



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

**Case reference** : **CAM/12UB/LSC/2019/0078**

**HMCTS code (paper, video, audio)** : **P:PAPERREMOTE**

**Property** : **Flat 125, The Cherry Building(s),  
125 Addenbrookes Road, Trumpington,  
Cambridge CB2 9BA**

**Applicant** : **Dr Frank Gommer**

**Respondent** : **RMB102 Limited**

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

**Tribunal members** : **Judge David Wyatt  
Judge Wayte**

**Date of decision** : **4 August 2020**

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**DECISION REFUSING PERMISSION TO APPEAL**

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**Covid-19 pandemic: description of hearing**

This has been a remote decision on the papers which the parties have not objected to. The form of remote decision was P:PAPERREMOTE. A hearing was not held because it was not necessary; all issues could be determined on paper.

The documents that we were referred to are in a bundle of 249 pages (the same bundle produced by the Applicant and used by the tribunal to make the decision dated 24 April 2020 (the “**Decision**”)) and the Applicant’s expanded grounds of appeal with annexed schedule as submitted on 30 June 2020, the contents of which we have noted.

## **DECISION OF THE TRIBUNAL**

1. The tribunal has considered the applicant's request for permission to appeal based on the extended grounds of appeal submitted on 30 June 2020 and determines that:
  - (a) it will not review its Decision; and
  - (b) permission is refused.
2. 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.
3. Where possible, you should send any such further application for permission to appeal **by email** to [Lands@justice.gov.uk](mailto:Lands@justice.gov.uk), as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently.
4. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

## **BACKGROUND**

5. The Decision was made on 24 April 2020 and sent to the parties on 29 April 2020. On 25 May 2020, the Applicant applied for permission to appeal and an extension of time to produce his grounds of appeal, referring to his personal circumstances. After he was required to explain this, he produced on 5 June 2020 initial grounds of appeal and information for his request for an extension of time. The tribunal gave a final deadline of 30 June 2020, when the Applicant produced expanded grounds of appeal, described as "further arguments and calculation", which appear to be an expanded version of the initial grounds.
6. This decision is based on (and references below to the grounds of appeal are to) those expanded grounds of appeal, consisting of 10 pages and a four-page schedule, submitted on 30 June 2020.

## **REASONS FOR THE DECISION**

7. The Decision was based on the bundle of 249 pages prepared by the Applicant for the determination. This included a schedule of the service charge items disputed by the Applicant (as prepared by the Applicant and answered by the Respondent), a statement of case from the Applicant, the invoices, quotations and other documents relied on by the parties in relation to the items in dispute, and a witness statement from the Applicant.

8. The case management directions had made it clear that the matter would be determined based on these papers unless either party requested a hearing. They required the Applicant to produce the schedule in the form attached to the directions setting out each item and amount in dispute, with the reasons why each amount was disputed, so that the Respondent could respond to each such item. The Respondent was given an extension of time to comply with the directions and the Applicant was given a corresponding extension. The Applicant did not contact the tribunal to ask for further directions to require the Respondent to provide any more information or documentation to identify or pursue any of his points of dispute. Neither party requested a hearing. Accordingly, the Decision was based on the case and evidence provided in the bundle.
9. The Applicant's grounds of appeal seek to reopen the dispute without actual grounds for doing so. In particular, they:
  - (a) repeat arguments which were made (in substance) by the Applicant in the documents in the bundle and taken into account by the tribunal;
  - (b) attempt to produce new calculations or assertions, but do not change the underlying position (as explained in the Decision) that - based on the documents produced in the bundle - the Respondent's answer to the case put by the Applicant on the relevant points was more credible than the Applicant's case; and
  - (c) attempt to introduce new evidence which could have been presented at the time.
10. The Applicant's grounds of appeal are essentially a disagreement with the tribunal's decision rather than an appeal on a genuine point of law. In the circumstances, we consider that there is no realistic prospect of a successful appeal and refuse permission.
11. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (if a further application for permission to appeal is made), the tribunal has in the attached Appendix set out comments on some of the specific points raised by the Applicant in his grounds of appeal. This Appendix is not exhaustive; we have considered all the points made by the Applicant in his grounds of appeal but it would not be proportionate to comment on each of them in this decision. The brief comments in the Appendix on a small number of the points made by the Applicant may be helpful.

