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

Case Reference : LON/00AG/LBC/2016/0026 &
LON/00AG/LAC/2016/0028

Property : 15B Fitzjohns Avenue, London
NW3 5JY

Applicant : Mirrorstoke Limited

Representative : Mr Jonathan Elstein (North by
Northwest – Managing Agents)

Respondent : Mr Louis Glatt

Representative : Ms Amanda Gourlay (Counsel)

Type of Application : Section 168(4) and Schedule 11 of
the Commonhold and Leasehold
Reform Act 2002

Tribunal Members : Mr Jeremy Donegan – Tribunal
Judge
Mr Luis Jarero BSc FRICS – Valuer
Member

**Date and venue of
Hearing** : 13 September 2016
10 Alfred Place, London WC1E 7LR

Date of Decision : 25 October 2016

DECISION

Decisions of the tribunal

- (A) The tribunal determines that breaches of covenants in the lease of 15B Fitzjohns Avenue, London NW3 5JY ('the Flat') have occurred but have ceased. Further details of the breaches are to be found at paragraphs 20 and 49 of this decision.
- (B) The tribunal determines that no administration charges are payable by the Respondent.

The applications and procedural history

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') that the Respondent is in breach of covenants within his lease. It also seeks a determination pursuant to schedule 11 of the 2002 Act as to the Respondent's liability to pay administration charges.
2. The breach of covenant application was dated 22 April 2016 and was issued under case reference LON/OOAG/LBC/206/0026. Directions were issued at a case management hearing on 27 April 2016 and the application was listed for a final hearing on 22 June 2016. The hearing on 22 June was postponed and further directions given, as the time allotted (2 hours) was insufficient.
3. The administration charge application was dated 22 July 2016 and was issued under case reference LON/OOAG/LAC/2016/0028. Directions were issued on 01 September 2016 and both applications were listed for a final, one-day hearing on 13 September 2016. This decision deals with both applications.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The Applicant is the freeholder of 15 Fitzjohns Avenue ('the Building'), which comprises five flats, four of which are let on long leases. The Respondent is the long leaseholder of the Flat, which is on the upper ground floor of the Building. He purchased the Flat with a Mr Julian Franks in 1971 and bought out Mr Franks in 1977. The Respondent does not live in the Flat. Since 1983 it has been solely occupied by his sister, Ms Helen Gregory.

6. The Building is currently managed by Mr Jonathan Elstein and his wife, Mrs Liat Elstein, under the trading name of North by Northwest ('NBN'). Mr and Mrs Elstein are the leaseholders of the lower ground floor flat at the Building, which is numbered 15A and have lived there since 2000.
7. NBN took over the management of the Building in January 2008. The previous managing agents were V J Management Limited ('VJML').
8. The specific provisions of the lease are referred to below, where appropriate.

The lease

9. The lease was granted on 03 August 1966 for a term of 99 years from 25 March 1965. The original parties were Palmglade Properties Limited ('the Landlord'), 15 Fitzjohns Avenue Limited ('the Managers') and Edgar Joseph de Normanville and Violet de Normanville ('the Tenant').
10. The Tenant's covenants with the Landlord are to be found at clause 2 of the lease and include the following obligations:

"(3) The Tenant will keep clean and in good and substantial repair order and condition the interior of the demised premises and all additions thereto and the water gas and other pipes and the electric wires and the water and sanitary apparatus therein and forthwith to make good any damage caused to any other flat or premises through any escape of water from the premises hereby demised caused by any breach non-observance or non-performance of any covenanted in this lease contained AND IT IS HEREBY AGREED AND DECLARED that all internal walls if any dividing the demised premises from the adjoining flat shall be party walls severed medially and responsibility for the structural repair thereof shall be shared accordingly and that the structural repairs of all walls wholly within the demised premises and all walls separating the demised premises from any inside part of the said building (other than an adjoining flat) shall be the responsibility of the Tenant and that there is also included in this covenant as repairable by the Tenant (including replacement where necessary) the windows and balconies (if any) of the demised premises PROVIDED ALWAYS that the Tenant shall not cut away any part of the walls floor or beams forming part of the demised premises or adjoining the same

....

