



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

**HMCTS code (audio,  
video, paper)**

**P: PAPERREMOTE**

**Case reference** : **CAM/26UE/LSC/2021/0017**

**Property** : **Flat 3  
Bank Chambers  
84 Watling Street  
Radlett  
Herts  
WD7 7AB**

**Applicant** : **Andrew David Rose and Leslie Ann  
Rose**

**Respondent** : **Jeffrey Benedyk and Mark Reuben**

**Representative** : **Ms Sally Drake of Benjamin Stevens**

**Date of Application** : **14 March 2021**

**Type of application** : **Application for a review/permission  
to appeal**

**The Tribunal** : **Tribunal Judge S Evans  
Mr Roland Thomas MRICS**

**Date of original  
decision** : **16 August 2021**

**Date of this decision** : **3 December 2021**

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**DECISION**

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

This has been a remote decision. The form of remote decision is P: PAPERREMOTE. A face-to-face hearing was not held because this is an application for permission to appeal. The documents before the Tribunal are contained in the original bundle, plus relevant emails from the Applicants and the Respondents, as set out below.

### **DECISION**

**1. The Tribunal determines that it will conduct a review pursuant to rules 53 and 55 of the First-tier Tribunal (Property Chamber) Rules 2013 because it is satisfied that an appeal, if brought, is likely to be successful.**

**2. In so far as it is necessary, the Tribunal treats the Applicants' email dated 27 September 2021 as an application for permission to appeal, and grants an extension of time to bring such an appeal.**

**3. The Tribunal corrects its decision dated 16 August 2021, in the terms set out below.**

**4. 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, either party 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.**

**5. 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); or by email: lands@hmcts.gsi.gov.uk .**

### **REASONS**

#### **Background**

1. On 16 August 2021 the Tribunal issued 2 linked decisions, one concerning payability of service charges and another regarding dispensation with consultation requirements (CAM/26UE/LDC/2021/0028).
2. On 27 September 2021 the Applicants sent an email to the Tribunal in these terms:

“However, looking at the Decisions in respect of the 2 cases, whereas the obligation to complete the works by September 17<sup>th</sup> was clearly part of the consent order in respect of case CAM/26UE/LSC/2021/0017, it has instead been merely recorded as being a condition for the granting of dispensation under case CAM/26UE/LDC/2021/0028 and hence, the only impact based on this decision of the works not being undertaken is that dispensation has not been granted. Therefore, as currently drafted, I do not believe the Decision will allow me to get the decision enforced. Please can you therefore advise as to how I can get this matter addressed so that the Decision under case CAM/26UE/LSC/2021/0017 correctly records that points b) and C) of clause 12 of the Decision under CAM/26UE/LDC/2021/0028 should be included under clause 8 of the Decision for case CAM/26UE/LSC/2021/0017.”

3. On 29 September 2021 a procedural Judge considered that “the leaseholder(s) appear to be asking that the terms of the consent order in the decision on the service charge application... be varied to oblige the landlord to complete the works (or, possibly, to confirm that the leaseholders are not liable to pay the relevant charges unless the dispensation conditions are satisfied)”.
4. The judge decided the Tribunal could not assist with this request, having no jurisdiction in the application to order the landlords to carry out works; and moreover, that the terms of the consent order could not be changed without the agreement of the parties.
5. On the same day, the Applicants responded to clarify but they were not looking for the consent order to be varied as such, but merely to be corrected to reflect what was agreed between the parties in front of the hearing judge.
6. On 8 November 2021 the Applicants sent the Tribunal a transcript of the whole hearing, submitting that parts of it supported their contentions made in their email of 27 September 2021.
7. On 9 November 2021 the Tribunal directed that the Respondents may file representations in relation to the Applicant’s email of 27 September 2021, by 4pm on Friday 19 November 2021, and in default be debarred from making any representations.
8. On 19 November 2021 at 15:59, Ms Drake on behalf of the Respondent, filed an email which explained why the works had allegedly been delayed. She did not address the terms of the Applicants’ email of 27 September 2021.

