FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LBC/2017/0096**
Property	:	**Flat 9, 40 Redcliffe Square, London SW10 9 HQ**
Applicant	:	**40 Redcliffe Square (Management Company) Limited**
Representative	:	**Mr Andrew Christensen and Mr Brian Hallock**
Respondents	:	**Ms Gita Jairaj**
Representative	:	**Ms Karen Layland (Solicitor)**
Type of Application	:	**Section 168(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Mr Jeremy Donegan (Tribunal Judge)** **Mr Anthony Harris LLM FRICS FCIArb (Valuer Member)**
Date and venue of Hearing	:	**14 December 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**29 January 2018**

DECISION

Decisions of the Tribunal

(a) The Tribunal determines that no breach of the lease of Flat 9, 40 Redcliffe Square, London SW10 9 HQ ('the Flat') has occurred.

(b) The application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') is dismissed.

The background and the application

1. The applicant is the freeholder of 40 Redcliffe Square, London SW10 9HQ ('the Building'), which is a substantial Victorian terraced house that has been converted into 14 flats. The Building is self-managed by the applicant, without the services of external managing agents.

2. The respondent is the long leaseholder of the Flat, which is on the second floor of the Building and comprises one bedroom, a sitting room with open plan kitchen and a bathroom/WC. There is a balcony leading off the sitting room.

3. The members of the applicant company are the various leaseholders at the Building, including the respondent.

4. The applicant seeks a determination pursuant to section 168(4) of the 2002 Act that there have been breaches of covenants or conditions in the respondent's lease.

5. The application was received by the Tribunal on 11 October 2017 and directions were issued on 16 October. In the application form, the applicant alleged there had been breaches of clauses 3(C), 3(H) and 4(i) of the lease, arising from:

   (a) water ingress from the balcony into the flat below (Flat 6); and

   (b) the condition of the windows in the Flat.

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

7. The relevant lease provisions are referred to below, where appropriate.

The lease

8. The original lease ('the Lease') was granted by Nicholas Thomas Grimshaw (*the Lessor*) to John Wilson (*the Lessee*) on 9 April 1976 for a term of 125 years from 1 October 1978. It was varied by a deed granted by the applicant to the respondent on 28 August 1996 ('the Deed'). Copies of the Lease and Deed accompanied the Tribunal application.

9. The Land Registry entries for the leasehold title also refer to a deed of variation dated 5 August 1988 but the Tribunal was not supplied with a copy of this document.

10. The Flat is defined at clause 1 of the Lease as *ALL THAT flat (hereinafter called "the Flat") numbered 9 and being on the second floor of the Building and shown coloured red on Plan No. 2.* The red edging on this plan does not extend to the balcony, so this area was not originally demised with the Flat.

11. The extent of the demise was varied in the Deed, which included the following:

> *Now this Deed provides for a Variation to the original Lease in so far as the Lessor agrees to assign the area known as the "second floor east balcony" and shown edged red on the attached plan no 2A hereto annexed to the Lessee on the basis that the Lessee will be given full rights for quiet recreational use of the area on condition that it is kept clean and free or rubbish debris and leaves that the drains are kept clear and clean and that no objects of a temporary or permanent nature are kept on the balcony ledge. Any plants containers or plant pots are to be kept clear of the floor surface of the balcony. No heavy objects are to be placed on the balcony. That no items of a temporary or permanent nature are placed on or within the designated balcony area that exceed the height of the parapet wall. That the Lessee will be responsible for the payment of the costs incurred in the repair and maintenance of the surface tiling undertaken by the Lessor or that such repairs and maintenance undertaken by the Lessee are to a standard required by the Lessor. The Lessee will not be responsible for the underlying structure unless damage to the underlying structure has resulted from neglect or misuse by the Lessee. The Lessor Lessor's agents employees servants or invitees will retain rights of access to inspect or make use of the area for access upon usual notice to the Tenant. That in the event of a fire or similar emergency passage onto and from the area is permitted for other occupants within the building. That save as varied by this Deed of Variation the Lessor's covenants imposed by way of the original Lease will apply in all respects to this Deed of Variation.*

12. The Lessee's covenants are to be found at clauses 3 and 4 of the Lease and the relevant sub-clauses are set out below:

3(C) That the Lessee will at all times during the said term keep the interior of the demised premises and all additions thereto and the Lessor's fixtures thereon and the sanitary and water apparatus thereof excluding all walls and all items of a structural nature in good and substantial repair damage by the insured risks excepted Together with the interior of party and other walls and also keep and maintain in good and substantial repair and the windows window frames doors and door frames both internal and external damage by the insured risks excepted and in every fifth and also in the last year of the said term howsoever determined paint twice over in good quality paint of an appropriate colour the woodwork and stucco work in the inside of the demised premises usually painted and at the same time paper colour grain distemper whitewash and varnish such parts of the interior of the demised premises now papered coloured grained distempered whitewashed and varnished such painting to be twice over with proper and appropriate colours and tints and to deliver up the same at the determination of the said term in such good and substantial repair and condition as aforesaid

3(D) Permit the Lessors and their duly authorised surveyors or agents with or without workmen and others upon giving note less than 48 hours' previous notice in writing except in the case of emergency at all reasonable times to enter into and upon the demised premises to take schedules of the Lessors' fixtures and fittings and to examine the state and condition of repair of an the use of the demised premises or any part thereof and that the Lessee will if the Lessors shall give or leave in writing on the demised premises to the Lessee requiring him to make good or repair any defect or want of repair in or cease any unauthorised use of the demised premises or any part thereof forthwith comply with the terms of the said notice in so far as he may be liable hereunder and if the Lessee shall make default in complying with such notice as aforesaid within three months or if the Lessee shall fail to comply with the covenants for the repair of the demised premises as hereinbefore contained on the part of the Lessee then it shall be lawful for the Lessors or their agents together with workmen and any necessary appliances and materials to enter into and upon the demised premises (but without prejudice to the proviso for re-entry hereinafter contained) for the purpose of making good such defects and wants of reparation and the expense and costs of such making good and all legal costs and surveyors' fees incurred shall be payable on demand by the Lessee to the Lessors and be recoverable as rent in arrears

3(E) Not to make any structural alterations or structural additions to the demised premises or any part thereof or remove any of the Lessor's fixtures without the previous consent in writing of the Lessor such consent not to be unreasonably withheld

3(H) Not any time during the said term to do or omit or suffer to be done or omitted on or about the demised premises any act or thing by reason of which the Lessors may under any enactment incur or have imposed upon them either jointly or severally or become liable to pay any penalty damages compensation costs charges or expenses

4 The Lessee hereby covenants with the Lessors and with and for the benefit of the owners and lessees from time to time during the currency of the term hereby granted of the other flats comprise in the Building that the Lessee will at all times hereafter during the said term: -

(i) So repair maintain uphold and keep the demised premises as to afford all necessary support shelter and protection to the parts of the Building other than the Flat and to afford to the Lessees of neighbouring or adjoining flats access for the purposes and subject to the conditions set out in paragraph (F) of Clause 3 hereof

13. The Lessor's covenants are at clause 5 of the Lease and include:

(D) That (subject to the contribution and payment as hereinbefore provided) the Lessors will maintain and keep in good and substantial repair and condition: -

(i) The main structure of the Building including the foundations and the roof thereof with its gutters and rainwater pipes but excluding such parts of the structure included in the demise by this Lease to the Lessee

(ii) All such gas and water pipes drains and electric cables and wires in under and upon the Building as are enjoyed or used by the Lessee in common with the owners or lessees of the other flats in the Building

(iii) The main entrance passages landings stair cases and forecourt of the Building enjoyed or used by the Lessee in common as hereinafter provided and the boundary walls and fences of the Building

The inspection

14. The Tribunal inspected the Flat on the morning of the hearing, in the presence of Mr Christensen, Mr Hallock, Mr Hagevold, the respondent and Ms Layland. External works were being undertaken to the front elevation of the Building, which was scaffolded. The internal common-ways were in poor condition and would benefit from redecoration and new carpets.

15. The inspection of the Flat was brief, as there was very little for the Tribunal to see. The windows in the sitting room and bedroom, which were the main area of dispute, had recently been replaced with timber double glazed units. The Tribunal members inspected the new windows and the balcony. Mr Christensen stated that he was satisfied with the new windows.

16. Mr Christensen suggested that the Tribunal should also inspect Flat 6. However, he did not have any keys and the leaseholder was unavailable. He invited the respondent to provide access but she said she had no authority to do so.