(5) The Landlord and the Surveyor and other Agents of the Landlord with or without workmen and others at any time in the daytime may on giving reasonable notice to the Tenant twice or

oftener in every year during the said term enter upon the demised premises and every part thereof to view the mode of user and state and condition thereof and give to the Tenant a notice in writing of defects decays and wants of repair or amendment then and there found and within two calendar months next after the giving or leaving of any such notice or sooner if required the Tenant will well and substantially repair and make good all such defects and wants of repair to the satisfaction of the said Surveyor

(6)(a) The Tenant will permit the Landlord and its Agents and workmen and all others at any time at all reasonable hours in the daytime on giving reasonable notice to the Tenant to enter on the demised premises for the purpose of executing repairs to or cleaning or altering the adjoining premises or the exterior of the demised premises or any other part of the building of which the demised premises form part or for carrying out upon the demised premises such repairs (if any) as either the Landlord or the Tenant may be liable to effect hereunder or for complying with any Statutory obligation imposed on the owner or occupier of the demised premises PROVIDED that where the Tenant is liable to effect the alterations or repairs as aforesaid this power shall not be exercised until the Tenant has made default for twenty-one days after being required in writing to do the work and in that case the Tenant shall be liable on demand to make good to the Landlord the cost of effecting the alterations or repairs with interest at a rate of Five pounds per centum per annum from the date of demand

(b) The Tenant will permit the Landlord and its tenants and the occupiers of the adjoining flats and those above and below the demised premises and their respective agents or workmen at reasonable hours in the daytime (but in the case of serious emergency at any time) to enter upon the demised premises for the purpose of cleansing and executing repairs and alterations to the said flats adjoining and those immediately above and/or below the demised premises and for the purpose of preventing damage by water or otherwise and those so entering making good all damage to the demised premises as may be caused thereby

(7) The Tenant will at least once in every month during the term hereby created clean the windows (both the exterior and interior) of and belonging to the demised premises and forthwith upon taking possession of the demised premises (for the general comfort and quiet user by other tenants of the building) will lay and keep laid felt carpet or other similar material to cover the floor of each room (except the entrance hall kitchen and bathroom)

...

(11) No act or thing shall be done in or about the demised premises which shall or may become a nuisance damage annoyance disturbance or inconvenience to the Landlord or the Managers or any of their respective lessees or the owners or occupiers of any adjacent premises and in particular (but without prejudice to the generality of the foregoing):

...

(e) Not to waste or permit to be wasted any water or allow anything harmful to pass into the drains or pipes nor allow any water to overflow to the floor from any sink bath or water closet and to keep the water pipes reasonably protected against frost and to make good all damage caused by the bursting or stopping up of any water or soil pipes at the demised premises

...

(23) If the Tenant shall at any time make default in the performance of any of the covenants hereinbefore contained for or relating (sic) to the repair or maintenance of the demised premises it shall be lawful for the Landlord its agents servants or workmen but without prejudice to the right of re-entry under the clause hereinafter contained to enter upon the demised premises and repair or make good the same at the expense of the Tenant in accordance with the requirements of the repairing and other covenants hereinbefore contained and the expenses incurred by the Landlord in consequence of the Tenant's default shall be repaid by the Tenant to the Landlord on demand

...

(25) That the Tenant will pay all costs charges and expenses including Solicitors' costs and Surveyors' fees properly incurred by the Landlord for the purpose of and incidental to the preparation and service of a Notice under Sections 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court"

11. The service charge provisions are to be found at clause 3 of the lease and include an obligation for the Tenant to pay to the Managers "... a fair and rateable proportion..." of various costs and expenses.

The hearing

12. The Applicant was represented by Mr Elstein and the Respondent was represented by Ms Gourlay, who both spoke to the documents in the hearing bundles. The tribunal also heard oral evidence from Mrs

Elstein, Mr Blake Gorst (a director of the Applicant company) and Ms Gregory.

13. The tribunal were supplied with three bundle of documents; a main bundle relating to the breach of covenant application and two short bundles relating to the administration charge application. The former contained copies of the statements of case, witness statements and a Scott Schedule that summarised each party's position on the alleged breaches.

The issues

14. At the start of the hearing the tribunal identified the following issues to be determined were:
 - (a) Whether water leaks into 15A amounted to breaches of the Respondent's lease;
 - (b) Whether Ms Gregory has refused Mr and Mrs Elstein access to the Flat in breach of the lease;
 - (c) Whether the Respondent had failed to repair and maintain the Flat in breach of the lease;
 - (d) Whether the Respondent's failure to carpet the rear study in the Flat amounted to a breach of the lease;
 - (e) Whether Ms Gregory's behaviour towards Mrs Elstein in 2008, January 2009 and February 2015 amounted to breaches of the lease; and
 - (f) Whether the Respondent was liable to pay administration charges to the Applicant in the total sum of £1,740.

