10444

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/LSC/2014/0245**
Property	:	**Ground & Second floor flats, 16 Stonor Road, London W14 8RZ**
Applicants	:	**Mr Sean O'Brien** **Ms Emma Holmqvist**
Representative	:	**In person**
Respondent	:	**Amicrest Recovery 52 Limited**
Representative	:	**David Bland from Pier Management Ltd** **Ms Louise Vidgeon & Ms Samantha Sandford from Countrywide Estate Management**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge and an administration charge**
Tribunal Members	:	**Mr L Rahman (Barrister)** **Mr A Manson FRICS** **Mr C Piarroux JP CQSW**
Date and venue of Hearing	:	**14th November 2014 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**27.11.14**

DECISION

Decisions of the tribunal

(1) The tribunal found the management fees as charged by the respondent to be reasonable and payable.

(2) The tribunal found the insurance premiums as charged by the respondent to be reasonable and payable.

(3) The tribunal found the administration charges to be reasonable and payable.

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

(5) The tribunal makes no order for the respondent to refund any fees paid by the applicants.

(6) The tribunal does not make an order for costs under paragraph 13(1)(b) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

The application

1. The applicants seek a determination pursuant to s.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 applicants in respect of the service charge years 2011, 2012, and 2013 (each service charge year is based upon a calendar year).

2. The parties stated the applicants had been given the right to manage the property since 1.11.14. Both parties stated at the hearing that the tribunal should consider the service and administration charges concerning the management fee and insurance premiums only, for the period up to 1.11.14, if possible. Given that the tribunal was not provided with any evidence concerning the management fee for 2014, the applicants have challenged every service charge year since 2006 by way of this and a previous application to the tribunal, the parties wanted to limit the tribunals findings to the insurance and management costs only yet on each occasion the applicants have challenged other service charge items, and at best the tribunal would only have estimated costs for 2014, the tribunal determined it should not deal with the 2014 service charge year.

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

The hearing

4. The applicants appeared in person and the respondent was represented by David Bland (legal representative from Pier Management limited) and Louise Vidgeon and Samantha Sandford (from Countrywide Estate Management). Mr Richard Mundy was observing.

5. Immediately prior to the hearing the respondent handed a "summary submissions".

The background

6. The property which is the subject of this application is a four storey mid terraced Victorian house converted into four flats. The applicants are the lessees of the flats on the ground and first floors respectively.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. The applicants hold long leases of their respective properties which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) Whether the management fees for the period 1.1.11 to 31.12.13 were reasonable and payable.

   (ii) Whether the insurance premiums for the same period were reasonable and payable.

   (iii) Whether administration charges, in connection with arranging and dealing with the insurance premiums, were reasonable and payable.

   (iv) Whether the decision of the tribunal dated 6.8.12 in case number LON/00AN/LSC/2012/0099 had been properly reflected in the applicants accounts with the managing agents for the period 1.1.06 to 31.12.10.

   (v) Whether there had been correct allocation of payments made by the applicants in respect of roof repairs and external

decorations in the period 1.1.11 to 31.12.13 (the cost, standard and need for the roofing works and external decorations were not in dispute).

(vi) Whether an order under section 20C of the 1985 Act should be made.

(vii) Whether an order for reimbursement of the application and hearing fees should be made.

(viii) Whether there should be an order for costs in favour of the applicants under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

10. Mr O'Brien stated at the hearing the tribunal should also consider whether the insurance premiums for the period 2006 to 2010 were reasonable and payable. Mr Bland objected on the basis that the tribunal had already considered this matter in Mr O'Brien's absence at the case management conference and had limited the period to 2011 to 2013 on the basis that the applicants should have raised this matter in their previous application to the tribunal, which dealt with various other matters for the period 2006 to 2010, and it was prejudicial to allow this to be raised at such a late stage. Ms Holmqvist stated the matter had been considered at the case management conference but she disagreed with the tribunals decision. The applicants stated they had obtained insurance quotes for the years 2011-2012 and 2014.

11. The tribunal determined it would only consider whether the insurance premiums were reasonable and payable for the years 2011, 2012, and 2013, as the tribunal had already considered the applicants argument at the case management conference and had limited the period under consideration. It would be unfair to allow earlier years to be raised at the hearing as the respondent had not prepared to argue whether the insurance premiums were reasonable and payable for those earlier years. Furthermore, the tribunal noted the applicants did not have any comparable quotes for those earlier years, as they had for the years 2011 and 2014.

12. The respondent conceded prior to the hearing and after the case management conference that the charge for the out of hours service for the period 1.1.11 to 31.12.13 was not payable and would be re-credited to the applicants. The charge for each flat was £14.40 (2011), £19.20 (2012), and £14.40 (2013).