The hearing

17. The applicant was represented by two of its officers, Mr Christensen (company secretary and director) and Mr Hallock (director). The respondent was represented by Ms Layland.

18. The Tribunal was supplied with two bundles of documents; one from each party. The main hearing bundle had been prepared by the applicant and ran to 519 pages. It included countless emails passing between the parties, many of which were duplicated. The respondent also produced a bundle that was approximately 150 pages long. Unfortunately, this was not properly paginated and was very difficult to follow.

19. At the start of the hearing, the Tribunal spent some time clarifying the issues. The application raised two issues, namely water ingress from the balcony and the condition of the windows. The respondent raised a number of other issues in her witness statement that did not form part of the application and many of which are outside the Tribunal's jurisdiction.

20. The Tribunal pointed out there was no evidence of water ingress into Flat 6. It had been unable to inspect this flat and there was no documentary evidence of the condition of the flat. The only relevant evidence was a witness statement from the leaseholder of Flat 6, Mr Amal Barbandi, stating he was unaware of any leak from the balcony. This completely undermined the applicant's complaint.

21. Mr Christensen sought to rely on photographs of the balcony that had been sent to the respondent by email, copies of which were included in the applicant's bundle. The respondent challenged the admissibility of the photographs on the basis that she had not received the relevant email and had first seen them when she received the bundle, a few days before the hearing.

22. The photographs in question were very small and of poor quality. Further they were not dated. After a short adjournment the Tribunal informed the parties that the photographs would not be admitted. They were very difficult to make out and there was no indication of when they were taken. The photographs were of no evidential value and only show the balcony and not Flat 6 below.

23. With some encouragement from the Tribunal, Mr Christensen and Mr Hallock withdrew the balcony complaint. This meant the only issue to be determined was whether the condition of the old windows, prior to their replacement, amounted to a breach of the Lease. The only relevant covenant is clause 3(C). There was no suggestion that the condition of the windows had resulted in any liability under clause 3(H) or a failure to provide support, shelter or protection to other parts of the Building (clause 4(i)).

24. Mr Christensen acknowledged that the alleged breach of clause 3(C) had been remedied with the replacement of the windows but sought a determination there had been a historic breach.

The factual background

25. The respondent approached the applicant in early 2016 regarding the proposed refurbishment of the Flat. In an email dated 16 January 2016, Mr Christensen stated that full details would be required so that "*the Licence to Undertake Works can be prepared*". Lengthy email correspondence ensued and the parties entered into a licence on 08 June 2016. This was said to be granted pursuant to clauses 3(C) and (E) of the lease and appears to have been prepared by Mr Christensen. The respondent paid a fee of £250 for the licence.

26. The licence included a schedule of works and stipulated that "*the works detailed are to be completed within a period of 28 calendar days from commencement of the works*" (condition 7). The schedule listed extensive works to be undertaken to the Flat, including:

Sash Windows in bedroom and sitting room
Full overhaul of all sash windows, leaving them operating as fully opening units is required as part of the Landlord's consent

Secondary Glazing and door to small terrace area
Removal of existing door to terrace area
Removal of existing secondary glazing in bedroom and sitting room
Removal of all existing glazing units within bedroom and sitting room
Fit new made wood door to terrace area with glazed unit
Fit new glazing units or acoustic glass in bedroom and sitting room in same location

27. The works listed in the schedule were not completed within the 28-day time limit for a number of reasons. Mr Christensen inspected the Flat and expressed concern about the limited works that had been completed. He also suggested certain additional works, including rewiring, a new consumer unit and replacement windows. The respondent needed to raise funds to pay for these additional works, which meant the project was put on hold.

28. The respondent applied for a second mortgage over the Flat, which completed in October 2016. However, there were further delays in completion of the works. This was partly due to health problems on the part of the builder and his girlfriend. There was also a delay in the manufacture of the new windows, which affected the sequencing of the works.

29. The respondent and Mr Christensen exchanged numerous emails regarding the delays and she applied for extensions to the licence. The correspondence became increasingly heated and Mr Christensen made various criticisms of the builders and sought to impose conditions on completion of the works. The respondent referred the matter to Mr Hallock in an email dated 17 February 2017, in which she described Mr Christensen as "*too heavy handed and a bully*".