9. On 21 November 2021 the Applicants provided a response to Ms Drake's explanation of delayed works.
10. On 25 November 2021, Ms Drake on behalf of the Respondents, filed an email, which attached (amongst other documents) what was said to be an independent surveyor's findings after a snagging inspection on 24 November 2021. Again, she did not address the terms of the Applicants' email of 27 September 2021.

## **Decision**

11. Having considered the transcript of hearing, the Tribunal accepts the Applicants' contention that the decision dated 16 August 2021 in this case (CAM/26UE/LSC/2021/0017) does not accurately reflect the parties' true agreement.
12. The procedural Judge was correct in the response given on 29 September 2021, having assumed that the decision of 16 August 2021 in the instant case accurately reflected the parties' agreement.
13. This Tribunal's task, however, is to ascertain the true bargain of the parties, as presented at the hearing.
14. The relevant part of the transcript for these purposes is as follows (p.2, lines 10-15):

“So, agree to pay £2,750 for decorations in their entirety, that is internal and external, and will include the painting of the internal face of the front door by 17 September; the surveyor's inspection and any snags done by 30 September; that the applicant shall be reimbursed £300 for the hearing and application fees and there be a Section 20C order in favour of the applicants, on paragraph 5A I will say as well”.

15. The Tribunal then went on to consider the dispensation application separately, in these terms (p.2, lines 23-28):

JUDGE EVANS: So, so far so good. I think we are also in a position to record, under Rule 35, a dispensation for the consultation requirements because you have seen the emails now, Mr and Mrs Rose. Kate Crombie from Flat 2 sent one today at 11.54, and then Emma Dowling has sent one on a screenshot from a phone that she does not object to the dispensation. So, it would seem to the Tribunal that we are able to grant dispensation by consent as well...

16. And on p.3:

JUDGE EVANS: ... So again, it would be dispensation on the basis that the works in terms of price are capped for Mr and Mrs Rose only at £2,750, but also on condition that they are completed by 17 September and that the snags are done by 30 September, yes? Does that seem fine, dispensation on that basis?

MS DRAKE: Absolutely.

17. The Respondents' representations dated 19 November 2021 do not take issue with what the Applicants say happened at the hearing. Neither do the representations dated 25 November 2021, even assuming the Tribunal could have regard to them, given that a debarring order has been made.

18. In the circumstances the Tribunal agrees to review its decision dated 16 August 2021, and in so far as is necessary, grants the Applicants an extension of time to request their review, given that in practical terms there was little purpose to be gained in their approaching the Tribunal until the deadline for the works had passed on 17 September 2021.

19. Accordingly, pursuant to Rule 35 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal considers it appropriate to make a consent order in the following terms:

(1) It is agreed that the Applicants are liable to the Respondents in the following sums in respect of their service charges:

(a) Major works (internal/external decorations) for 2019: £2750

(b) Insurance for 2019: £172.72 (rebate of £138.57)

(c) Insurance for 2020: £215.89 (rebate of £238.34)

(d) Insurance for 2021: £238.28 (rebate of £215.95)

(2) The works will include the painting of the internal face of the front entrance door;

(3) All works will be completed by 17 September 2021;

(4) The Applicants will undertake a surveyor's inspection and complete all snagging by 30 September 2021;

(5) Mr and Mrs Rose's liability to pay for the works is capped at £2750.

(6) The Respondents' costs (if any) in connection with this application should not be regarded as relevant costs to be taken into account in determining the amount of any service charge or administration charge payable by the Applicants (Flat 3) and Emma Dowling (Flat 1) and Kate Crombie (Flat 2), pursuant to s.20C of the Landlord and Tenant Act 1985/ para. 5A of Sch.11 to CLARA 2002.

(7) The Respondents shall reimburse the Applicants the sum of £1000 from their service charge account, by 31 August 2021.

(8) The Respondents shall reimburse the Applicants the sum of £300, being the application fee and the hearing fee, by the same date.

20. Finally, the Tribunal confirms that it does not have jurisdiction to order the landlords to carry out works. The Applicants and the Respondents may wish to take legal advice on any proposed enforcement of the agreement.

**Name:** Tribunal Judge S Evans

**Date:** 3 December 2021.