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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AM/LSC/2015/0474**
Property	:	**Flat 12 DeHavilland Studios, Theydon Road, London E5 9NY**
Applicant	:	**Cecilia Peries** **Paul Voysey**
Representative	:	**In Person**
Respondent	:	**DeHavilland Studios Limited**
Representative	:	**Mr De La Piquerie of Counsel instructed by IBB Solicitors**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Evis Samupfonda** **Mr Richard Shaw FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**22 June 2016**

DECISION

Decisions of the tribunal

(1) The tribunal determined that the costs to be incurred in respect of repairing the windows are not reasonable. The tribunal considers that replacement of the windows is the most reasonable option.

(2) The tribunal determines that all of the other sums claimed by the respondent in respect of the service charge items set out in Scott schedule are reasonable and payable by the applicants save for the sums claimed in respect of the keys.

(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.

(5) The tribunal does not make an order for costs under Rule 13 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 Act") as to the amount of service charges payable by the applicants in respect of the service charge items set out in the Scott Schedule.

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

The hearing

3. The hearing of the application took place on 9 and 10 May 2016. The applicants appeared in person. Mr De La Piquerie of Counsel represented the respondent.

The background

4. The property which is the subject of this application is a first floor live/work unit (one of 41) converted from a former factory. The building is of four stories with the lower three being of similar appearance and the fourth floor possibly being a later addition.

5. 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.

6. The applicants 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 specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. At the commencement of the hearing, the tribunal considered the applicants' application for it to receive oral evidence from their expert Mr J. G Flowers of Flowers Consultancy Limited. Mr Flowers was instructed to prepare a report on the condition of the widows at Flat 12 permission for expert evidence having been granted by the tribunal on 19 April 2016. At the time, it was not known whether the respondent's expert, Mr Brian Miles of Miles Property Management would be available to attend the hearing and also give evidence. As he was not able to attend the hearing, Mr De La Piquerie opposed the application. Having heard the parties' submissions, the tribunal decided that it was fair and just for it to rely only on the experts' reports without hearing any oral evidence.

8. The hearing proceeded with the agreement of the parties that the issues to be determined by the tribunal were those set out in the Scott Schedule save for the following paragraphs 1.4, 3.2.2, 3.2.4, and 3.3 in its entirety, 4.1-4.3, 4.5, and 5.2-5.5 that were withdrawn by the applicants. The respondent admitted paragraphs 1.1, 1.2, 1.3 and the tribunal was informed that any over charged amounts have been credited back to the applicants.

9. There remained around 23 issues listed as being in dispute. There were four lever arch files in addition to separate loose-leaf documents produced throughout the hearing and the parties provided separate bundles. The parties also made detailed oral submissions over the course of the two days. For ease of reference, the tribunal has grouped the remaining issues in dispute under a sub-headed service charge item and within this decision has focused on the salient points made in respect of that item, the evidence and then made its determination accordingly. The parties' submissions have not been rehearsed here save where the tribunal considered that to be necessary.

10. 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.

The Windows

11. Essentially, it was common ground between the parties that the windows were in a state of disrepair. It was also common ground that the cost of replacement was far greater than the cost of repair. They also agreed that under the terms of the lease, the window frames are part of the external fabric of the Building and are not included within the demise. The applicants are responsible for the glazing. Therefore, the issue between the parties was what was the best course of action to remedy the defective windows.

12. The applicants' position was that the windows should be replaced and not repaired whereas the respondent argued that they should be repaired. Both parties relied on their expert evidence and cited costs as being the reason in support of their positions. The applicants were concerned that the proposed repairs would not alleviate the defects identified in the reports. They were concerned by the estimated costs projected by the respondent which they considered to be unreliable and contained discrepancies. They were also concerned that the proposed repairs were to be carried out in phases and the proposal was to place the repair of their windows in the last phase which they estimated would be in some 3 or so years time and given that they had already suffered defects for a number of years, this was unacceptable. The respondents argued that because the expert reports had not excluded repair as being a reasonable option and the cost of replacement was beyond the means of some of the leaseholders, the decision was taken to repair rather than replace. It was submitted that as the respondents as covenantor is responsible for keeping the structure and exterior of the Block in good and tenantable repair and condition, the respondent is therefore entitled to choose the appropriate course of action to remedy the defects.

13. The applicants also asked the tribunal to make an order that would allow them to withhold their future service charge contributions and recoup any payments already made from the reserve fund in order for them to meet the cost of replacing their own windows. The respondent acknowledged that some of the leaseholders had replaced their windows and the respondent did not object if the applicants also wished to do so.