30. Mr Christensen sent a long email to the respondent on 17 March 2017, alleging various failings in the works and breaches of the original licence. He also listed additional and remedial works that he considered to be necessary and indicated that a further licence would be required. By this stage, some work has been undertaken to the windows but this was incomplete. Mr Christensen expressed concern over the standard of this work. The email included two very small, undated photographs of the windows.

31. In an email dated 26 March, Mr Christensen stated that the respondent would have to pay the applicant's legal costs for the preparation of the new licence.

32. Ms Layland came on the scene at the end of March. She wrote to Mr Christensen on 31 March, pressing him for the new licence and questioning whether the involvement of solicitors was necessary. He responded on 04 April, saying:

As an alternative and expedient way forward, the following is proposed. This proposal is that Gita will provide a full and without reservation apology for the unfounded claims and statements that she has raised in various communications, and will undertake never to repeat them in any form, verbal or written. Further, in recognition of the defamation, Gita will make a symbolic donation of £10.0 that will go to the charity Accion Contra el Hambre (Action Against Hunger). Additionally, Gita will undertake to commit to meeting any expense

that may be incurred by the Landlord as a result of the lift breakdowns that were experienced, which came about because of the use of the lift by workers during the undertaking of the works, in breach of the requirements of the Licence to Undertake Works not to use the lift.

With such an apology and undertakings from Gita being received, I suggest that the Licence to complete the works can be drafted and advanced for completion without the Landlord seeking the involvement of the external solicitor.

33. The respondent was unwilling to comply with these terms, which led to an impasse. Mr Christensen required an apology and the charitable donation (or payment of the applicant's legal fees) before granting the new licence and made it clear the remaining works should not be undertake without the licence.

34. The applicant subsequently instructed a surveyor, Mr Steve Hagevold MRICS of Morse Consultants, to inspect the Flat. He produced a report dated 28 July 2017, which referred to a "*cursory inspection*" on 20 June. This addressed the windows, new boiler installation and electrical works. The report also included four photographs, which showed the exterior of the windows to be in poor condition with flaking paintwork, open joints and incorrectly sized glazing.

35. The report identified that the original timber sash windows had been re-glazed with double glazed glass units. Mr Hagevold stated that the units were incorrectly sized, with enlarged beading used to pack out the frame. He also referred to open joints in the windows, poor quality installation and a large gap in the window head, which could allow water ingress.

36. Mr Hagevold recommended the following remedial works:

The glazed units need to be removed and correctly sized panes installed to fit the frame and securely puttied in, as is correct and consistent with the rest of the building. This will allow the window to be prepared and painted to the appropriate standard to maintain the wind and water tightness of the building. If the defects to the window are not remedied, the decorations will split very quickly and become ineffective as a protective coating and the window unit will deteriorate further and at a quicker rate.

37. Mr Hagevold attended the Tribunal inspection of the Flat but not the hearing. This meant there was no opportunity for Ms Layland or the Tribunal to put questions to him. However, the contents of his report were partially corroborated by a report from Mr Barry Russoff C.Eng F.I.Struct.E of Russoff Waud Assocates, relied on by the respondent.

This was prepared following an inspection of the Flat on 07 September 2017. In the report, Mr Russoff stated that the replacement of the windows was incomplete.

38. Mr Hagevold's report was copied to the respondent on 28 July 2017. In his covering email, Mr Christensen alleged a breach of clause 3(C) of the Lease and wrote:

So as to advance so that the alleged breach is remedied, the Landlord will be requiring that the windows be made good and that the works will be under the direction and supervision of Morse Consultants, who are the Contracts Administrator for the current external refurbishment of the building.

While the Landlord will be arranging for this on your behalf, it will be necessary for you to accept and agree to these works, as well as accept and agree to reimbursing the costs for the works as well as the fee of the Contracts Administrator.

Mr Christensen also threatened to service notice on the respondent, pursuant to section 146 of the Law of Property Act 1925, as a preliminary to forfeiture action and imposed a 10-day deadline for agreement to his terms.

39. The respondent did not accept Mr Christensen's terms and on 08 August the applicant served a purported section 146 notice. This alleged breaches of clauses 3(C), 3(F), 3(H) and 4(i) of the Lease, arising from the condition of the windows and required the respondent to remedy the alleged breaches and pay the applicant's costs of £175. This document was not a valid section 146 notice, as the applicant had not complied with subsection 168(2) of the 2002 Act. The alleged breaches had not been determined pursuant to section 168(4) or a post-dispute arbitration agreement and certainly were not admitted.

