



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

**Case Reference
(County Court Ref.)** : **LON/00BA/LSC/2014/0276
(Claim no. A2QZ7198)**

Property : **Flat 27, Crown Mill,
London Road,
Mitcham,
Surrey CR4 4FY**

Applicant : **Crown & Grove Management Ltd**

Representative : **Centro PLC**

Respondent : **Ms E F Brigue**

Representative : **Mr B Ighalo**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay service charges and
administration charges**

Tribunal Members : **Judge J E Guest
Mrs L West
Mr M A Mathews FRICS**

**Date and venue of
Hearing** : **25/09/2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **28/10/2014**

DECISION

Decisions of the tribunal

- (1) **The tribunal determines that the sum of £1,361.68 is payable by the Respondent in respect of the service charges for the period 01/07/2013 to 30/06/2014 and, in addition, the sum of £222.00 in respect of administration charges levied in the same period is also payable.**
- (2) The total sum claimed by the Applicant for the period from 01/07/2013 to 30/06/2014 amounted to £1,588.33 (excluding the County Court issue fee, the claim for interest and the Respondent's payments). As a result of this decision, company secretarial charges were disallowed. These costs amounted to £218 for the year ending 2013 and £228 for the year ending 2014. The costs were recovered as part of estate costs so that the Respondent was liable to pay 1/48th. Therefore, the Respondent's contribution was £4.54 for the year 2013 and £4.75 for 2014. The amount due for the period 01/07/2013 to 30/06/2014 was, therefore, reduced by £4.65 (i.e. $£4.54 + £4.75 = £9.29 \div 2$).
- (3) The tribunal makes the determinations as set out under the various headings in this Decision.
- (4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (5) The tribunal determines that the Respondent shall pay the Applicant £245.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.
- (6) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Bromley County Court.

The application

1. The Applicant seeks 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 Applicant in respect of the service charge for the period 01/07/2013 to 30/06/2014.
2. Proceedings were originally issued in the Northampton County Court under claim no. A2QZ7198. The claim was transferred to the Bromley County Court and then in turn transferred to this tribunal, by order of District Judge Brett on 16/05/2014.

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

The hearing

4. The Applicant was represented by Mrs A Spicer, a legal executive employed by the managing agents, Centro PLC. Mrs S Mosford, the property manager for Centro, was also present. The Respondent did not attend the hearing. The Respondent was represented by her husband, Mr B Ighalo. The start of the hearing was delayed by nearly 30 minutes as Mr Ighalo was running late. The Respondent had not filed/served written notification that her husband had been appointed as her representative, as required by Rule 14 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2008. Mrs Spicer had no objection to the tribunal waiving this procedural requirement under Rule 8.
5. Mrs Spicer provided further documents during the course of the hearing, namely; 5 photographs of the estate; the management agreement between the Applicant and Centro PLC dated 01/01/2005; the Applicant's Articles of Association dated 08/04/2004; and a standard specification for the gardening and upkeep of the communal areas undated. In addition, the tribunal obtained the order of 16/05/2014 from the court file that had been omitted from the bundle. The tribunal considered all these further documents in addition to the bundle of documents produced by Mrs Spicer for the hearing. References in square brackets relate to the relevant page number of the bundle.

The background

6. The property which is the subject of this application is a two bedroom flat situated on the second floor of a three storey building known as Crown Mill. Crown Mill forms part of the Crown and Grove Estate. The estate contains Crown Mill, another block of flats, known as Grove Mill, three freehold houses, a substation, a bin store and a bike store. There are a total of 45 flats on the estate. Vehicle access is via an entry phone controlled gate with an adjacent gate for pedestrian access. There is a block paved drive way leading to a cul-de-sac with 45 parking spaces for the residents. The lease has a site plan attached [93] that shows that part of the estate is adjacent to the River Wandle and another part is adjacent to land owned by the National Trust. The tribunal was informed that the estate was developed in about 2004.
7. Neither party requested an inspection and the tribunal did not consider that one was necessary as photographs and a site plan were available. An inspection would not in any event have been proportionate to the issues in dispute.

8. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The Applicant is a management company owned by the residents. Centro is employed by the Applicant as its managing agents. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. A case management conference (“CMC”) took place on 10/07/2014 that was attended by Mrs Spicer. The Respondent did not attend the CMC and she was not represented. Various directions were ordered that required, amongst other things, the Respondent to identify the charges in dispute in the form of a Scott schedule so that the Applicant could respond to each item in dispute.
10. The schedule [158-161] included various items that related to charges that were outside the scope of the tribunal’s remit. The tribunal explained to the Respondent’s representative at the beginning of the hearing that the tribunal could only make determinations in relation to the disputed charges for the period 01/07/2013 to 30/06/2014. This is because the charges for this period formed the basis of the County Court claim and thus the amount transferred to the tribunal. The tribunal explained to Mr Ighalo that the Respondent would need to make a separate application to the tribunal for a determination of the charges that were not part of the County Court claim. The tribunal would not, however, be able to adjudicate again on any charges that have already been determined by the tribunal, as per the decisions of the tribunal dated 14/10/2010 and 07/11/2012.
11. The tribunal identified at the start of the hearing that the charges in relation to the period from 01/07/2013 to 30/06/2014 amounted to a total of £1,588.33 excluding the Applicant’s claim for County Court costs and interest and any payments made by the Respondent.
12. In respect of these charges, the Respondent had indicated that in the schedule the following items were in dispute:
 - (i) The payability and/or reasonableness of service charges relating to company secretarial fees, gardening, directors’ insurance, entrance gate service contract, pedestrian gate repair, telephone entrance gate costs and management fees; and
 - (ii) The administration charges for a letter before action and arrears processing fees.
13. The hearing lasted from 10.35am to 3.35pm with breaks totalling 1 hour 5 mins. 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.

Company secretary fees

14. The tribunal heard from Mrs Spicer that Centro acts as the Applicant's company secretary. Mrs Spicer's position was that the costs of complying with the requirements of Companies House were a cost that was recoverable under the service charges since Clause 4 of Parts I and II to Schedule 7 of the lease [86] states that the Applicant may "*.. employ a managing agent or surveyor to manage the Estate and to collect the maintenance charges in respect of the Property and the other parts of the Estate and to carry out such other duties as may from time to time be assigned to it by the Landlord or by the Company or are otherwise imposed on it by the provisions of this Lease or by any statute or statutes for time to time being in force*". Mrs Spicer said that the costs related to complying with company law by filing forms at Companies House annually, which involved checking the details of the current directors/residents. Invoices in relation to the costs were provided [162-164].
15. Mr Ighalo's position was that the costs were excessive. He considered that the forms were a routine matter that would take little time. Further, Mr Ighalo submitted that the time spent was not a cost that had been 'incurred' by Centro as the managing agents had undertaken the work.

Tribunal's decision and reasons

16. The tribunal disallowed the costs in full.
17. Centro are required to carry out the obligations of the management company under the terms of the management agreement. The tribunal considered that the work undertaken by Centro to ensure that returns were filed at Companies House each year was simply part of its role as managing agents and it was not a matter for which Centro could make a separate charge. There is no provision in the management agreement for additional charges

Gardening costs

18. There was no issue between the parties that the communal areas were maintained to a high standard. The dispute concerned whether the costs were reasonable. Mrs Mosford explained that three gardeners attended on a weekly basis between March to October and fortnightly between November to February. Mrs Mosford said that the gardeners spent about 3 – 4 hours on site each visit carrying out various gardening and maintenance duties. The Applicant also produced

invoices for the gardening charges [162-164]. Mrs Spicer informed the tribunal that the gardeners were employed by Centro and that they were not contractors.

19. Mr Ighalo considered that the costs were excessive. He referred to the cost of having his own lawns cut at home and said that the costs should be halved, although he offered no comparable evidence.