14. The applicants also raised concerns as to whether the respondent had complied with the consultation requirements under s20 of the Act in

respect of the proposed repair work. In the light of the tribunal's decision, a determination on this question was considered not to be necessary.

The Tribunal's decision

15. Having heard the parties' submissions and considered the documentary evidence, the tribunal decided that the cost to be incurred by the respondent in carrying out repair work to the windows was unreasonable. The tribunal considered that in the light of the evidence as produced, the most reasonable option was for the respondent to replace the windows.

Reasons for the tribunal's decision

16. The landlord's covenants are set out in the Sixth Schedule Part 1 and Part 11 of the lease. The tribunal considered that the respondent is empowered by Part 11 clause 2 to replace the windows as this provides that the landlord's covenant is "to keep the structure and exterior .....in good and tenantable repair and decorative condition (including any renewal and replacement of all worn or damaged parts)....." The tribunal did not challenge the parties' construction and understanding of the lease in so far as the repairing covenants are concerned which was that the demise included the glass fitted in the windows and excluded the frames.

17. The tribunal considered very carefully the experts reports from Kindleigh, Finnegans, Miles and Flowers. It was acknowledged that Mr Flowers' report focused exclusively on the windows of Flat 12. From all of the reports, the tribunal deduced that the issues of disrepair to the windows had been ongoing for sometime as was evidenced by the "10 year Planned Preventative Maintenance" report dated 3/9/12 from Finnegan Associates Limited in which they found " the windows are of most concern and some will require replacement very soon with the possibility of more year- on- year as they fail." Reading that report in its entirety, it is clear to the tribunal that there were many defects found in the windows in 2012, many of which would appear now to be difficult to resolve by repair alone. Mr Miles reported in 2014 that "repairs will certainly give a considerable improvement in what sadly are now sub-standard windows but the insulation value will be well below the required standard and deterioration.....will continue ....., they do not meet current building regulations and reglazing will have to continue to be carried out externally at considerable cost." On the question of which method to adopt he added " to give you a recommendation is difficult in those circumstances and I feel that it is for the Directors to consider whether to meet the high cost of replacement now, albeit in phases, is a preferred decision over repair with the ongoing issues of reglazing and the fact that the windows will continue to deteriorate overtime."

18. The tribunal acknowledged that whilst Mr Flowers' report focused on the subject flat windows, his report also identified similar defects. The applicants informed the tribunal that the respondent had been aware of their defective windows for some time and in response to their complaints had advised them to keep them closed for health and safety reasons.

19. Whilst the tribunal can appreciate the rationale behind the respondent's decision to repair rather than replace based on the financial implications, we formed the view that this was in part false economy given the level of disrepair identified as far back as 2012 and more recently by the respondent's own expert and Mr Flowers. In considering the totality of the reports, it appeared to us that the proposed repairs would not adequately address all the defects identified. Therefore there is a real possibility that the respondent will have to consider replacement in the near future. The tribunal cannot accept that the cost of reglazing the repaired windows now is cost effective when in a short space of time new window frames will be required with more new glazing. Also, whilst the experts' reports did not expressly exclude repair as an option, we concluded that although replacement would be more expensive at this stage, however, taking into account the design defects identified by all the experts and that major works to the windows would be required in the near future, replacement was the reasonable option as only this addresses the real ongoing design defects. Furthermore, replacement will not only improve the quality but will also ensure that the windows meet current building regulations. Additionally, replacement will avoid leaseholders having to meet future repairing costs, which will almost inevitably arise as the windows are likely to continue to deteriorate.

20. The tribunal was of the view that a material consideration when determining the reasonableness of replacement over repairs was the financial impact of any major works on the service charge payers. Although the tribunal was informed that the respondent believed most lessees would face financial difficulties, the tribunal was not provided with any evidence to support that assertion. In adopting a common sense approach, the tribunal accepted that replacing the windows might cause financial hardship but the cost will have to be borne sooner rather than later. The exact amount of the service charge to be demanded for either repairs or replacement was not known and the figures provided were vehemently challenged by the applicants but in broad terms it was accepted that replacement would be in region of 5x greater than repair.

21. The tribunal considered the applicants' request for an order allowing them to withhold their future service charge contributions and be credited contributions already made to the reserve fund in order to meet the cost of replacing their own windows. The tribunal's jurisdiction to determine service charge disputes arises from s27A of the Landlord and Tenant Act 1985 (the Act) as set out below and

pursuant to that Act, the tribunal did not have jurisdiction to consider the applicants' request.

