



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

Case reference : CHI/24UC/LIS/2021/0010

Property : Flat 2, 55 Station Road, Liss, Hampshire,
GU33 7AA

Applicant : Mr Glynn Terence Evans
evans.glynn@yahoo.com

Representative :

Respondent : Mr Michael McCusker

Representative :

Type of application : Transferred Proceedings from the County
Court in relation service charges and
insurance

Tribunal member(s) : Judge J Dobson
Mr B Bourne MRICS

Date of Hearing : 6th May 2021

Date of Decision : 7th May 2021

DECISION

SUMMARY OF DECISION

1. **The Tribunal determines that none of the service charges and administration charges included within the claim are payable.**

BACKGROUND AND HISTORY FOLLOWING TRANSFER

2. The Lessor Applicant issued proceedings in the County Court in relation to sums said to be owed by the Respondent Lessee, which have been transferred to the Tribunal, following a Defence having been filed and Directions Questionnaires submitted.
3. Directions were given by Judge Tildesley on 1st March 2021, which directed that various steps be taken to prepare the case for the final hearing and explained that the Tribunal would consider the liability for and reasonableness of the elements of the claim that related to service charges. The other elements of the claim were identified as ones for the County Court. Subsequent Directions have been given in relation to the hearing bundle.
4. The Directions included that the case be listed for final hearing in person, exceptionally in the current circumstances before the Tribunal, with the Tribunal Judge sitting as a County Court Judge in respect of the County Court aspects of the case.

THE LEASE

5. The terms of the lease (“the Lease”) governing the relationship between the parties is fundamental and any consideration of the issues must be undertaken in the context of the provisions contained in the Lease. The Lease was entered into by the predecessors in title of the parties on 31st October 1986 for 99 years.
6. The relevant parts of the Lease firstly read as follows:

1. DEFINITIONS

The terms defined in this Clause shall for all purposes of this Lease have the meanings specified in this Clause-

1. “The Building” shall mean the Building known as 53/57 Station Road Liss in Hampshire which is for the purposes of identification only shown edged blue on the Plan annexed hereto including the roof foundations exterior walls and interior walls other than any internal wall or part thereof included in the Premises as next hereinafter defined-
2. “The Premises” shall mean all that part of the First Floor of the Building more particularly delineated on the said Plan hereto and thereon edged red INCLUDING

- a. the plasterboard plaster paint paper and other decorative finishes applied to the interior surfaces of exterior walls; and
 - b. the floor finishes so that the lower limit of the said Premises shall include such finishes but shall not extend to anything below them; and
 - c. the ceiling finishes so that the upper limit of the said Premises shall include such finishes but shall not extend to anything above them; and
 - d.
 - e. The window frames glass fittings doors door fittings
Pipes electrical and heating installations therein; and
7. "The Rent" shall mean the sum of £50.00 per annum until the 33rd anniversary of the Term and then the sum of £100 per annum until the 66th anniversary of the Term and thereafter the sum of £150.00 per annum PROVIDED THAT such rent shall never equal such a sum as would in appropriate circumstances create an inhibition on the premium
8. "The Tenants Covenants" shall mean the covenants set out in Schedule 3 hereof-
9. "The Landlord's Covenants" shall mean the covenants set out in Schedule 4 hereof-
10.
11. "Interest" shall mean interest at the rate of 4% per annum above the National Westminster Bank PLC base rate with a minimum of 15% per annum or in the event of the said base rate ceasing to exist.....
12. "The Retained Parts" means all parts of the Building not let or intended to be let to a Tenant including (but without prejudice to the generality of the foregoing):
.....
d. such part of the Building including (again without prejudice to the generality of the foregoing) those parts of the fences walls foundations and roofs not within the Premises and /nor let or intended to be let to a tenant
.....
13. "The Proportion" shall mean the fraction obtained by dividing the rateable value of The Premises by the sum of all the rateable values of the premises comprised within The Building-

3. THE DEMISE

IN considerationThe Landlord hereby demises unto the Tenant the Premises TOGETHER WITH the Rights EXCEPTING AND RESERVING unto the Landlord the Exceptions TO HOLD the same unto the Tenant for the Term paying thereof unto the Landlord first the Rent without deduction by equal quarterly payments in advance on the usual quarter days in every year AND secondly by way of further rent on demand The Proportion of the sums which the Landlord shall from time to time pay by way of premium (and all or any increased premium.....) for keeping the building insured under the covenants on the part of the Landlord contained in paragraph 2 of Schedule 4 (the Insurance Rent)

4. THE COVENANTS

1. The Tenant hereby covenants with the Landlord to observe and perform the Tenant's covenants at all times during the term
2. The Landlord hereby covenants with the Tenant to observe and perform the Landlord's covenants at all times during the term-