40. Not surprisingly, Ms Layland pointed out the notice was invalid in a letter to Mr Christensen dated 11 August 2017. What is surprising is that Mr Christensen still sent copies of the notice to the respondent's mortgagees on 25 September 2017.

41. The new licence was never completed and these proceedings were issued on 11 October 2017. The respondent subsequently replaced the windows in the Flat. In oral evidence, she stated this took place approximately 2 weeks before the hearing and the work had been undertaken by new contractors.

Submissions

42. Mr Christensen submitted that the poor condition of the windows, as identified in Mr Hagevold's report, was a breach of the repairing covenant at clause 3(C) of the Lease. He acknowledged that the breach had been remedied with the replacement of the windows but argued there had been an unreasonable delay on the part of the respondent. He had raised the condition of the windows in his email of 17 March 2017. By that date, the respondent's finance was in place and some work had already been undertaken. However, it was a further 8 months before the windows were replaced.

43. Ms Layland acknowledged there had been a delay in completing the works covered by the original licence but submitted that the 28-day time limit was unrealistic. The initial delay was due to problems with the builder and the need to raise additional finance. The more recent delay was down to the applicant's obstructive stance and refusal to issue a further licence. This had prevented the respondent from complying with her repairing obligation.

44. The Tribunal questioned whether the replacement of the windows was a structural alteration that required a licence. Ms Layland explained that she did not specialise in this area of law but believed a licence was necessary. In any event, the respondent had relied on the various emails from Mr Christensen stating that a licence was required. Mr Christensen expressed the view that a licence was necessary as the original windows were being replaced with double glazed units.

The Tribunal's decision

45. The delay in replacing the windows in the Flat was not a breach of clause 3(C) of the Lease.

46. The section 168(4) application is dismissed.

Reasons for the Tribunal's decision

47. Clause 3(C) obliges the respondent to "*keep and maintain in good and substantial repair the windows window frames doors and door frames both internal and external..*". Clearly she is responsible for the maintenance of the windows in the Flat.

48. The applicant's bundle included some brief legal submissions, suggesting that the windows also fell within its repairing obligation, as set out at clause 5(C) of the Lease. This was based on the windows forming part of the structure of the Building. If this is correct, then applicant and respondent are both liable for their maintenance. The Tribunal rejects this submission. It is very unlikely that the original

parties to the Lease intended there should be joint liability, as this would cause uncertainty over who should maintain the windows and bear the cost. Such an interpretation would also mean the applicant might be in breach for failing to repair or replace the windows.

49. The obligation at clause 5(C) extends to the "***main*** *structure of the Building*" (emphasis added), which is more restrictive than "*structure*". In the context of the Lease, where there is an express obligation for the respondent to maintain the windows and a mechanism for the applicant to serve notice if she defaults (clause 3(D)), the Tribunal finds that the repairing obligation at clause 5(C) does not extend to the Flat windows.

50. It is doubtful whether the original work to the windows or their subsequent replacement amounted to structural alterations. These fell within the respondent's maintenance obligation and there was no evidence they had any impact on the structure of the Building. It is unnecessary for the Tribunal to decide whether a licence for alterations was required, given its findings at paragraphs 54-58 below.

51. It is clear from Mr Hagevold's report that the orginal work to the windows was incomplete and remedial work was required. The contents of his report were partially corroborated by Mr Russoff and the Tribunal is satisfied there was disrepair from 20 June 2017, the date of Mr Hagevold's inspection, until the windows were replaced.

52. There was insufficient evidence to find any earlier disrepair to the windows. Mr Christensen expressed concern over the quality of the window repairs in his email of 17 March 2017 but did not identify any disrepair and the accompanying photographs were of no evidential value, being undated and too small to make out. The only reliable evidence of disrepair was to be found in the reports from Mr Hagevold and Mr Russoff.

53. Based on the respondent's evidence, the windows were replaced at the end of November 2017. This means there was a period of approximately 4 months when the windows were in disrepair. However, it does not automatically follow that this was a breach of clause 3(C). Rather it is necessary to look at the reasons for the disrepair.