22. The tribunal observed that the applicants had been critical of the manner in which the respondent had conducted earlier consultations on proposed major works. The tribunal would remind both parties that it is in their best interests that the consultation procedures under s20 of the Act are complied with. Furthermore, the tribunal observed that whilst the respondent is liable for the frames under the terms of the lease as agreed by the parties, it would appear to us that a pragmatic approach would be for the landlord to consider obtaining estimates for the replacement of the frames and quotes for the glazing. This approach is likely to give leaseholders a clearer indication of the costs to be incurred. The tribunal acknowledges that the cost of reglazing will vary depending on size of the windows and that the Notices that the respondent is required to serve must reflect only the costs to be incurred by the respondent arising from fulfilling its obligations under the terms of the lease.

Service Charge expenditure of Flat 35

23. In summary, the applicants' case was that the respondent made various cash payments to the lessee of flat 35 who was also a director of the respondent company out of the service charge funds that were not chargeable under the terms of the lease. The respondent accepted that payments were made but denied that the lessee of Flat 35 was then a director of the respondent. The respondent's position was that the payments were permitted by clause 9(a) of the lease. The tribunal understood that the respondent had been in dispute with the lessee of flat 35 and that led to legal proceedings being issued. The respondent took legal advice and the payments were made following that legal advice and as part of the terms of settlement agreed. The tribunal was informed that the first applicant was one of the lessee directors who agreed to the settlement terms that included an agreement to carry out works to replace the windows of Flat 35. The tribunal was provided with the relevant documentary evidence that included the invoices, advice given and the Tomlin Order.

24. The applicants also asserted that the respondent failed to comply with the consultation procedures under s20 of the Act when undertaking the works pursuant to the Tomlin Order in that there was a gap between the Notice of Intention dated 19 July 2012 and Notice of Estimate dated 14 February 2014 and the costs incurred were not reasonable as they had been asked to contribute to previous works to the windows of Flat 35 in 2005 and 2008. The applicants did not dispute the chronology or the Tomlin Order. The respondent did not accept that it had breached the consultation procedures but made an application under s20ZA of the Act for dispensation from the consultation requirements as a precautionary measure.

The tribunal's decision

25. The tribunal decided that the payments made to the lessee of flat 35 are recoverable as a service charge under the definition of Estate Service Charge which includes "costs charges and expenses incurred in or in connection with the performance of its covenant ..... or in doing any other works or things for the maintenance and/or improvement of the Estate." The costs incurred in respect of payments made to Crabtree Property Management and Miles Property Management are also reasonable and recoverable under the same term of the lease.

Reasons for the tribunal's decision

26. The tribunal understood that the payments were made to the lessee of Flat 35 as part of legal and settlement costs agreed and not because he was a lessee director as asserted by the applicant. The tribunal was provided with evidence that the payments were funded from moneys received from APA Surveyor's insurers due to their professional negligent advice in 2008 in relation to the works required to repair the windows of flat 35.

27. The tribunal understood that the reason for the delay between the Notices was that the first Notice was served pursuant to the terms of the Tomlin Order that provided for the respondent to tender for repair works to Flat 35. The first applicant who was then a lessee director of the respondent company and therefore party to the agreement caused the respondent to breach the Tomlin Order leading to the respondent being legally advised to settle a new agreement with Flat 35 in order to prevent Flat 35 returning to court to enforce the Tomlin Order. The new agreement dated 1 November 2013 provided a revised schedule of works to be undertaken and for payment of Flat 35's legal costs. The respondent then served the Notice of Estimates in February 2014. The applicants did not produce any evidence to demonstrated that they were prejudiced by the respondent's decision that the applicants' observations submitted in response to the second Notice were made out of time. In the circumstances the tribunal did not accept that there was unreasonable delay by the respondent in serving the second Notice.

28. The tribunal understood that Crabtree Property Management LLP was retained in order to manage the consultation process and Miles Property Management produced a report regarding the repair work. There was no evidence produced to demonstrate that the costs incurred in respect of their services were unreasonable or not payable.

29. The tribunal considered the application by the respondent to dispense with the consultation requirements under s20ZA and decided that it was reasonable to dispense because the respondent acted reasonably in complying with the terms of the Tomlin Order and by following legal advice.

Service Charge expenditure Flat 16

30. The applicants' position was that the costs incurred arising from what they termed "problematic fit out" by the lessee of Flat 16 are not recoverable as a service charge under the terms of the lease. The respondent contended that the costs were recoverable under s9 (a) of the lease.

The tribunal's decision

31. The tribunal decided that all the costs incurred in respect of Flat 16 are recoverable under clause 9(a) of the lease.