13. After an extended lunch break, following a suggestion by the tribunal that the respondents explain to the applicants how their accounts had been calculated, the applicants stated they were satisfied the decision of the tribunal dated 6.8.12 in case number LON/00AN/LSC/2012/0099

had been properly reflected in the applicants accounts for the period 1.1.06 to 31.12.10. The respondent stated the accounts had been reconciled by 17.1.14. The applicants stated they had no evidence to the contrary but had only understood the accounts today. The applicants also stated they were satisfied that the allocation of the payments made by the applicants in respect of the roof repairs and the external decorations in the period 1.1.11 to 31.12.13 had been correctly applied.

14. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Management fees

15. The respondent stated the actual management fee for each flat was £283.65 for 2011, £300.00 for 2012, and £317.00 for 2013.

16. The applicants argued that they should pay no management fee whatsoever as the service provided was very poor. There was a failure to respond to phone calls and emails, incorrect service charge demands were issued, and legal threats were made to recover disputed service charge items.

17. Mr O'Brien in particular stated he had a roof leak in about December 2012. Water was leaking into his sitting room. There were three wet patches on the ceiling and water was dripping when it rained. He had to put saucepans on the floor to collect the water. The leak was not so bad that the saucepans overflowed. He states he contacted the managing agent (Tony) by email (copies not in the bundle). Tony stated he would get someone to look into the matter and someone attended months later. He chased the matter with Tony in the meantime by emails (copies not in the bundle). Whoever attended just checked the roof outside and left, stating the roof needed to be replaced. Tony made enquiries to see if he could get in contractors and tried to obtain quotes but there wasn't much progress. So the applicant obtained quotes and got the job done in May 2013, having agreed with Tony that he would be reimbursed by the respondent. The applicant states Tony visited the flat twice, in connection with a separate redecoration matter, between December 2012 and May 2013.

18. Mr O'Brien stated he paid £740 for the roof replacement and provided the invoice to Tony. Tony wanted details of the builders insurance cover, which the applicant then provided. He then heard nothing from Tony. After Samantha Sandford joined he raised the matter with her. He only became aware since the case management conference hearing that he had been re-credited the amount owed to him.

19. The respondent stated the matter was reported in December 2012 and an inspection took place on 13.3.13, as confirmed by the email on page 228 of the bundle. Tony was dealing with the matter but there were difficulties with gaining access, as suggested by the email from the applicant to Tony, dated 25.2.13 (page A5 of the bundle), which states "Please can you let me know when you get confirmation via the freeholder that Judith will allow access for the scaffolding. It will impact on the roof repairs..." The respondent states Judith was not co-operating and therefore made it difficult to arrange an inspection. Eventually, a surveyor was instructed to inspect from inside the applicants flat. The applicant then agreed to get quotes and have the work done. Samantha Sandford states she processed the invoice under their system.

20. Ms Holmqvist stated the billing was the main concern and which demonstrated how poor the management service was. The example given by her was in relation to works the respondent proposed to carry out to the internal and external parts of the building. Having consulted each other, the applicants stated the cost for the internal decoration was too high and they would do it themselves. The applicants state the respondent agreed to this and had agreed to deduct the overall cost of the works by £600 per flat accordingly. However, despite this the respondent continued to demand the additional £600. The last email Ms Holmqvist sent to Tony was in July 2013 (page A20), which shows she was still being asked to pay £600. The service charge demand on page A21, dated 10.7.13, shows that her contribution towards the section 20 external redecoration works was in the sum of £3,750.00. It should have been £3,750.00 minus £600.00.

21. The respondent accepts the total cost for internal and external decorations for each flat was £3,750.00, there was no internal decoration, and that the applicants were still charged £600 for this. This was because the initial section 20 works included internal decorations. It was only later, during the consultation process, a decision was made that there would not be any internal decoration. However, by then the charges had already been levied in September 2012. A credit was eventually made in May 2013. The respondent accepts that despite this, the service charge demand sent to the applicant, as shown on page A21, appears to suggest £600.00 had not been deducted. However, the applicants had not in fact been overcharged and their accounts had been deducted by £600.00, as demonstrated by the accounts on page 150, showing a credit of £600.00 on 14.5.13. Therefore, the amount due and demanded on 10.7.13, in the sum of £1,979.74, was correct. The respondent accepts the service charge demand on page A21 was not clear and could be interpreted as if the £600.00 had not been deducted.

