10949

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BA/LSC/2015/0144**
Property	:	**22 Byegrove Road, Colliers Wood. London SW19 2AY**
Applicant	:	**Mr Stefano Venti**
Representative	:	**None**
Respondents	:	**Ms Kaluthilaham Vaithilinghan (known as Mrs Sakathyevan)**
Representative	:	**Mr Nagendran**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge T Cowen** **Ms S Coughlin** **Ms S Wilby**
Venue of hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**25 June 2015**

DECISION

Decision of the tribunal

(1) The Tribunal determines that the amounts payable by the Tenant by way of service charges for the years 2009 to 2014 are as follows:

Year end 24 June	Weeding (£)	Managmnt Fee (£)	Decoration, refuse and repairs (£)	Legal fees (£)	Other Items (£)	**TOTAL (£)**
2009	42.00	26.00	52.50	287.50	-	**408.00**
2010	42.00	26.00	220.00	-	-	**288.00**
2011	42.00	26.00	140.00	-	-	**208.00**
2012	42.00	26.00	-	-	-	**68.00**
2013	42.00	26.00	-	-	-	**68.00**
2014	42.00	26.00	-	25.00	22.00	**115.00**

(2) The Tribunal has decided not to make an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

(3) The reasons for the orders made above are set out in the remainder of this decision.

The application

1. The Property ("the Lower Flat") is a ground floor flat located in a house ("the Building") which contains one other flat. The Applicant is the freehold owner of the Building. The Respondent is the leaseholder owner of the Lower Flat under a long lease of 99 years from 1968. The Applicant is therefore the Respondent's landlord. The Applicant occupies the upper flat in the Building. The Respondent does not occupy the Lower Flat. She rents it out and gave evidence to the Tribunal that she hardly ever goes there.

2. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of services charges for the following six years (each of which are years ending on 24 June):

   2009, 2010, 2011, 2012, 2013, 2014

3. The application is the latest in a number of sets of proceedings and disputes between these parties about various matters. This is the first time, as far as we are aware, that the matter has come to this Tribunal in respect of an application under section 27A.

4. The relevant statutory provisions are set out in full in the appendix to this decision. In this case, sections 19, 20 and 27A(1) of the 1985 Act are particularly relevant.

The Leases and the Service Charge Covenants

5. The lease dated 15 August 1968 was varied by deed of 12 March 1985 and again by deed dated 26 October 1987. Clause 13 of the lease, as varied, requires the Applicant to provide services which includes the maintenance of the common parts and the repair of the main structure. Clause 6 and the Schedule to the lease, as varied, require the Respondent to contribute 50% of the total expenditure incurred by the Applicant in complying with his obligations (together with other matters) in each year by way of a variable service charge. The service charge year according to the lease runs from 25 March to 24 March. The Applicant in this case has erroneously calculated the service charges to 24 June as year end for each year. The Respondent has previously paid service charges on that basis and does not now complain about the dates of the service charge year claimed. We will therefore determine the service charges based on the accounting period used by the parties on the basis of an estoppel by convention.

6. The schedule to the lease provides for the Applicant to be able to demand interim service charges and then to demand (or pay) a balancing charge after the end of each year after serving on the Respondent a certified account with supporting invoices, vouchers and receipts.

The Service Charge Demands

7. Service charge demands for each of the years in question appeared in the Applicant's bundle before us. There is a dispute as to whether any of these service charge demands were served before the commencement of these proceedings. The Respondent (who does not live at the Lower Flat) denied having received any of them.

8. The Applicant said that he delivered them by hand in July of each year to the Lower Flat. The Respondent said that she never received them, because she has not been living at the Lower Flat, even though her tenant is supposed to forward on all her mail to her address at 33 Whitgift Avenue. The Respondent conceded that she could not say whether the documents had actually been left at the Lower Flat, as she hardly ever visited the Building, and she also accepted that it would be less likely that her tenants would forward on hand-delivered mail, because they would have to spend their own money on postage.

9. The Tribunal has no evidence to suggest that the service charge demands, of which there were copies in the bundle, had been recently

fabricated and we found no reason why the Applicant should have withheld them from being served on the Lower Flat for six years. We therefore find as a fact that the Applicant did hand-deliver the service charge demands to the Lower Flat, addressed to the Respondent, in July of each year of the relevant service charge periods (2009-2014).

