FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UH/HTC/2022/0002**
HMCTS code (audio, video, paper)	**:**	**P: PAPERREMOTE**
Property	**:**	**14 Colson Path, Loughton Essex IG10 3QZ**
Applicant	**:**	**Daniel Playfair**
Respondent	**:**	**Case Consultant Solutions Ltd**
Type of application	**:**	**Application for permission to appeal**
Tribunal member	**:**	**Judge David Wyatt**
Date of decision	**:**	**7 July 2022**

DECISION

Covid-19 pandemic: description of decision

This has been a remote decision on the papers. 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 I was referred to are described in paragraph four below. I have noted the contents.

Decisions of the tribunal

1. The tribunal has considered the request for permission to appeal based on the grounds of appeal provided and decided that:
   (a) the tribunal will not review its Decision; and
   (b) permission to appeal 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, each party who applied for permission to appeal 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, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. 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).

Reasons for this decision

4. The substantive decision was made on 6 June 2022 (the "**Decision**"). On 13 June 2022, the Respondent applied for permission to appeal, enclosing copy invoices and correspondence which had not previously been produced. I have taken those documents, and those described in paragraph two of the Decision, into account.

5. I consider that none of the grounds of appeal have any realistic prospect of success. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (if any further application for permission to appeal is made), I comment below on the points raised by the Respondent in their grounds of appeal. Please read this document with the Decision, which explains the background and the expressions used. References below in [square brackets] are to those paragraphs in the Decision.

6. The Respondent argues that the tribunal did not have evidence to support its decision, but the Respondent is actually seeking to:

   (a) introduce new evidence (invoices for some of the expenses described at [25], although even now no invoices have been produced for the referencing expenses said at the hearing to have been incurred, and copy correspondence in support of the new argument described below); and

   (b) make a new argument that the re-marketing charge described at [25] was higher than it would otherwise have been because the marketing agency spent time investigating what the Respondent says (in effect) were unjustified complaints from the Applicant.

7. It is a basic general principle that there has to be an end to litigation. In Ladd v Marshal [1954] 1 WLR 1489, in the Court of Appeal, Denning LJ said: "*In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial: second, the evidence must be such that, if given, it would*

probably have an important influence on the result of the case, though it need not be decisive: thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible."

8. The Respondent fails the first test. They could have produced this evidence with their other case documents for the hearing of this matter, but did not. Nor am I satisfied that it would be appropriate to reopen these proceedings for the new argument made by the Respondent. Again, they could have made any such argument, and produced any evidence for it, for the substantive hearing.

9. In any event, the evidence now produced and the argument now made would not have been sufficient to change my decision to order that the entire £358 holding deposit be refunded. That is for the reasons summarised in [24-26]. If the Respondent had been more careful about how they took the holding deposit, this situation would probably not have arisen at all and there would probably have been nothing for the marketing agency to investigate. The last e-mail from the marketing agency (in the new correspondence produced with the grounds of appeal) does nothing to suggest otherwise; it was sent on 7 February 2022 and asked the Respondent to "*ensure the tenant is refunded*".

Judge David Wyatt **7 July 2022**