22. The applicants further stated the management fee was excessive and should not have been more than £150 plus vat per flat, which is what they were paying the new managing agent they had appointed since

acquiring the right to manage. They had obtained three quotes during the summer prior to appointing their managing agent. The applicants did not include the quotes, or the agreement with the managing agent, in their bundle or have copies at the hearing.

23. The respondent stated the management service provided by Countrywide Estate Management included the setting of an annual budget and preparing the notes of explanation to clarify costs, liaising with contractors and instructing works, preparing the financial documents to be submitted to the in house accounts team, corresponding with lessees with issues flagged up by leaseholders, conducting site visits once a quarter (report on page 213), dealing with major works and the section 20 consultation. The respondent stated that managing agents ordinarily charge an additional 10% or so of the total cost of any major works on top of any management fee. However, Countrywide Estate Management did not charge for the major external works that took place in 2013 (costing £12,600.00 in total). The respondent stated the managing agents fee was inclusive of vat and was competitive and reasonable for a property in London. It did not have any comparisons to offer to show how competitive Countrywide Estate Management's fees were.

24. Both parties agreed at the hearing the tribunal should use its accumulated knowledge and experience in such matters when determining what it found to be a reasonable management fee.

25. The tribunal noted the highest management fee, concerning 2013, was £317 inclusive of vat. The tribunal noted the previous decision by the tribunal in 2012 found that a management fee of £277 per flat (inclusive of vat) was to be reduced to £210 per flat for the year 2010, due in part to poor services and in part because it felt the level of the charge was too high for the size of the development, although it did not specify the percentage deduction due to poor service (paragraph 21 of the decision). This reflects an increase of £107.00 since 2010.

26. The applicants claim they are currently paying £150 exclusive of vat. The applicants state they had obtained three quotes but have not provided those to the tribunal, or the agreement with their managing agent, to show the fee they are actually paying or to show that the management fees paid by the respondent are excessive / unreasonable or that it is a like for like comparison. One significant difference between the two management fees is that the applicants accept that their managing agents, unlike the respondents managing agents, would charge 10% on top of the fee already charged for any section 20 works. The tribunal noted the section 20 works in 2013 was valued at £12,600. Ten percent of that equates to £1,260, representing what could have been an additional charge of £315 per flat.

27. In view of the matters referred to in the two preceding paragraphs, and bearing in mind the property concerns four flats located in West Kensington, and using the tribunals accumulated knowledge and experience in such matters, the tribunal found the applicants have not provided adequate persuasive evidence to suggest the management fees charged by the respondent are unreasonable.

28. The tribunal considered whether there should be any deductions for the service provided by the managing agent. The tribunal accepts the managing agents had not failed to credit the applicants £600 each, however, the tribunal accepts that they had failed to clearly explain that to the applicants and the invoice dated 10.7.13 was confusing. With respect to the roof leak the tribunal found the managing agent was not as proactive as it could have been, but they did not ignore the applicant and were partly obstructed by the lack of co-operation in trying to obtain access. The applicant then agreed to carry out the work himself and the managing agent were slow in reimbursing the applicant. The tribunal accepts these may not have been the only two incidents the applicants wished to complain of, but they represent the two main complaints they wished to highlight to demonstrate the service provided by the managing agent.

29. The tribunal noted the overall service provided by the managing agent, which included the setting of an annual budget and preparing the notes of explanation to clarify costs, liaising with contractors and instructing works, preparing the financial documents to be submitted to the in house accounts team, corresponding with lessees with issues flagged up by leaseholders, conducting site visits once a quarter (report on page 213), and dealing with major works and the section 20 consultation. The tribunal noted that Tony had visited Mr O'Brien's flat twice in relation to decorations and the managing agent had consulted on the proposed works and had listened to the applicants observations and agreed to allow the applicants to carry out the internal decorations.

30. The tribunal found the service provided by the managing agent could have been better but it was not of such a poor standard that there should be any deductions in the management fee, given the overall service provided by the managing agent.

31. The tribunal found the management fees as charged by the respondent to be reasonable and payable.

Insurance premiums

32. The respondent stated the actual insurance premium for the whole property was £1,576.82 for 2011, £1,654.26 for 2012, and £1,735.47 for 2013. Each applicant paid one quarter of the total for each year. The relevant insurance certificates were on pages 9, 10, and 11 respectively.

33. The respondent stated neither it nor its managing agents had any links with the insurance providers or the insurance brokers. It arranged its insurance cover on a portfolio basis covering 35,000 units. The broker obtained the best and most competitive price after testing the market, although it did not know how exactly the brokers tested the market. It had, when necessary, changed insurers. The respondent earns a commission on its portfolio. Its representatives at the hearing were unable to state the percentage commission it was paid or the way in which it was calculated.