10. Clause 29 of the lease provides that the service provisions of section 196 of the Law of Property Act 1925 applies to any notice which is required to be served by the lease. Subsection 196(3) of the 1925 Act permits a landlord to serve a notice on the lessee and for it to be regarded as sufficient service if (amongst other things) it is "left for him on the land or any house or building comprised in the lease". Leaving the service charge demands at the Lower Flat every year was therefore good service in law of the service charge demands, even though the Respondent lived elsewhere and the Applicant knew that she did.

11. We were not persuaded by the Applicant's evidence (which contradicted his earlier statements) that he had also posted a copy of the demands and supporting documents to the Respondent's separate home address, but because of our decision above, it is not necessary for us to take that question further.

12. The service charge demands were in the form of final demands for actual sums spent in that each of them contain a landlord's certificate as to the accounts on which they are based. The Applicant stated that he did not like collecting interim estimated service charges so he did not do it.

13. They are in exactly the same amounts for four of the six years in question. In particular, for the years ended 24 June of 2010, 2011, 2012, 2013, they comprised (excluding ground rent, arrears and interest – none of which are in the jurisdiction of this application):

    a. A figure of £250 for "sundry cleaning, maintenance and repairs"

    b. A management fee of £26.

14. The Respondent does not challenge the £26 management fee.

15. When challenged as to the provenance of the yearly £250, the Applicant stated that this was a contribution to a fund rather than a reflection of the actual amounts spent each year. The lease does not allow the Applicant to collect a fund. When challenged on this at the hearing, the Applicant stated that he thought that the actual expenditure was sometimes higher and sometimes lower than the "£250 fund" and that it would average out over the years. In fact, it was demonstrated at the

hearing that the actual average expenditure, as claimed by him, was much lower than £250 per year. It was closer to £169 per year.

16. In the years ending 24 June 2009 and 24 June 2014, the Applicant demanded additional sums namely:

For Y/E 2009

a. The Respondent's 50% share of the fees of Philip Ross solicitors acting as managing agents in the drafting of section 20 notices and an estimated service charge invoice – a total of £359.37

For Y/E 2014

b. Six years' worth of photocopying charges all demanded in 2014 at a total of £30.

c. A fee for the Applicant's attendance at this Tribunal in 2014 in previous (later withdrawn) proceedings under section 168 of the Commonhold and Leasehold Reform Act 2002 - £65

d. A fee for the Applicant's attendance at H M Land Registry in Croydon in 2013 to obtain title documents in preparation for commencing the earlier proceedings - £65 + bus fare of £8 + £14 Land Registry fee.

e. The Respondent's 50% share of the fees of Philip Ross solicitors for retrieving and copying a file to forward to the Applicant to prepare for proceedings against the Respondent – a total of £25

f. Rental fee in lieu for the alleged unlawful affixation of a satellite dish to the exterior wall of the Applicant's Building - £1 per week amounting to a total of £195. (the Applicant sought at the hearing to increase this item to £7 per week giving a total claim of £1,365)

17. The Respondent challenged almost all of these items (including the £250 "fund").

18. The Tribunal will consider each challenged item in the section of this decision which now follows

Disputed Items: the Tribunal's Decisions with Reasons

"£250 Fund" – Repair, maintenance and cleaning

19. The lease does not permit the Applicant to charge a flat yearly sum as a "fund" in order to even out variations in expenditure over the years. The Applicant is therefore not entitled to do so. Therefore, the figure of

£250 per year in respect of repairs and cleaning is, on its face, unreasonable. This is because it does not relate to any amount actually incurred by the Applicant, on his own admission.

20. Having established that the figure demanded is unreasonable, we must determine what a reasonable amount would be for the sums incurred by the Applicant (if any) for repair maintenance and cleaning for the years in question.

21. The Applicant has produced a schedule of his actual expenditure for those years. For the years ending 24 June 2009, 2010 and 2011, the amounts claimed include sums for decorating, roof repairs, gutter repairs and refuse collection. The largest of those items is £280 of which the Applicant claims the Respondent's 50% share of £140. The Respondent has very sensibly conceded all of those relatively modest amounts at the hearing. She disputed some of them before the hearing, but that was before she had seen all the documents and was fully aware of how they were calculated and evidenced.