Determination

15. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Water leaks

16. The Scott Schedule detailed six occasions when water had entered 15A from the Flat. These were in October 2013, 21 and 28 February 2014, March 2015, January 2016 and April 2016.

17. Mr and Mrs Elstein are pursuing Small Claims Court proceedings against Ms Gregory in relation to the March 2015 leak, in which they seek compensation for alleged damage to their flat. Those proceedings are due to be heard in November of this year. At the suggestion of the tribunal, the Applicant withdrew that part of the application relating to the March 2015 leak.
18. Mr Elstein provided the tribunal with details of the other five leaks. The Respondent accepted that water had escaped into 15B on four occasions (October 2013, 28 February 2014, January 2016 and April 2016), although the causes of the leaks were disputed. The alleged leak on 21 February 2014 was disputed.
19. Ms Gourlay acknowledged that escapes of water amounted to a breach of clause 2(11)(e) of the lease, even where there was no fault on the part of Ms Gregory or the Respondent. With some reluctance she accepted the lease had been breached on each of these four occasions.

The tribunal's decision

20. The tribunal determines that the Respondent breached clause 2(11)(e) of the lease by allowing water to escape into 15A in October 2013, 28 February 2014, January 2016 and April 2016. The breaches in question have ceased.
21. The tribunal determines that no breach has been proved in relation to the alleged leak on 21 February 2014.

Reasons for the tribunal's decision

22. The breaches referred to at paragraph 20 above were reluctantly admitted by Ms Gourlay.
23. The alleged leak on 21 February 2014 was disputed by the Respondent and there was insufficient evidence to establish whether water had escaped from the Flat on that date. Mr and Mrs Elstein were away at the time of the alleged leak so could not give first hand evidence of the leak or its source. There was no independent evidence of the leak, such as a plumber's report.

Access to the Flat

24. The Scott Schedule detailed four occasions when Ms Gregory allegedly refused access to Mr and Mrs Elstein (October 2013, 28 February 2016 and January and April 2016). On each occasion they initially rang on the entry 'buzzer', which is located by the front door to the Building but

were not let in. The Applicant contends that this amounted to breaches of clauses 2(6)(b) and (23) of the lease.

25. Ms Gregory's evidence was that she did not hear the buzzer on the first three occasions. On the fourth occasion, in April 2016, Mr and Mrs Elstein entered the Building and tried to force entry through the front door of the Flat, which she resisted. Ms Gregory alleged that Mr Elstein assaulted her and refused her cross request for access to 15A to see where the water was entering that flat. The police were called but no charges have been brought.

The tribunal's decision

26. The tribunal determines that no breach has occurred in relation to Mr and Mrs Elstein's attempts to access the Flat.

Reasons for the tribunal's decision

27. The tribunal accepts the Elsteins immediately tried to contact Ms Gregory when they discovered the leaks, by ringing the buzzer for the Flat. However the tribunal does not accept that Ms Gregory's failure to give access was a breach of clauses 2(6)(b) and (23) of the lease. The purpose of ringing the buzzer was to notify Ms Gregory of the leaks; rather than to undertake repairs. In her oral evidence, Mrs Elstein said she did not know where the stopcock was and that any repairs would have to be undertaken by a plumber. The Elsteins were not in a position to cure the leaks themselves.
28. The tribunal accepts that Ms Gregory did not hear the buzzer on the first three occasions. At least one of the occasions, in January 2016, was late at night (approximately 11.30pm).
29. It is clear from both parties' evidence that there was a heated confrontation between the Elsteins and Ms Gregory on the occasion of the April 2016 leak. Mr Elstein tried to force entry through the front door of the Flat. He accepted this would have been intimidating for Ms Gregory. In the circumstances it was reasonable for her to refuse access. Again, the Elsteins were not seeking access with a view to undertaking repairs or curing the leak.

Repair and maintenance of the Flat

30. The Applicant contends that the Respondent has failed to repair and maintain the Flat in accordance with clauses 2(3) and (5) of the lease. They rely on an interim schedule of dilapidations from Mr Rudy Fattal MRICS of R D & D Associates dated 20 April 2016. This identified various dilapidations, including cracks to many of the walls, rot damage

to the framework of the rear balcony door and damp staining to the ceiling in the rear study.

