

11977



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

**Case Reference** : LON/00AL/LAC/2016/0020

**Property** : 155 Halton Court, 5 Cranfield Walk,  
London SE9EX

**Applicant** : Keith von Local

**Respondent** : Viridian Housing

**Type of Application** : Application for permission to  
appeal

**Tribunal Members** : Tribunal Judge Richard Percival  
Mr P A Roberts FRICS

**Date of Decision** : 19 December 2016

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**DECISION**

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### **Decision of the tribunal**

1. The Tribunal has considered the applicant's application for permission to appeal dated 16 January 2017 and determines that:
  - (i) it will not review its decision; and
  - (ii) permission is refused.
2. The Tribunal has, as a result of the application, made a correction to a clerical mistake under Rule 50 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) 2013.
3. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the applicant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

### **Reason for the Decision**

4. The Applicant sets out his proposed grounds of appeal by reproducing the passages from the Tribunal's decision that he contests. This determination follows that approach, referring to the grounds of appeal by reference to the paragraph of the decision to which they refer.
5. In respect of a number of grounds, the Applicant concludes his argument with the statement that he seeks permission to appeal so that the Respondent can present a missing contract or other document. On its own, a demand for the production of new documents cannot amount to a ground of appeal. Further, in each case, the Tribunal found itself able to come to factual conclusions without the documents in question.
6. The figures in paragraph 24 of the decision, which the Applicant thinks wrong, were based on a comparison of the original statement upon which the service charge was based (p 18 of the bundle), and the subsequent substituted statement (page 357). The Applicant's figures proceed on a different basis. The statement in paragraph 24 is true, and in any event a change to the figures would not provide a ground of appeal.
7. Paragraph 40 contests a finding of fact by the Tribunal. We remain satisfied that the relevant document contained the terms of the contract

at issue. The Applicant did not contend for any other terms that would have justified us finding a qualifying long term agreement.

8. Paragraph 48 helpfully corrects the date “31 March 2014” to “31 March 2015” in that paragraph. We make the requisite correction under rule 50.
9. In respect of Paragraph 77, the Applicant advances the new argument that, if we are right, housing associations could set up fake comparison companies to thwart consultation. The argument is fanciful. No financial benefit would accrue to a housing association from doing so.
10. The next ground of appeal, marked paragraph 96, appears to relate to the decision recorded at paragraph 89. It effectively repeats the evidence in respect of the responsibilities of the staff that we heard at the hearing. For the reasons we give in paragraphs 84 to 88 of the decision, we reject his contentions.
11. Paragraphs 93 and 96 repeat the Applicants non-particularised objection to the service charge component relating to fire equipment and the cost of communal electricity. His grounds of appeal amount, at best, to no more than a demand for further documentation.
12. In respect of paragraph 104, the Applicant appears to raise a new point, that the Respondent charged a further management fee which it “hid by reducing the Leaseholder income (rent) shown on the statement of service charge”. His explanation for failing to bring the matter up earlier is that he only discovered the issue when he challenged the service charge statement for 2015/16.
13. In the first instance, in general all evidence and submissions thereon should be deployed at a hearing, rather than a party seeking to adduce new evidence, or a completely new head of challenge, when applying for permission to appeal. The Applicant provides some justification for his failure to make the point at the hearing, but it is at least not obvious why, had he exercised due diligence in advance of the hearing, the point would not have been available to him.
14. We have nonetheless considered whether the point might justify a ground of appeal. The onus is on the Applicant to provide a real basis for a new head of challenge in such circumstances, and the bare statement in the Applicant’s grounds of appeal (it is no more than that set out above) does not do so.
15. In his text relating to paragraphs 105 to 106, the Applicant raises, first, a point that he had made in the papers in advance of the hearing, that, in effect, the Respondent was making a profit on the service charge

account. However, this was not a point that the Applicant relied on at the hearing, and we understood him to have abandoned it.

16. The other points made repeat a series of alleged defects in the Respondent's accountancy practices. These merely point out defects. They do not provide any argument why the defects should have any effect on the reasonableness or payability of the service charge.

**Name:** Tribunal Judge Richard Percival      **Date:** 6 February 2017