5. PROVISOS

2. If the Tenant shall fail to pay the rents or any other sum due under this lease the Tenant shall pay the Landlord interest on the rents or other sum from the date when it was due to the date when it is paid and such interest shall be deemed to be rent due to the Landlord-

SCHEDULE THREE

TENANT'S COVENANTS

Rent

1. To pay the rents on the days and in manner aforesaid (provided that if and so long as the amount of rents which the Tenants is liable to pay shall be restricted by law)

Outgoings

2.
3. To pay the Landlord on demand The Proportion of the expense of maintaining and keeping the Retained Parts in good and substantial repair and condition and (where appropriate) cleaning all party walls fences pipes and other things the use of which is common to the Premises and to other premises belonging to the Landlord-
4. To repay to the Landlord on demand the sums which the Landlord shall from time to time pay by way of premiums for keeping the Premises insured under the covenant on the part of the Landlord contained in Paragraph 2 of Schedule 4 hereof-
.....
9. To keep the Premises and the Pipes therein or used exclusively by the Premises in good and substantial repair and condition and well cleansed and maintained-
.....
41. To pay to the Landlord on an indemnity basis all costs, fees, charges, disbursements and expenses (including without prejudice to the generality of the foregoing those payable to Counsel, Solicitors, Surveyors and bailiffs) properly and reasonably incurred by the Landlord in relation or incidental to:
.....
c. the recovery or attempted recovery of arrears of rent or other sums due from the Tenant, and
.....
f. any breach of covenant by the Tenant

SCHEDULE FOUR

LANDLORD'S COVENANTS

5. Subject to the Tenant paying the Tenants due proportion of expenses in accordance with Clause 3 of the Third Schedule to maintain and repair and keep in good order and condition the Retained Parts the roof foundations load bearing walls and beams of the Building excluding the premises PROVIDED THAT:

.....

- b. The Landlord shall not be liable to the Tenant for any breach of this covenant unless the Landlord shall have failed to carry out such work within a reasonable time after written notice of any want of repair shall have been given by the Tenant to the Landlord-

7. The Tribunal adopts the term “the Building” but refers to the Respondent’s flat as “the Property” rather than “the Premises”.

THE LAW

8. The relevant statute law related to service charges and administration charges is annexed to this Decision. The key elements in relation to the disputed service charges for the purpose of this Tribunal Decision are found in section 19 of the Landlord and Tenant Act 1985 and Schedule 11 paragraph 2 of the Commonhold and Leasehold Reform Act 2002.
9. Those need to be considered in the context of the provisions of the Lease and in respect of such items as the Lease requires the Applicant to attend to and the Respondent to contribute to the cost of. Equally, the requirements of the Lease are subject to compliance with and otherwise subject to the law as to requirements to be met by the Applicant and/ or the Respondent or as otherwise imposed.
10. In broad terms, the questions for the Tribunal in respect of service charges are whether sums demanded on account are reasonable, whether service charges for costs and expenses are reasonable for works and services of a reasonable standard and whether such sums are recoverable pursuant to the terms of the given lease. The Tribunal will decide the sums payable as service charges.
11. There are innumerable case authorities in respect of service charge disputes and Tribunal is often referred to some, often several, of them, although many are very much a reflection of the facts of the given case. However, the parties have not referred to any in this instance.

THE PARTIES WRITTEN CASES

12. The Applicant states in his County Court claim that the Respondent has failed to pay service charges, including in relation to insurance, which fall within the jurisdiction of the Tribunal. The service charge aspect of that claim amounted to £1953.97. Aside from the Lease, various documents were enclosed. In addition to those discussed referred to below, a report from a chartered building surveyor from 2008, with a schedule and photographs of the Property were provided.