31. The Respondent relies on a report from Mr Konstantinos Korakakis of Architecture and Interiors dated 21 May 2016. Mr Korakakis concluded that the Flat was in need of refurbishment works but the majority of the dilapidations arose from structural problems at the Building and major water leaks from the flat above (15C). He recommended that the refurbishment be deferred until the structural problems are resolved.
32. Neither Mr Fattal nor Mr Korakakis attended the hearing and there was no opportunity to test their evidence, which meant it was of limited value. Mr Elstein explained that there had been subsidence at the Building and major structural repairs (including underpinning) had been undertaken in 2015, as part of an insurance claim. The structural problems were first identified in 2010 but the repairs were not completed until November 2015.
33. In cross-examination Mr Elstein accepted there were major leaks from the balcony to 15C in November 2014. This caused dry rot in the rear study of the Flat, which has not yet been treated. 15C is not subject to a long lease and belongs to the Applicant. Ms Gregory has had lengthy correspondence with the Applicant regarding the works required to treat the rot.
34. Mr Elstein suggested that the Respondent has had ample time to refurbish the Flat in the 10 months since completion of the structural repairs. He also suggested that the Respondent could have refurbished all rooms save for the rear study. The Respondent contends that he has been unable to refurbish the Flat due to the structural problems and the leaks from 15C. Ms Gourlay submitted that the refurbishment should wait until the dry rot has been treated, when all work can be undertaken as one job.

The tribunal's decision

35. The tribunal determines that no breach has occurred in relation to the Respondent's failure to maintain and repair the Flat.

Reasons for the tribunal's decision

36. The tribunal accepts Ms Gourlay's submission. Whilst the Respondent could have refurbished the Flat following completion of the structural repairs in November 2015, it makes sense to defer the work until the dry rot is treated and cured. This will enable the Respondent to undertake the refurbishment as one job, rather than on a piecemeal basis. Further the dry rot treatment might have an impact on other

parts of the Flat and not just the rear study. It would be premature to refurbish the flat until the treatment is completed.

37. The failure to maintain and repair the Flat is not of the Respondent's making. Rather this is down to the structural problems at the Building and the leaks from the balcony to 15C. Further the Applicant must bear some responsibility for the delay, as the dry rot has been caused by leaks from the balcony to its flat.

Flooring in the rear study

38. Mr Fattal's interim schedule identified that there was no carpet in the rear study. The Applicant contends this is a clear breach of clause 2(7) of the lease, which requires felt carpet or similar material to cover the floor of each room, save the kitchen and bathroom.
39. The Respondent's case is there has been a wooden floor in the rear study since he purchased the Flat in 1971. He contends that the Respondent has waived the covenant to carpet by failing to take any action over the last 45 years.
40. In his oral evidence, Mr Gorst stated that the Applicant purchased the freehold of the Building in 1971. He recalled that he had inspected the Flat on just one occasion, many years ago, when he only saw the hallway. Mr Gorst stated he had not inspected the rear study but that action had been taken against another flat in the Building that had original wooden flooring.
41. In cross-examination, Mr Gorst was unable to say when he had first seen Mr Fattal's schedule. He was also unable to say if the previous managing agents, VJML, had ever inspected the Flat. He accepted that Mr Fattal might have inspected prior to the subsidence issue.
42. Mr Gorst was referred to an exchange of emails between Ms Julie Buss of the Applicant and Ms Gregory in May and June 2015. In an email dated 05 June 2015, Ms Buss confirmed an appointment for Mr Gorst to inspect the Flat (with two others) on 10 June 2015. The purpose of the inspection was to view the damage caused by the balcony leaks from 15C. Mr Gorst then conceded that had attended this inspection but said he could not recall seeing the dry rot. He also stated that Ms Buss is his daughter and a director of the Applicant company.

The tribunal's decision

43. The tribunal determines that no breach has occurred in relation to the wooden flooring in the rear study.

Reasons for the tribunal's decision

44. The tribunal was not impressed with Mr Gorst's evidence. Some of his oral evidence conflicted with his witness statement. Further his recollection of events was extremely vague yet he had inspected the Flat as recently as June 2015. The purpose of that inspection was to view the damage caused by the balcony leaks. It is inconceivable that Mr Gorst did not inspect the study on that date, as this was the room directly affected by the leaks. The wooden flooring would have been clear to see during the inspection. No action was taken following that inspection, which suggests the Applicant was content with the flooring.
45. The tribunal accepts there has been wooden flooring in the rear study since the Respondent's purchase of the Flat in 1971. It has been in place for at least 45 years. The Applicant would have been aware of the flooring since June 2015 at the very latest. In all probability it had constructive knowledge of the flooring for a much longer period, from inspections by Mr Fattal, other professional advisers or former managing agents. The tribunal agrees with the Respondent. The Applicant has waived the covenant to carpet, at least in relation the rear study.