Tribunal's decision and reasons

20. The tribunal allowed the costs in full.
21. The costs amounted to £6,768. The tribunal calculated that there were about 40 visits per year, which was equivalent to a charge of £170 per visit. As there were three men on site for approx. 3-4 hours, this meant that the hourly charge was less than £20. The tribunal considered that the time spent was reasonable given the number of workers and visits and the extent of the tasks set out in the gardening specification, which included not only lawn mowing, but also maintaining the extensive paved areas, shrubs, debris and leaf cleaning, rubbish removal, bin area cleaning and pruning. The tribunal also considered the hourly charge to be reasonable. There is no obligation to provide the very cheapest services, only a requirement to incur 'reasonable' costs. The tribunal considered that the gardening costs were reasonable.

Directors' insurance

22. Mrs Spicer told the tribunal that the residents volunteer to act as directors of the management company and that they would not do so if they were not covered by insurance. Mrs Spicer relied upon Clauses 6 and 6.1 of Parts I and II of Schedule 7 of the lease [86]. This states that the Applicant may "*.. pay all other proper costs... incurred by the Company.. in the running and management of the Estate..*" The Applicant produced evidence of the expense [168].
23. Mr Ighalo's position was that the directors' insurance was not payable under the terms of the lease. He also considered it unnecessary for the directors to effectively insure against themselves and he said that he would be willing to act in the role without such insurance.

Tribunal's decision and reasons

24. The tribunal allowed the sum in full.
25. The provision for insurance is covered by Clauses 6 and 6.1 – it is a proper cost incurred in the running and management of the estate. The management company must have directors and these are residents who

undertake the role in their own time and without remuneration. It is reasonable for directors to have insurance otherwise it is unlikely that anyone else would volunteer for such a position.

Entrance gate

26. Mrs Spicer explained that there is an annual service contract with AAC. Invoices for the costs were produced [170-175]. Mrs Mosford explained that AAC carries out a twice yearly inspection and that, in addition to the service contract, AAC charged for parts but gave a discounted rate for call outs. The operation of the gate has been plagued by intermittent breakdowns and issues arising from vandalism. Mrs Mosford said that the service contract was cost effective, as other contractors would charge twice as much for call outs.
27. Mr Ighalo informed the tribunal that the gate was regularly out of order and he considered that it should still be under warranty given that it was replaced at around the time of the London Olympics. He thought that the service contract did not give good value for money and he considered that it would be preferable to have a contract that included all call out charges.

Tribunal's decision and reasons

28. The tribunal allowed the costs in full.
29. The tribunal notes that the costs included both the fees for the maintenance contract in addition to the call outs and parts. The tribunal accepted Mrs Mosford's explanation that the AAC provided discounted call out fees. Such a contract was, therefore, beneficial to the management of the estate, particularly given the ongoing problems with the installation. The tribunal considered it likely that the costs would be higher if there was a contract, as suggested by Mr Ighalo, which incorporated both the cost of all possible repairs in addition to maintenance.

Pedestrian gate

30. Mrs Spicer explained that the Applicant had estimated the cost of reinstating the pedestrian gate as £648.00 but that the actual cost was £520.80. An invoice was provided in support of the expense [174]. The work had been requested by the directors of the management company and included installing a closing mechanism.
31. Mr Ighalo thought that this was an unnecessary expense. His position was that the works could have been done more cheaply as all that was required was for the magnet catch to be removed.

Tribunal's decision and reasons

32. The tribunal allowed the costs in full.
33. The works had been commissioned at the request of the directors who themselves are residents. The provision of a gate with a closing mechanism was reasonable and the cost was not excessive. The tribunal again refers to the fact that there is no requirement for a landlord to undertake works at the very cheapest cost.

Entry phone to entrance gate

34. Mrs Spicer and Mrs Mosford explained that the entrance gate for vehicles is controlled by a key pad that enables visitors to call a resident so as to be given access to the estate. The tribunal was told that the cost includes a standard telephone line rental and also telephone charges, including to residents' mobile phones. No invoices were submitted in support of this expenditure.
35. Mr Ighalo considered that the cost was high, particularly given the amount of the time the entrance gate was out of order.

Tribunal's decision and reasons

36. The tribunal allowed the costs in full.
37. Although no invoices were provided, the explanation for this expense was entirely credible. The tribunal did not consider the cost, which included line rental and individual call costs (including to mobile phones), to be unreasonable.