34. The applicants stated the quotes were too high compared to the quotes they had obtained. They provided a quote of £570 for 2011-2012 (pages A15-16) and three quotes for 2014-2015; £813.00 (pages A8-10), £994.62 (pages A11-13), and £844.00 (pages A14-15, and the actual insurance premium they have paid after acquiring the right to manage).

35. The respondent stated the quote on page A15 was not a like for like comparison. The buildings sum insured was £538,347 only and it did not provide cover for terrorism. Its own policy provided cover for terrorism and the buildings sum insured was significantly higher at £695,265.

36. The respondent stated the quote on page A8 was not a like for like comparison. It was a home quote and not a landlords policy, which tended to be more expensive. It provided cover for a four bedroom terraced house for a household comprising four adult non-smokers. Its own policy was for a landlord, providing cover for a block containing four flats without any limitations as to the number of occupants or whether they were non-smokers.

37. The respondent stated the quote on page A11 was not a like for like comparison as it did not provide cover for terrorism, the claim was based upon there being one previous claim for water damage, and the communal contents cover was limited to £1,000. Its own policy provided cover for terrorism and sabotage, was based upon there being 2 previous claims for water damage (at the time the quote was obtained there were two claims for water damage but subsequently one claim was not pursued), and its communal contents cover was up to £10,000.

38. The respondent stated the quote on page A14 was not a like for like comparison as it did not provide cover for terrorism (both applicants agreed it did not provide cover for terrorism), the previous claims history had not been disclosed (both the applicants stated they could not state whether the previous claims history had been disclosed), the communal contents cover was limited to £1,500, and the cover was provided for "Household (Multi Tenanted and Leaseholder)" which could mean a household policy for a single dwelling that is let to a number of tenants.

39. The applicants initially stated terrorism cover was not required due to the location of the property and it was not required under the terms of the lease. Having then been referred by the respondent to clause 5(5)(c) of the lease (page 99 of the bundle), which stated the respondent had covenanted to *"insure and keep insured the Building...against loss or damage by fire explosion storm tempest...and risk of explosion and other such risks..."* the applicants agreed with the respondent that cover for terrorism was required under the lease.

40. Both parties agreed at the hearing the tribunal should use its accumulated knowledge and experience in such matters when determining what it found to be a reasonable insurance premium.

41. The tribunal noted the respondent received a commission but had failed to clarify the amount received or how it was calculated. The tribunal noted the applicants had failed to provide any like for like comparisons to show that the insurance premiums were excessive or unreasonable. Using the tribunals accumulated knowledge and experience of such matters the tribunal found that whilst the insurance premiums may be at the higher end of the scale, they were not excessive or unreasonable in amount.

42. The tribunal found the insurance premiums as charged by the respondent for each of the relevant years are reasonable and payable.

Administration charges

43. The respondent stated the charge for each applicant was £11.94 for each of the relevant years. The respondent stated it employed Pier Management Limited in addition to Countrywide Estate Management. Pier Management Limited was responsible for ground rent, insurance, and generally dealt with matters such as lease extension, etc. The administration charges were for the services provided by Pier Management Limited. The respondent stated it was a modest charge for the service provided.

44. The applicants stated that one managing agent and one management fee should cover all the services provided. The applicants stated their own managing agent does not deal with arranging the insurance for the property.

45. The tribunal found the administration charges to be reasonable and payable. The lease does not preclude and it is not unusual for services to be split between two agents. The tribunal notes the applicants themselves have appointed a managing agent yet they have chosen to deal with the insurance themselves. The tribunal noted that Pier Management Limited provided a service which had a cost element. If Countrywide Estate Management were to provide this service, as with

the applicants own managing agents too, perhaps a higher fee would have been charged by the managing agents. The overall amount is a modest sum for the service provided.

Application under s.20C and refund of fees and costs

46. At the end of the hearing, the applicants made an application for a refund of the fees that had been paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the respondent to refund any fees paid by the applicants.

47. At the hearing, the applicants applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines the respondent was successful on all the disputed issues, except for the concession made concerning the out of hours charges, therefore the tribunal decline to make an order under section 20C. However, the tribunal noted the respondent stated at the hearing that no costs would be passed through the service charge.

48. The applicants indicated at the case management conference that they wished to apply for an order for costs. However, the applicants confirmed at the hearing, having understood the need to satisfy the tribunal that the respondent had acted unreasonably in defending or conducting proceedings, that they did not want to apply for an order for costs.

Name: Mr L Rahman **Date:** 27.11.14

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 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).