22. The only remaining categories of expenditure which were still in dispute at the hearing related to annual weeding charges for all six years and a one-off charge of £60 for a four month course of chemical weed control in 2012.

23. The annual weeding charges (expressed in the schedule as "cleaning") were explained by the Applicant as follows. There is a small concrete yard at the front of the Building. Weeds grow through the cracks around the concrete. The Applicant employs friends of his from the local area once a month to pull up the weeds to keep the area tidy. He pays them in cash and they do not issue formal invoices or receipts. The job takes about 30 minutes each time. The Applicant has kept a ledger of all the dates on which he has had the front yard tidied in this way, the amounts he paid and each item is initialled by the friend in question by way of receipt. The Applicant has lost the ledger sheet for 2011, but he has recreated the data on it from his diary for that year.

24. At the hearing, the Respondent accepted that:

    a. the weeding has taken place every month; and

    b. that it is a job which would take about 30 minutes; and

    c. that (as far as she is aware) the front yard is kept tidy of weeds; and

    d. that the friends have been paid the amounts set out in the ledger sheets.

25. The Respondent disputes, however, the reasonableness of the amounts paid to each of these friends. The amounts vary from £5 to £30 for what is exactly the same job each time. When challenged on this at the hearing, the Applicant said that he pays different amounts based on:

a. How enthusiastically his friend has done the work

b. Whether his friend has fallen on hard times and needs a bit of extra cash

c. How much cash the Applicant has in his flat upstairs at the time.

26. In our judgment, this is not a reasonable approach to incurring cost – especially when viewed as an hourly rate. For example, the times when he paid £30 to someone for the 30 minute job was the equivalent of £60 per hour for pulling up some weeds. . We regard that as much too high. We also do not regard the three criteria mentioned above as being a reasonable approach to expenditure on the Building. They are subjective and arbitrary and unrelated to the value of the work done to the tenants/occupiers of the Building.

27. The Respondent gave evidence that she paid her professional gardener (at a different property) about £10 per hour. We accept that comparable as a starting point for a reasonable rate for this job. The Applicant also stated that his payment for the weeding included a return £4 bus fare for his friend. Although the Applicant could make the expense cheaper by hiring only people who live within walking distance of the Building, the Applicant has a duty only to act reasonably in incurring expenditure. He does not have a duty to minimise the expenditure to the absolute lowest price. We note also that the other 50% of the cost is coming out of the Applicant's own pocket as landlord-occupier of the upper flat. Taking all of that into account, we regard the figure of £14 per hour as a reasonable rate for the weeding.

28. The reasonable yearly figures which we have determined for weeding/cleaning are therefore:

£84 per year for each of the six years
(based on 12 x 30 minute sessions per year at £7 per session)

of which the Respondent is liable to pay 50% - namely £42 per year

29. The £60 cost incurred for chemical weed control in 2012 was, according to the Applicant himself, unsuccessful. It did not stop the weeds from growing and there is, as a result, no interruption in the monthly weed-clearing programme. The works carried out were not therefore of a reasonable standard and it is not reasonable for any share

of their cost to be payable by the Respondent. We therefore determine that nothing shall be payable by the Respondent in respect of that item.

Philip Ross fees: the 2009 s20 notice

30. The Applicant engaged Messrs Philip Ross, solicitors, to draft a section 20 consultation notice in respect of proposed major works to the Building in 2009. The major works were required by a local authority notice. The solicitors did so, but the major works were never carried out because the scaffolders had difficulty obtaining the necessary access. The Respondent submits that the section 20 notice was therefore a waste of money and it is not reasonable to require the Applicant to pay a share of it. We disagree. We find as a fact that the Applicant intended to carry out the works at the time he incurred the cost of solicitors drafting the notice. It is reasonable to seek professional help in drafting such notices because the procedure is complex. It is more usual to engage professional managing agents to do so, but it is not unreasonable to ask solicitors to act as quasi-managing agents for that purpose. These were not especially expensive solicitors. We regard the cost as being within the reasonable range, doing our best with our experience and expertise. We therefore allow the Philip Ross invoice of £575 (inc VAT) of which we determine the Respondent's 50% share to be £287.50.