Management fees

38. Mrs Spicer provided a copy of the management agreement during the course of the hearing. Mrs Mosford told the tribunal that she had been in post for the past 2 years and that the management fee was increased in line with the provisions set out in clause 3 of the agreement, which provided for an annual increase to a fee per flat of £100 + VAT at 1 ½ times the rate of inflation plus a further 10% + VAT on expenditure of a non-regular nature in excess of £1000 actual cost.
39. Mrs Spicer explained that the total management fee was proportioned between the costs that related to the blocks and to the estate. The tribunal was told that this was necessary as the freeholders of the houses on the estate contributed towards the cost of managing the estate but not to the costs of managing the blocks of flats.

40. Mr Ighalo objected to the management fee as he thought the management fee was too high. He considered, however, that the fee would be reasonable if it had been increased in line with the management agreement.

Tribunal's decision and reasons

41. The tribunal allowed the costs in full.
42. The tribunal accepted Mrs Mosford's evidence that the management fee had been increased in line with clause 3 of the agreement. The tribunal was satisfied with her explanation that she had complied with clause 3 of the management agreement, as she referred to using the RPI when calculating the annual increase during the period she had been in post.
43. The tribunal decided that the fee was reasonable, particularly since it was in keeping with industry norms for this type of property in this particular area.

Letter before action and arrears processing charge

44. Mrs Spicer explained that the demand for service charges required payment within 7 days. After this time had expired, a final demand was then issued giving a further 7 days for payment. If the charges still remained unpaid, then a formal letter before action was prepared warning of court proceedings. Mrs Spicer said that the Applicant was anxious to obtain payment quickly as there was no reserve fund. She explained that the letter was not a standard document since she had to check the amount due, whether there was a dispute, etc. A charge of £72.00 (incl VAT) had been levied for the letter before action.
45. Mrs Spicer informed the tribunal that the work involved in pursuing arrears was now undertaken in-house rather than instructing solicitors. Mrs Spicer said she undertook a variety of steps as part of the arrears processing charge, such as land registry searches, liaising with the property manager, discussions with the directors, etc. She said that the arrears processing charge was based on an hourly charge of £75.00. The arrears processing fee amounted to £150.00 (incl VAT).
46. Mrs Spicer relied upon clauses 6 and 7 to Parts I and II of Schedule 7 of the lease [85] that relates to costs incurred by the management company in the running and management of the estate (clause 6) and costs incurred in the enforcement of the tenant's covenants (clause 7).
47. Mr Ighalo regarded both charges as excessive. He thought that the letter before action would take little time to prepare as it was just like any other standard correspondence. Whilst he commended the Applicant for using an in-house representative, he regarded the costs as

exorbitant. He contended that no efforts had been made to contact his wife by telephone and that she had offered to pay by instalments. Mrs Spicer said that there had been two monthly payments but that payments then stopped without explanation and only resumed following the issue of proceedings.

Tribunal's decision and reasons

48. The amount was allowed in full.
49. The costs were payable under clauses 6 and 7 to Parts I and II of Schedule 7 of the lease as proper costs incurred in the enforcement of the lease. The tribunal considered that the amounts were reasonable and not out of line with general charges that were imposed in these circumstances. The costs had also been kept lower by the use of an in-house legal executive.

Application under s.20C and refund of fees

50. The tribunal decided that the Respondent must reimburse the tribunal fees paid by the Applicant and the tribunal declined to make an order under s. 20C.
51. There has been a long history of non-payment of the service charges by the Respondent. The Respondent failed to adhere to an agreement without explanation. The Respondent generally does not initiate contact with Centro. There has been no complaint about charges being excessive. The issues were raised only in defence to the County Court proceedings for non-payment. The Respondent does not take any part in the management of the estate. It appeared to the tribunal that the Respondent only raises concerns about charges when action is taken against her for arrears. The non-payment of the charges is a serious matter as it affects the Applicant's ability to pay for the running of the estate, etc.

The next steps

52. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the Bromley County Court.

Name: J E Guest

Date: 28/10/2014

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).