13. The Respondent's initial case was provided in a handwritten document which asserts that the Applicant had failed to meet obligations in relation to the Building and asserted effects on the Property and the Respondent's occupation of it, including impact on his health and damage to property. The Respondent states that all charges were paid by him up to 2014. He also states that the Applicant and the Applicant's solicitor were contacted numerous times. Specific reference is made to ceilings collapsing in 2012 and to pigeons and rats. Involvement of the local Council is mentioned.
14. The Applicant's witness statement [34] says that there are two flats above two shops plus a third residential unit behind. He says that the effect of the Lease provision as to apportionment is to make 18% of service charges payable by the Respondent. The Applicant denies notification of defects. Various historic documents are attached, including in relation to a previous set of proceedings, together with more recent demands and related documents.
15. The Respondent again states in his witness statement [87 onwards] that the Applicant has failed to repair in response to notification, including with regard to windows. He says that the roof was reported in 2006 and talks about the Council being contacted in 2014. He specifically refers to failure to maintain fire safety and also asserts ongoing water damage. Various provisions of the Lease are quoted. The Respondent requests at the end of his witness statement that the Applicant be ordered to repair and to pay compensation to the Respondent, including for loss of earnings.
16. The Respondent is, the Tribunal observes, wrong to suggest the repair of windows to the Property to be the responsibility of the Applicant, in light of the terms of the Lease as set out above. The position generally is not the same as arises with a tenancy. The evidence produced by the Applicant [73] also appears to make it very clear that in fact the Respondent did not pay the service charges following court proceedings in 2007 but rather Abbey, as the company was then called, paid the judgment sum and costs. Those observations should not be taken to imply the particular matters necessarily would be taken to have wider significance, as to which the Tribunal has not sought to reach any conclusions at this time
17. A witness statement [92] is also provided from Mrs Best, the sister of the Respondent and his representative, who refers to a decline in the Respondent's health for many years. She makes further comments about her brother's hospital admission and contact with the Council. It is said that power to the communal staircase light has been cut off by the Applicant. Medical documents, communication with the Council and photographs are enclosed with the statements of and in support of the Respondent.
18. The Applicant adds in his Reply [110 onwards] to the Respondent's witness statement and the Respondent's sister witness statement a number of additional matters. (He also repeats certain matters set out in the above documents which are not repeated here.) He says that the Respondent has never paid any service charge payments. He states that a recent fire risk

assessment has been carried out, exhibiting [115 and 116] an invoice or similar document. The Applicant refers to the dilapidation report by his surveyor and in relation to asserted breaches by the Respondent from 2008 as indicating similar conditions in the Property then. Whilst he accepts a problem with the chimney to the Building and that may have caused dampness to the Property, he only admits that from 2020 and denies that was the cause of mould to the Property generally. The Applicant accepts only a minor ongoing leak, but not that it affects the Property. He does not deny a period of five months from correspondence from the Council to the repair being undertaken in August 2020, although asserts that the delay was caused by the Covid 19 pandemic.

19. The Tribunal observes in that regard that the deadline for the works as provided by the Council is said by the Applicant to have been 23rd March 2020, the date of lockdown being announced. The Applicant has not disputed that. Any difficulties with arranging contractors would therefore appear at first blush to have post-dated that deadline, although again no firm conclusion is reached, no specific evidence having been heard

THE HEARING

20. The parties both attended the hearing. In addition, the Respondent's sister, Mrs Best attended as the Respondent's representative, having been authorised by the Respondent to do so.
21. It was explained to the parties that the Tribunal would consider the liability for and reasonableness of service charges and any related set-off for the effects of any breach of contract and that the other elements of the Claimant's claim would be considered by the Tribunal Judge alone and sitting as a County Court, without the involvement of the other member of the Tribunal. The Tribunal did proceed on that basis.
22. The Tribunal raised the issue considered below with the Applicant at the outset. In consequence of that issue and the Tribunal's decision, it was not necessary to address any other matters in relation to the service charge or to hear evidence. Further, the Tribunal did not consider any aspect of the Respondent's assertions of breaches of covenant by the Applicant.
23. The essence of the Tribunal's decision was explained to the parties in the hearing. This Decision contains a more detailed analysis.

CONSIDERATION

24. References to pages numbers are shown as [] and refer to pages of documents within the hearing bundle.
25. It is fundamental that the Applicant must have issued demands for service charges in compliance with the requirements of the Lease and in compliance with legal requirements more generally. Unless or until that has occurred, the service charges do not fall due.

26. Service charges include the insurance for the Building, albeit that the Lease refers to the contribution to the cost of insurance as “additional rent”.
27. The Tribunal is mindful that the Respondent has not raised any point about compliance with the requirements of the Lease or the law as to service charge demands. The Tribunal may often be cautious about raising a point not raised with the parties. However, the appropriate approach will differ from case to case and dependent upon the specific circumstances that apply.
28. More particularly, compliance with terms of the Lease and the wider law is so fundamental that the Tribunal, sitting as an expert tribunal and applying its expertise, cannot, at least in this instance, ignore the question of whether that compliance has been achieved.
29. The Tribunal, having considered the written cases in the hearing bundle, requested that the Applicant give evidence confirming regarding the demands made for service charges and the supporting documentation. The answer was that the Applicant had sent two letters, those dated 30th November 2018 and 21st September 2020, setting out sums currently said to be payable by the Respondent. The letters contained the enclosures [from 80 to 86 including the letters themselves], particularly being the invoice in relation to roofing work and renewal invitations in relation to insurance for 2016, 2017, 2018 and 2019.
30. The Applicant stated that demands had not been sent each service charge year. He accepted that a very informal approach had been taken by him. The Tribunal noted that can be acceptable to parties and may be agreeable to them where no issues arise. However, it does not comply with statutory requirements and consequently risks difficulties when disputes arise.
31. Neither of the Applicant’s letters make any reference to enclosing a summary of rights and obligations as required pursuant to section 21B of the Landlord and Tenant Act 1985. No such summary is included in the enclosures to the letters as provided in the bundle. Mr Evans accepted not having provided such summary.
32. It was therefore apparent, and the Tribunal so finds, that no summary had been provided to the Respondent by the Applicant.
33. Consequently, on the evidence presented and heard, the Tribunal finds that the Applicant has failed to make a compliant demand for the service charges and so the Respondent need not make payment until such time as a valid demand has been made. As the statutory provision sets out, any provisions of the Lease in respect of late payment or non-payment do not apply.
34. There appears every likelihood that the Applicant has not previously issued compliant demands either and therefore that there may be a number of years of service charges which were and are not payable unless and until the time of such demands. It is not clear whether all such sums originally