Reasons for the tribunal's decision

32. The tribunal understood that the respondent was engaged in a legal dispute with the lessee of Flat 16 at a time when the first applicant was a director of the respondent company. The tribunal decided that it was reasonable for the respondent to instruct a surveyor to report on whether the works undertaken by Flat 16 identified by the applicants as 'problematic' were causing any damage to the common parts. The respondent sought legal advice and was advised to settle. The tribunal was provided with the relevant invoices and payment made. In the circumstances the tribunal concluded that the payments were recoverable as service charge under the terms of the lease.

Keys

33. The applicants argued that the costs incurred in respect of 3 keys were excessive and not reasonably incurred because in their view the respondent should have ensured a transfer of the keys between the managing agents. The respondent acknowledged that fees of £1,320 have been wrongly charged to DeHavilland Studios and a credit will be applied to the service charge account and the applicants will also receive a credit of £34.32.

The tribunal's decision

34. The tribunal decided that the cost incurred in respect of the keys for Dehavilland Studios was not reasonable and therefore not payable by the applicants.

Reasons for the tribunal's decision

35 The tribunal understood that the keys in question were held by the previous managing agent and the cost in dispute arose following the sale of the keys by the previous agent to the new managing agent. The tribunal took the view that it would have been reasonable for the previous agent to handover the keys at no cost to the new agent. It seems likely that they were originally provided by the landlord to the agents at the cost to the lessees at that time. The respondent did not provide any evidence justifying this expenditure or any explanation as to why it was deemed necessary to pay for the exchange.

Managing Agent's fees and Ottimo Cleaning Contract

36. The applicants argued that the costs incurred in respect of the management and cleaning were not recoverable because the agreements were qualifying long-term agreements and the respondent had not complied with the consultation requirements as required by s20 of the Act. The respondent provided a copy of the management agreement dated 6/3/2014. The respondent stated that it did not have a written contract with Ottimo Cleaning.

The tribunal's decision

37. The tribunal decided that the contract for the management of the Building was not a qualifying long-term agreement as asserted by the applicants. The costs incurred were recoverable under the terms of the lease. The tribunal accepted the respondent's evidence that it did not have a written agreement with Ottimo and therefore there was no obligation to comply with the consultation requirements and the costs are recoverable.

Reasons for the tribunal's decision

38. The tribunal considered the respondent's management agreement with Trinity (Estates) Property Management Ltd provided. The agreement was for an initial period of 1 year from 6/3/2014 and thereafter until determined upon giving three months notice in writing. The agreement also provided that the company may serve a notice to terminate three months prior to the expiry of the initial term. HHJ Marshall QC considered a similar term in the case of **Paddington Walk Management Ltd v Peabody Trust [2010] L&TR** 6 in which he concluded "In my judgment an agreement for a year certain and then from year to year to continue subject to not being terminated is not "an agreement for a term of more than 12 months."

Removal of satellite dish from Flat 4

39. The applicants argued that the cost incurred in removing the satellite dish from the roof of Flat 4 and reconnecting to the communal dish was not recoverable as a service charge item under the terms of the lease. The respondent explained that the lessee of Flat 4 was granted permission to install the dish. The respondent then decided to remove the dish in order to prevent damage to the roof structure and agreed to connect Flat 4's equipment to the communal satellite dish on the roof.

The tribunal's decision

40. The tribunal decided that the cost was recoverable as a service charge under the terms of the lease.

Reasons for the tribunal's decision

41. The tribunal understood that the lessee was granted permission to install the satellite dish. The tribunal found that the respondent's decision to remove the satellite dish as a precautionary measure to avoid potential damage to the roof was reasonable. The tribunal found that the cost is recoverable under clause 9 (a) of the lease for the same reasons outlined above.

Application under s.20C and Rule 13 of the First-tier Tribunal Procedure (Property Chamber) Rules 2013

42. The tribunal received the applicants' written representations in respect of their applications for costs on 1 June 2016 and the respondent's on 7 June 2016. Having read the submissions from the parties and taking into account the determinations above, the tribunal does not make an order under Rule 13 as it finds that neither party has established that the other party has acted "unreasonably" as required by the Rule 13.

43. The tribunal noted that the applicants had part succeeded in their application. However, the tribunal has taken into account that some of the issues that were raised by the applicants for determination were matters that arose as disputes at the time that the first applicant was a director of the company and the respondent's assertions that some of the expenditure now challenged by the applicants arose as a result of the first applicant's conduct at the time that she served as a director of the respondent were not disputed. Therefore, the tribunal decided that in the circumstances it is just and equitable for an order not to be made under section 20C of the 1985 Act, so that the respondent may pass any of its costs reasonably incurred in connection with these proceedings before the tribunal through the service charge. The applicants, may make an application to this tribunal and challenge this if and when the respondent seeks to recover its costs incurred in these proceedings.

Name: Judge Evis Samupfonda **Date:** 22 June 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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 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.