9441

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AK/LSC/2013/0040**
Property	:	**Flat 111A Church Street, Edmonton, London N9 9AA**
Applicant	:	**Mr Stephen Backes**
Representative	:	**Mr Andrew Dymond (Counsel)**
Respondent	:	**Ms Kathleen Riley**
Representative	:	**N/A**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mr J P Donegan (Tribunal Judge)** **Mrs A Flynn MRICS (Valuer Member)** **Mr A D Ring (Lay Member)**
Date and venue of Hearing	:	**24 September 2013** **10 Alfred Place, London WC1E 7LR**
Date of Determination	:	**01 November 2013**

DECISION

Decisions of the Tribunal

(1) The tribunal determines that the Respondent is liable to pay the following service charges to the Applicant:

Interim service charges for the year ended 31 March 2011

Contingency contribution	£700.00
Management fee	£165.00
Insurance contribution	£221.72
TOTAL	**£1,086.72**

(2) The tribunal determines that the Respondent shall pay the Applicant the sum of £150 within 28 days of this Decision, in respect of the reimbursement of the tribunal hearing fee paid by the Applicant.

(3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

(4) Since the tribunal has no jurisdiction over ground rent, interest, county court costs and fees, this matter should now be referred back to the Edmonton County Court.

The application

1. The Applicant seeks a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the service charge year 2010/11.

2. Proceedings were originally issued in the Edmonton County Court under claim number 1XV05696. A Defence and Counterclaim was filed by the Respondent on 12 March 2012 and the case was transferred to the tribunal on 11 November 2012.

3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Andrew Dymond of Counsel. The Respondent did not attend the hearing and was not represented. Mr Dymond advised the tribunal that his instructing solicitors had contacted the Respondent's solicitors and been informed that she would attend the hearing in person. The tribunal delayed the start of the hearing by 30 minutes to give the Respondent an opportunity to attend but she did not appear. Accordingly the hearing went ahead in her absence. The Respondent did not provide any explanation for her failure to attend the hearing.

5. Prior to the hearing the Applicant produced a bundle of relevant documents for the tribunal that included copies of the documents from the County Court proceedings, the statements of case and witness statements, a Scott schedule, the lease, various Land Registry searches and the relevant correspondence, service charge demands, statements and vouchers.

6. During the course of the hearing, Mr Dymond informed the tribunal that the Applicant would not be pursuing his claim for administration charges. Accordingly that part of the application was withdrawn and the tribunal did not determine the administration charges.

The background

7. The Applicant is the freeholder (lessor) of 111/113 Church Street, Enfield, London N9 9AA ("the Building") and the Respondent is the leaseholder (lessee) of Flat A ("the Flat"), which is on the ground floor of the Building. Confusingly the lease refers to the Flat as "*Flat C on the Ground Floor 113 Church Street in the London Borough of Enfield*". However a Land Registry search for the Flat records the address as 111A Church Street, which is the address used by the tribunal.

8. The Respondent holds a long lease of the Flat, which requires the Applicant to provide services and the Respondent to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

9. Neither party requested an inspection of the Flat nor did the tribunal consider that one was necessary, nor would it have been proportionate to the issues in dispute. The tribunal understand the Building is a converted house consisting of 8 flats, which is on the corner of Church Street and Stanley Road. There are four flats in 111 Church Street and four in 113 Church Street.

10. Oral pre trial reviews took place on 21 February and 15 May 2013, when Directions were given. An agent for the Applicant's solicitors attended both PTRs but there was no appearance by the Respondent.

11. The Applicant served a statement of case dated 29 May 2013, an undated Scott schedule and a witness statement dated 10 September 2013. He also attended the hearing and gave oral evidence in support of his statement.

12. The Respondent also served a witness statement, dated 16 July 2013 and responded briefly to the Scott schedule. As noted at paragraph 5 above, she did not attend the hearing. This meant that the Tribunal heard no oral evidence from the Respondent. Within the County Court proceedings she raised a Counterclaim which could give rise to a set off. The Respondent's primary complaint was that there had been two water leaks to the Flat from the flat above and that she had been unable to recover the cost of internal repairs from the insurers for the Building. She also claims the cost of clearing the communal areas and garden at the Building and alleges that the Applicant refused to remove the rubbish from the communal areas.