claimed for in the proceedings will be claimed and are properly claimable but that is an issue for determination, if necessary, on another occasion and subject to demands made hereafter.

35. It necessarily follows from the above finding that there have been no valid demands for the service charges in question in these proceedings that no service charges are payable, including for the purpose of the County Court claim brought by the Applicant.
36. In the normal course of events, the Tribunal would look to go on to consider the reasonable level of service charges year on year for the years before it, taking each item in dispute. However, in the absence of clear evidence upon which to undertake such an exercise, the Tribunal has concluded that it ought not to seek to determine the reasonable level of service charges which can properly be demanded in any given year. Rather that ought, if required, to be determined on receipt of an application by one or other of the parties seeking a determination of such reasonable level of service charges and where the parties have provided the information on which such a determination can properly be made.
37. Whilst the Tribunal has summarised the parties' cases, it has therefore done so for completeness and to facilitate a, limited, degree of comment about them but not with a view to detailed consideration of them.
38. The Tribunal has particularly not been required to, and has not, made any determination of the Respondent's case that the Applicant was in breach of covenant. Neither has the Tribunal otherwise considered that claim. It necessarily follows from no service charge sums being found payable by the Respondent to the Applicant at this time in any event that there is nothing against which any set-off for damages argued by the Respondent need be applied.
39. No determination having needed to be made or having been made of the Respondent's case with regard to breach of covenant, the Tribunal has equally not sought to value any such case, whether as presented or on any findings which might have been made following hearing oral evidence and/or further submissions.
40. The specific matters raised by the Respondent as to an order for repairs and for compensation for injuries would be matters for the County Court. However, they are referred to here because the witness statement in which they were mentioned primarily deals with matters in the jurisdiction of the Tribunal and because repairs were only raised in the Defence in the context of breach of covenant to offset sums otherwise said to be payable by the Respondent by way of service charges.
41. Importantly, the Respondent did not raise the specific points of an order for repairs and compensation for injuries in the Defence filed with the County Court, no amended statement of case has been prepared and no leave to rely on such has been sought, no counterclaim had been filed with

the County Court which the court could therefore determine or transfer to this Tribunal and no fee had been paid for any such claim.

42. There is consequently nothing in respect of any such potential order in relation to repairs or compensation for injuries which the County Court could determine and hence any such matters could, in the context of the current proceedings between the parties, only have been relevant to offset the service charges and had there been a need to do so.

DECISION

43. The Tribunal finds that the Applicant has failed to demand any of the service charges, both for insurance and for other matters, in accordance with the provisions of the Landlord and Tenant Act 1985.
44. Consequently, the Tribunal determines that no service charges claimed are due to the Applicant from the Respondent.
45. No decision was made at all about the Respondent's case.

COSTS AND FEES

46. The fee was paid to the County Court and does not fall to be determined by the Tribunal.
47. No application had been made to disallow any costs incurred by the Applicant from being recovered as service charges or administration charges.
48. As no sums have been found to be due from the Respondent to the Applicant, it is not unclear that there could be any basis for the Applicant being entitled to costs pursuant to the terms of the Lease. However, in the absence of any relevant application by the Respondent at this time to disallow such costs, any question as to any costs which the Applicant may claim have not been given the proper consideration on which to make any other comment and must be considered on a later occasion if required.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.ogv.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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 Meaning of “service charge” and “relevant costs”

(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 Limitation of service charge: reasonableness

(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 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 leasehold valuation tribunal, or the First-Tier 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 –.....

(ba) in the case of proceedings before the First-Tier Tribunal, to the Tribunal.

(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.

Section 21A Withholding of service charges

(1) A tenant may withhold payment of a service charges if-

(a) The landlord has not supplied a document to him by the time by which he is required to supply it under section 21, or

(b) The form or content of a document which the landlord has supplied to him under that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under subsection (4) of that section

Section 21B Notice to accompany demands for service charges

(1) A demand for the payment of service charges must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to the non- payment or late payment of service charges do not have effect in relation to the period for which he so withholds it

.....

Section 27A Liability to pay service charges: jurisdiction

(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.

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 subparagraph (1).