54. The stance taken by Mr Christensen, following receipt of Mr Hagevold's report was unreasonable and obstructive. In his email of 28 July 2017 he stated that the applicant would arrange the remedial work but the respondent would have to agree to this and accept responsibility for the cost. This was entirely inappropriate, as it is the respondent who is responsible for the maintenance of the windows. It was for her to organise the remedial work; not the applicant. If she delayed then the applicant could have served written notice under clause 3(D) of the

Lease, requiring her to remedy the disrepair. If she failed to comply within three months then the applicant could undertake the remedial work at her expense. No such notice was served.

55. Mr Christensen then served a purported section 146 notice and subsequently copied the notice to respondent's mortgagees, despite Ms Layland pointing out its obvious flaws. This was both intimidating and oppressive.

56. The notice was premature and invalid. The applicant had not satisfied the requirements of section 168(4) of the 2002 Act. Furthermore, the notice did not include the information prescribed by subsection 1(4) of the Leasehold Property (Repairs) Act 1938.

57. Given Mr Christensen's stance, it is no surprise there was a delay in replacing the windows. The respondent has previously been informed she would have to obtain a further licence before embarking on any remedial work. She was then told that the applicant would arrange the work but only once she agreed to meet the cost. This led to a stalemate that was of Mr Christensen's making.

58. The applicant, through Mr Christensen, was responsible for the delay in remedying the disrepair of the windows. It follows that the respondent has not breached clause 3(C) of the Lease.

Costs

59. There were no applications for a refund of any Tribunal fees[1] or for orders under section 20C of the 1985 Act or paragraph 5A of schedule 11 to the 2002 Act.

The next steps

60. During the hearing, the Tribunal expressed concern about the applicant's heavy handed approach to this dispute, which it repeats here. The section 168(4) application was misconceived and has been dismissed. Both parties have wasted a considerable amount of time and energy on this dispute and incurred unnecessary expense. The applicant is urged to seek independent legal advice and try alternative dispute resolution before embarking upon any further litigation.

Name: **Tribunal Judge Donegan** **Date:** **29 January 2018**

---

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

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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

Law of Property Act 1925

Section 146 Restriction on and relief from forfeiture of lease and underlease

(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice -

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach;

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

...

Leasehold Property (Repairs) Act 1938

Section 1 Restriction on enforcement of repairing covenants in long leases of small houses

(1) Where a lessor serves on a lessee under subsection (1) of the Law of Property Act, 1925, a notice that relates to a breach of a covenant or agreement to keep or put in repair during the currency of the lease all or any of the property comprised in the lease, and at the date of service of the notice three years or more of the term of the lease remain unexpired, the lessee may within twenty-eight days from that date serve on the lessor a counter-notice to the effect that he claims the benefit of this Act.

(2) A right to damages for a breach of such a covenant as aforesaid shall not be enforceable by action commenced at any time at which three years or more of the term of the lease remain unexpired unless the lessor has served on the lessee not less than one month before the commencement of the action such a notice as is specified in subsection (1) of section one hundred and forty-six of the Law of Property Act, 1925, and where a notice is served under this subsection, the lessee may, within twenty-days from the date of service of the service thereof, serve on the lessor a counter-notice to the effect that he claims the benefit of this Act.

(3) Where a counter-notice is served by a lessee under this section, then, notwithstanding anything in any enactment or rule of law, no proceedings, by action or otherwise, shall be taken by the lessor for the enforcement of any right of re-entry or forfeiture under any proviso or stipulation in the lease for breach of the covenant or agreement in

question, or for damages for breach thereof, otherwise than with the leave of the court.

(4) A notice served under subsection (1) of section one hundred and forty-six of the Law of Property Act, 1925, in the circumstances specified in subsection (1) of this section, and a notice under subsection (2) of this section shall not be valid unless it contains a statement, in characters not less conspicuous than those used in any other part of the notice, to the effect that the lessee is entitled under this Act to serve on the lessor a counter-notice claiming the benefit of this Act, and a statement in the like characters specifying the time within which, and the manner in which, under this Act a counter-notice may be served and specifying the name and address for service of the lessor.

...

Landlord and Tenant Act 1985

Section 20C Limitation of service charges: costs of proceedings

(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

Section 168No forfeiture notice before determination of breach

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(6) For the purposes of subsection (4), "appropriate tribunal" means –

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to a dwelling in Wales, a leasehold valuation tribunal.

Schedule 11
Paragraph 5A Limitation of administration charges: costs of proceedings

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph –

(a) "litigation costs means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.