the Tribunal's decision it follows that an order should be made that the Respondent reimburse fees paid of £350.00 to the Applicant.

17. The Applicant made an application pursuant to section 20C Landlord and Tenant Act 1985 which provides as follows;

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2).....

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

18. Again, given the Tribunal's decision it follows that it would be right for an order to be made that all or any of the costs incurred by the Respondent in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.



..... Mr M Martynski (Chairman)