13. The total sum claimed by the Respondent in the Counterclaim was £5,726. Further details were provided in her statement, in which she quantified her Counterclaim at a higher figure of £7,900.74. The tribunal felt unable to determine the Counterclaim without hearing oral evidence from the Respondent. This meant that tribunal dealt solely with the Applicant's service charge claim and did not deal with any right of set off.

The lease

14. The lease is dated 24 January 1990 and is for a term of 125 years from 25 March 1989. The original parties to the Lease were Laurel Gordon Estates Limited (Lessor), Laurel Gordon Properties Limited (Grantor) and John Hamill and Kathleen Wolfenden (Lessee).

15. By clause 2 of part I of the fifth schedule to the lease, the Respondent is obliged:

To pay the Lessor on the 1st day of April in each year a Maintenance Charge being that proportion specified in paragraph 7 of the particulars of the expenses which the Lessor shall in relation to the First Property reasonably estimate it will properly incur in each Maintenance Year and which are authorised by the Eighth Schedule hereto (including the provision for future expenditure therein mentioned) and FURTHER on the execution hereof to pay on account of the Lessee's liability under this clause the sum specified in paragraph 6 of the Particulars as an Interim Maintenance Charge

16. The proportion specified in paragraph 7 of the particulars is one fourth (1/4) and the "*First Property*" is defined as 113 Church Street. The service charge year runs from 01 April to 31 March (clause 8 of first schedule to the lease).

17. The eighth schedule to the lease sets out the costs and expenses which are to be charged to the Maintenance Fund, which all relate specifically to the "*First Property*". They include the Applicant's costs of complying with various obligations set out in part I of the sixth schedule and various other expenses including managing agents' fees (clause 9), legal fees (clause 11), audit fees (clause 12) and a reserve provision (clause 14).

The issues

18. In the original County Court Proceedings the Applicant claimed a sum of £1,414.77 plus interest and (contractual) legal costs. The claims for interest and legal costs do not fall within the tribunal's jurisdiction. The figure of £1,414.77 included ground rent of £100, which is also outside the tribunal's jurisdiction and administration charges of £217, which the Applicant waived. This meant that the service charges to be determined by the tribunal are:

Contingency contribution demanded on 22/09/10	£700.00
Management fee demanded on 22/09/10	£165.00
Insurance contribution demanded on 20/12/10	£232.77
TOTAL	**£1,097.77**

19. During the course of the hearing, Mr Dymond advised that the amount of the insurance contribution had been miscalculated and that the correct sum due was £221.72. This reduces the total service charge claimed to £1,086.72.

20. The only issues to be determined by the tribunal are whether the Respondent is liable to pay the service charges detailed at paragraphs 18 and 19 above, which are all interim (advance) service charges.

Evidence and submissions

21. Although the Respondent did not attend the hearing, she did give brief reasons for disputing the service charges in her Defence and Counterclaim, her response to the Scott schedule and her witness statement. These can be summarised as follows:

21.1 The Applicant, as the managing agent, has not fulfilled his obligations under the lease. In particular he has not provided any cleaning of the communal areas at the Building and has refused to clear rubbish from these areas.

21.2 The Applicant has neglected the garden at the Building.

21.3 The Applicant has failed to act on a letter from the leaseholders at the Building dated 30 August 2010, asking that he stands down as the managing agent.

21.4 The interim service charge is to be based on an estimate of anticipated expenditure at the Building under the terms of the lease. If the expenditure is not actually incurred then the Applicant cannot recover the interim charges.

21.5 The Respondent has sought clarification of the service charges demanded but this has not been provided by the Applicant.

21.6 The Applicant has not provided invoices specifically relating to the Flat. She does not know the exact amount that she has to pay as the invoice is not clear, the items listed have no details and the invoice "*..relates to properties A111 to 113*".

21.7 The Applicant failed to assist the Respondent with the insurance claims arising from the water leaks in the Flat and she has been notified "*..by the insurance providers that the Buildings Insurance does not adequately cover for any damage caused to the tenants*".

21.8 The Applicant had wanted to instruct a contractor, CDN, to paint the outside of the Building at a cost exceeding £9,000. The leaseholders objected to this on the basis that the cost was excessive. This demonstrates that "*..the Applicant has not always carried out his services properly*".