**Attached: Appendix**

**APPENDIX TO THE DECISION**  
**REFUSING PERMISSION TO APPEAL**

References below in (brackets) are to those points of dispute in the Applicant's schedule of items in dispute, as described in the Decision, and references in [square brackets] are to those paragraphs in the main body of the Decision.

**(1) Replies to pre-contract enquiries**

1. This is explained in [28] to [35]. The tribunal has not made a determination of this issue and on the evidence produced would have decided against the Applicant if it had, but it is not the tribunal's function to refer such issues to the County Court as the Applicant requests. If the Applicant wishes to consider and take legal advice on any claim to the County Court about these pre-contract replies, he is not barred by the Decision from doing so.

**(2) Agreed refund**

2. This is explained in [36] and [37]. The Applicant confirms that this £10,751.37 refund (of sums incorrectly charged to leaseholders by the former managing agents, SDL) has now been paid. He says that some of this sum has not been reimbursed to individual residents, but indicates that the balance was correctly applied to other items. He refers to penalties and interest, which are outside the jurisdiction of the tribunal in this case and are not a ground of appeal. Again, if he wishes to consider and take legal advice on any claim to the County Court about such matters, he is not barred by the Decision from doing so.

**(3) Difference between summary report and reconciliation file**

3. This is explained in [38] to [40] in relation to the £3,576.44 previously disputed by the Applicant under this heading. The Applicant now says that the difference is £2,152.02, or a different figure, and attempts to explain how he has calculated this. As explained in [39], the Applicant did not in his schedule or statements explain his calculations or provide in the bundle copies of the relevant documents from the reconciliation file(s) to which he referred. Based on the documents produced, the tribunal decided that it was more likely that the Applicant was in effect claiming sums which were already included in the agreed refund (2) or the sums disputed individually under his items (5) to (64) and the Respondent's explanation, summarised in [38], was more credible. To avoid repetition, please see the same general comments made in respect of item (4) below.

**(4) Section 20B of the 1985 Act**

4. This is explained in [41] to [53]. The tribunal did not make a separate determination about the £20,627 disputed by the Applicant under this heading because, as indicated in [41], the Applicant had provided no breakdown of this sum or other adequate details and it appeared that

this sum was likely to include the actual items disputed under the Applicant's points (5) to (64).

5. Accordingly, the tribunal applied its finding in relation to section 20B (that costs not within in the estimated service charge would not be recoverable if they were incurred before about 26 January 2018) to the individual costs challenged by the Applicant under his items (5) to (64). For example, item (10), £727.20 for key fobs, was disallowed because the invoice was dated 19 January 2018 and the cost did not appear to be within the estimated service charge.
6. The Applicant is attempting to reopen this, saying that the figure is higher than the £20,627 he disputed in his case. He now produces a breakdown/calculation of his new figure of £35,651.31, based on a schedule of expenses attached to his grounds of appeal, and says that £1,305.23 of this should be allocated to him. The Applicant failed to provide proper calculations and details of these items with the schedule/statements and evidence he put before the tribunal. There is no reason why he could not have provided this in the bundle. The tribunal made the determinations in relation to each of the actual items identified by the Applicant as his disputed items (5) to (64), applying our findings in relation to section 20B in each case. We did not do so in relation to the general lump sum figure(s) stated by the Applicant because the Applicant did not provide any breakdown of these figures identifying actual items in dispute, let alone any adequate details of challenge to enable the Respondent to know the case it had to meet or the tribunal to make determinations, for any items other than the Applicant's items (5) to (64).