31. We will not allow the additional invoice of £143.75 for drafting an estimated service charge account. The Applicant gave evidence (as we have recorded above) that he does not send out estimated service charge accounts and there is no evidence that he sent out this one to the Respondent. Paying for a solicitor to draft it was not therefore a reasonable disbursement.

Photocopying

32. There is no evidence that the Applicant incurred any costs of photocopying over the six years in question. We determine that this £30 sum is not payable by the Respondent.

Daily attendance fees of £65

33. There is nothing in the lease (as varied) which allows the landlord to charge for his time spent, as opposed to actual out of pocket expenses, dealing with the Building. We determine that these sums are not payable.

Land Registry Fee and Bus Fare

34. It is reasonable for the Applicant to obtain incur the modest cost of obtaining Office Copy title documents for the purposes of estate management and the necessary bus fare to visit the offices of the registry. We find that these sums were incurred and we determine that 50% of them are payable by the Respondent.

Philip Ross Fees: File Retrieval

35. As with the previous item, we find that it is reasonable for the Applicant to incur the cost of retrieving a file from his solicitor for the purposes of estate management . We determine that 50% of £50, namely £25 is payable in that regard. We reject the Respondent's argument that such expenses are simply the Applicant's "problem". The Applicant is entitled under the lease to pass on 50% of such costs to the Respondent.

Rental of wall space for satellite dish

36. The Applicant claims that the Respondent unlawfully affixed a satellite dish to the exterior of the Building and that this constitutes a trespass. The Applicant claims to be entitled to be compensated for that trespass by payment of "rent" for the wall space for the 195 weeks that the satellite dish was in place. We have decided that that claim is a sum which cannot be claimed as a service charge under the terms of the lease. It is in the nature of a claim for damages for breach of covenant and/or the tort of trespass. This Tribunal does not have jurisdiction to award damages in respect of such claims and so we must disallow that claim from the service charge account and we determine that it is not payable as a service charge. For the avoidance of doubt, this decision does not prevent the Applicant from making a damages claim in an appropriate jurisdiction in respect of that claim, but we express no view as to the merits or quantum of any such claim.

Increase of management fees to 12.5% of service charge

37. As noted above, the Respondent has consented to pay £26 per year as a management fee in respect of the six years in issue. That is the figure which was claimed by the Applicant in his service charge demands and in his application to the Tribunal. He explained that the figure represented his postage and stationery costs.

38. At the hearing, the Applicant increased his management fee claim to 12.5% of service charge expenditure on the basis that he had been advised by his solicitor that such a figure was reasonable. We are not convinced that the lease allows for the charging of a management fee (as opposed to the cost of employing a managing agent), but we do not need to resolve that issue. The Applicant has demanded and claimed £26 per year and the Respondent has not challenged it. We therefore determine that the figure of £26 per year is payable in respect of that item. We cannot accede to the Respondent's request to increase the amount at the hearing.

Ground rent

39. The Applicant's application includes claims for ground rent for each of the years in question. This Tribunal does not have the jurisdiction to determine the amount of ground rent payable, so we cannot make any decision on that claim. We understand that the Respondent has paid the ground rent in full in any event.

Application for costs

40. There is no application under section 20C of the 1985 Act.

41. The Applicant made an application at the hearing for a costs order under rule 13 of the 2013 Procedural Rules. We refuse to make any such order because the Respondent has not behaved so unreasonably as to warrant such an order. She was only able to formulate her case before the Tribunal once she had seen the documents in the bundle. She sensibly conceded items which were obviously reasonable. The dates on which she paid various sums are not relevant here because payments made by the lessee are expressly excluded by the statute (section 27A(3)) from consideration on the question of payability of service charges.

Conclusion

42. We have calculated the amounts payable as a result of the decisions made above and the resulting figures appear in the record of our decision at the beginning of this decision.

43. As a final observation, we note with concern that, as a result of another dispute between the parties, the Building has been uninsured (despite the provisions of the lease) for a number of years. We cannot and do not offer any findings on the matter but urge the parties to speak to each other and, if necessary, obtain their own legal advice to enable that unfortunate situation to be resolved as soon as possible.

Dated this 26th day of June 2015

JUDGE T COWEN

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).