22. The Applicant relied on his statement of case, Scott schedule and witness statement. He also gave oral evidence at the hearing. The Applicant is a director of Crimson Crescent Limited ("CCL"), the managing agent for the Building. He currently deals with the day to day management. In the past the Applicant was assisted by another director of CCL, Mr Andrew Harvey. He informed the tribunal that the Respondent does not live at the Flat. Rather it is sublet to tenants.

23. The Applicant contends that the interim service charges are reasonable upon the following grounds:

23.1 Some of the rubbish that had to be cleared from the communal areas was building rubble. Mr Harvey was advised by other leaseholders at the Building that the rubble emanated from the Flat. CCL sent an email to the Respondent on 29 March 2007, asking that she remove the rubble.

23.2 CCL have cleared rubbish from the front garden area. In March and April 2009, CCL corresponded with the Respondent and the other leaseholders regarding discarded furniture in the communal areas, which they planned to clear. The Respondent offered to contact Enfield Council to arrange the removal of these items and CCL accepted this offer. She informed CCL that the Council would not charge for this service but it appears that there was a charge.

23.3 The garden consists of a hard stand with 3 or 4 bushes and very little grass. The Applicant visits the Building regularly and clears any weeds or rubbish during these visits.

23.4 CCL were first informed of water leaks in the Flat in an email from the Respondent dated 12 March 2007. This referred to a leak from the bathroom of the flat above, causing the bedroom ceiling to collapse. The Respondent's contractor had repaired this leak. The email also referred to a separate leak in the bathroom. The Respondent asked CCL to forward an insurance claims form to her letting agents. Initially this request was overlooked but CCL subsequently advised the Respondent to refer the claim to the insurance brokers in an email dated 20 September 2007. The Applicant had no involvement in the insurance claim relating to the bedroom ceiling. Rather he left the Applicant to deal with this and does not know the outcome of the claim.

23.5 The Applicant was notified of a further leak in the Flat in September 2010. Mr Eliades is the leaseholder of the flat above and copied the Applicant in on an email to the Respondent dated 02 September 2010. In that email, Mr Eliades notified the Respondent of a leak in the Flat (from his flat) and asked the Respondent to contact him. The Applicant then sent an email to the Respondent, also on 09 September 2010, asking her to contact Mr Eliades. Further email correspondence followed and an insurance claim was made on the policy for the Building. The Applicant was advised by Mr Eliades that the claim was declined but he does not know the reason.

23.6 The water leaks in 2007 and 2010 both emanated from the flat above. This is not the Applicant's responsibility and he considers that the Respondent should direct any claim for water damage should be directed to the leaseholder of that flat, Mr Eliades.

23.7 The sums being demanded are all interim service charges but the Applicant has separated the charges into a contingency contribution, management fees and insurance contribution to be transparent. The

contingency contribution is also a reserve contribution. All of three items are recoverable as service charges expenses under the eighth schedule to the lease.

23.8 The contingency/reserve contribution of £700 was demanded meet any unexpected costs arising in-year, with any surplus remaining at the end of the year being used to build up a fund for the proposed external redecoration of the Building. At the time of the demand, the Applicant had already undertaken the original section 20 consultation and believed that the total cost of the work was likely to exceed £9,000. The work was deferred, as a majority of leaseholders objected to the appointment of CDN, after the consultation had concluded. They claim that the work can be undertaken at lower cost and CCL has now appointed the Respondent's brother, who is a surveyor, to organise the work.

23.9 CCL's management fee is £165 per flat per annum. The Applicant considers that this fee is reasonable for the work involved in managing the Building. The figure is in line with a management fee determined by the leasehold valuation tribunal, in an earlier case involving the Building, prior to the Applicant's purchase. The total management fee for the Building is £1,320 (8 x £165) and Applicant charges the fee equally between all 8 flats.

23.10 The insurance premium for the Building for year from 26 December 2010 to 25 December 2011 was £1,773.74. Again this has been divided between all 8 flats. The contribution due for the Flat is £221.72 (£1,773.74). The Respondent has not produced any evidence to suggest that the premium is unreasonable.

23.11 The Applicant has provided services to the Respondent in accordance with the lease and the suggestion that he is in breach of the lease is unfounded.

23.12 The interim service charges for the year ended 31 March 2011 were payable on 01 April 2010 but were not demanded until 22 September 2010 (contingency/reserve contribution and management fee) and 20 December 2010 (insurance contribution), respectively. The lease does not make time of the essence and the interim charges can be demanded late.