#### **(5) to (64) – Specific items in dispute**

7. The Applicant says that less weight should have been given to the Respondent's case/evidence because this was produced by their agent and they did not produce a witness statement. The nature of the Respondent's case/evidence is obvious from the bundle and was given appropriate weight. Their case was not accepted in relation to some of the items in dispute. However, in relation to others, their responses to the Applicant's schedule were more credible than the Applicant's assertions (despite the lack of witness statements or separate statements of case other than their statement about the insurance arrangements).
8. The Applicant says that the total service charge amounts are out of line with preceding and following years. He lists his claimed figures for the total service charges for several years, including £42,135 in 2016/17, £92,682 in the relevant service charge year (2017/18) and £56,682 in 2018/19. He does not appear to have made this point in his schedule/statements and produced no evidence of service charges in other years except the service charge accounts for 2017/18, which indicate that the figures now asserted by the Applicant are wrong. These accounts, at pages 73 and 74 of the bundle, include notes of the figures for 2016/17, showing total expenditure of £48,339.99 in 2016/17

compared to £84,157.92 in 2017/18. That is a substantial difference, but those accounts indicate that much of this is made up of repair/maintenance work (including over £10,000 more on common area repairs, and over £8,000 more on communal heating/plant repairs and maintenance, during 2017/18 than 2016/17) and £1,000 transferred to reserves when nothing was transferred in 2016/17. It appears that none of these costs were challenged by the Applicant in his schedule. Allowing for these repair/maintenance costs, the reserve fund figure and the agreed refund of £10,751.37 from item (2), would bring the total cost broadly into line with the previous year and the service charge figure now asserted by the Applicant for 2018/19. Accordingly, even if this point had been made by the Applicant in time, it would not have made any difference to the Decision in view of the way that he made his case and the evidence he produced.

9. The Applicant points out that copy invoices were not produced for items (5) and (6). The tribunal decided that the total cost of £120.05 was reasonably incurred, since such costs were likely to have been within the estimated service charge even if they were incurred before January 2018 and the Respondent's answer that this was a meter at the Cherry Building (explaining that this was for a different meter number than that queried by the Applicant) was more credible; it is a reasonable meter cost.
10. The Applicant says that the deduction of £200 from item 9 must have been in error, but it was not. The tribunal determined that the cost for the key fobs was otherwise reasonable, but deducted £200 in view of the dispute about the number of fobs handed over. The other matters referred to by the Applicant were not put before the tribunal in the bundle for the determination they were asked to make.
11. The Applicant refers to "double booking" of items (11), (12), (13), (21), (26), (28), (29), (32), (33), (46), (47), (48), (49), (50) and (51). He says in his grounds of appeal that these are all included in a spreadsheet in the bundle (pages 110-115) which he says came from SDL (the former managing agent) and another spreadsheet in the bundle (pages 116-117) which he says came from APT (who, he says, briefly managed after SDL before Flaxfields were appointed). However, again, the Applicant did not produce actual evidence to demonstrate any such duplication and the Respondent's explanation that these are accounting entries on change of managing agent, not duplicates, was more credible. The Applicant asserts that without double counting these entries the Respondent cannot justify the total figures in the accounts, but again he did not demonstrate or provide any calculation of this and has not done so in his grounds of appeal. The Respondent's answer was more credible than the Applicant's claims of double counting because: (a) the Applicant's claims were made by assertion, referring to files and other documents which could have been produced in the bundle but had not been; and (b) it was more likely that the Applicant was himself double counting, since no breakdown has been produced of the £10,751.37 of incorrect payments which the Respondent had already agreed to refund.

### **(55) to (64) – Insurance**

12. This is explained in [60] to [69]. The Applicant's grounds here are a disagreement with the tribunal's decision, not grounds of appeal. The Applicant says in the grounds of appeal that the claims history should be better because claims made under the insurance policies should have been made against third parties, but he produced no evidence for this.

### **Order for reimbursement**

13. The Applicant asks for an order for reimbursement of funds within 14 days. This is not a ground of appeal and for the purposes of these proceedings the tribunal has no jurisdiction to make such an order.

### **Costs**

14. This is explained in [81] to [85]. The Applicant refers to an interruption of the gas supply (interrupting heating and hot water) but that was not the subject of these proceedings and no actual details were provided; he had indicated that this was the subject of separate proceedings in the County Court.

### **Fraud allegations**

15. As explained in the decision, the Applicant did not provide any evidence to support his allegations of fraud on the part of the Respondent. The Applicant's grounds are again a disagreement with the tribunal's decision. Neither they, nor the Applicant's request for an order for a full accounts audit, are a ground of appeal.