The tribunal's decision

24. The tribunal determines that the amount payable by the Applicant for interim service charges for the year ended 31 March 2011 is £1,086.72. This figure is broken down as follows:

Contingency contribution	£700.00
Management fee	£165.00
Insurance contribution	£221.72
TOTAL	**£1,086.72**

25. The contingency/reserve and management contributions fell due on 22 September 2010 and the insurance contribution fell due on 20 December 2010, being the dates of the respective demands.

Reasons for the tribunal's decision

26. The tribunal accept and endorse Mr Dymond's closing submissions, as summarised below:

26.1 External works are clearly required at the Building and it was reasonable for CCL to demand contingency/reserve contributions to build up a fund for these works.

26.2 The management fees charged by CCL were reasonable, given the work they have undertaken. This is evidenced by the extensive correspondence in the hearing bundle, regarding rubbish clearance, the insurance claims and other issues. The Respondent's allegation that CCL do not do anything to justify their fee is not borne out by this correspondence. Further the fees are in line with the fees determined in the previous tribunal case.

26.3 The Respondent has not produced any evidence to demonstrate that the insurance premium is unreasonable. She has referred to the failure of the insurance claims but the claims relate to water leaks from the flat above, which is not the Applicant's responsibility.

26.4 It is clear from the face of the service charge demands that the sums being sought relate to the Flat.

27. The tribunal also took the following factors into account, when determining the service charges:

27.1 The amount of the contingency/reserve contribution was reasonable, having regard to the original estimate from CDN.

27.2 In the tribunal's experience it is common for managing agents to charge a fee of £200-300 per flat per annum. CCL's fee of £165 per flat per annum is well below this figure.

27.3 The Respondent has not produced any alternative quotes to suggest that the insurance premium is excessive. Further she has not produced the correspondence with the insurers to establish why the claims were rejected.

27.4 CCL has calculated the service charge contributions with reference to the Building, as a whole. By this we mean that each flat pays 1/8th of the total expenditure (or total anticipated expenditure). Under the terms of the lease the Respondent is liable to pay ¼ of the expenditure for 113 Church Street. In practice this is the same as 1/8th of the expenditure for the entire Building but it would be helpful for CCL to apportion the expenditure between 111 and 113 Church Street in future.

27.5 The service charge demands in the bundle clearly identify the interim charges being sought. It may avoid the scope for future disputes if CCL demand one, composite interim charge in the future rather than breaking this down into contingency/reserve, management and insurance contributions.

27.6 The lease does not make time of the essence and interim service charges can be demanded after the specified payment dated of 01 April. In that event the charges only fall due once the demand is made. Clearly it is in the Applicant's interest if future demands are issued before 01 April, so that the charges fall due on this date.

28. Mr Dymond invited the tribunal to make findings of fact in relation to cost of clearing the rubbish from the Building. The tribunal declines to do so, given that this forms the largest element of the Counterclaim which has not been determined.

Costs/Fees

29. At the end of the hearing, Mr Dymond made an application for a refund of the £150 tribunal fee that the Applicant had paid for the hearing[1]. Having heard the submissions from the parties and taking into account the determination above, the tribunal orders the Respondent to refund this fee within 28 days of the date of this decision.

30. The directions issued on 15 May 2013 provided that one of the issues to be determined by the tribunal was whether an order under section 20C of the 1985 Act should be made. It is not clear whether the Respondent has formally applied for such an order but Mr Dymond accepted that this was "*in play*". Taking into account the determination above and the Respondent's failure to attend the hearing, without any form of explanation, the tribunal determines that it is not just and equitable for

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

an order to be made under section 20C. Accordingly no such order is made.

The Next Steps

31. The tribunal has no jurisdiction over ground rent, interest, county court costs or fees. This matter should now be returned to the Edmonton County Court.

32. For the avoidance of doubt the tribunal has not determined the Respondent's Counterclaim, given her failure to attend the hearing to give oral evidence. If the Respondent wishes to pursue the Counterclaim then this will be a matter for the County Court.

Name: Jeremy Donegan (Tribunal Judge) Dated: 01 November 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,

(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
   (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
   (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
   (a) an amount prescribed by, or determined in accordance with, the regulations, and
   (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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, residential property tribunal or the Upper 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) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) An appropriate tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to an appropriate tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of an appropriate tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before an appropriate tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.