Ms Gregory's behaviour towards Mrs Elstein

46. Mr Elstein informed the tribunal that the Applicant was not pursuing its complaints in relation to the incidents in 2008 and 2009. Rather it focussed on just one incident when Mrs Elstein was working in the front room of 15A and Ms Gregory shouted whilst standing in the communal front garden. The Scott Schedule stated this incident took place in February 2015, in breach of clauses 2(11) and (22) of the lease.
47. Mrs Elstein's evidence was that Ms Gregory had shouted insults and sworn at her, through the window of the front room and the front door of 15A. Ms Gregory also shouted "*Are you Mossad?*". Mrs Elstein avoided eye contact and left the room, to escape the abuse. She was extremely upset and called her husband. The incident was reported to the police and the tribunal were referred to an email sent to Mrs Elstein by the Crime Management Unit. This was dated 07 January 2015, which suggests the incident took place in early January (not February).
48. Ms Gregory accepts that an incident occurred in early 2015 but stated that she was shouting at surveillance equipment that had recently been installed in the front garden. Mrs Elstein's evidence was that the equipment had not been installed at the time of the incident. Rather video cameras were ordered and fitted in response to the incident. The tribunal were also referred to the purchase order for the surveillance equipment, which was dated 12 January 2015.

The tribunal's decision

49. The tribunal determines that a breach of clause 2(11) of the lease occurred in early 2015, in that Ms Gregory caused a nuisance, annoyance or disturbance to Mrs Elstein. The breach in question has ceased.
50. The tribunal determines that no breach of clause 2(22) has been proved.

Reasons for the tribunal's decision

51. There was clearly an incident in early 2015 when Ms Gregory shouted whilst in the communal front garden. The tribunal accepts Mrs Elstein's evidence that Ms Gregory was shouting at her rather than the video surveillance equipment. This would have been very unpleasant and intimidating and certainly amounted to a nuisance, annoyance of disturbance. The incident took place in the communal front garden, which is "*...in or about the demised premises...*", as required by clause 2(11).
52. The tribunal is satisfied that the email from the Crime Management Unit was sent in response to this incident, so the incident must have taken place before 07 January 2015. This is consistent with the Elsteins ordering the video surveillance equipment on 12 January 2015.
53. The tribunal was not referred to any evidence that the Applicant had given written notice to the Respondent "*...to adopt such measures and bring and take such actions and proceedings as the Landlord may require....*", as required by clause 2(22). Accordingly, no breach of this clause has been proved.

Administration charges

54. The Applicant contends the Respondent is liable to pay legal fees of £600 plus VAT and surveyor's fees of £850 plus VAT, as administration charges. The legal fees were charged by Silver Sherliker LLP and relate to the recovery of service charge arrears for the Flat totalling £14,830.14. Their invoice was dated 31 July 2014. The accompanying schedule showed total recorded time, which equated to a fee of £1,159 plus VAT but the bill had been capped at £600 plus VAT. The invoice has been paid from the service charge account.
55. The surveyor's fees were charged by R D & D Associates and relate to the interim schedule of dilapidations prepared by Mr Fattal. The invoice was dated 20 April 2016 and the tribunal were referred to an email from Mr Fattal dated 23 August 2016, stating that he had spent a total of 6 hours inspecting the Flat and preparing the schedule.

56. NBN sent the Respondent a demand for these administration charges on 29 June 2016, which was accompanied by a summary of tenant's rights and obligations.
57. Mr Elstein submitted that the Respondent is contractually liable to pay the administration charges, pursuant to clause 2(23) of the lease, as they relate to the "...*repair or maintenance of the demised premises*". The legal fees were paid from the service charge account. On questioning by the tribunal he stated he did not rely on any other clause in the lease. He also acknowledged that the surveyor's fees would only be recoverable if the tribunal found there had been a breach of the Applicant's repairing covenant.
58. The Respondent's bundle for the administration charge application included a helpful statement of case that had been prepared by Ms Gourlay. This referred to the Supreme Court's decision in **Arnold v Britton [2015] UKSC 36** and the Upper Tribunal's decision in **Geyfords Limited v O'Sullivan and others [2015] UKUT 0685 (LC)**, which both dealt with the contractual interpretation of documents.
59. Ms Gourlay's submitted that clause 2(23) is directed at expenses the Applicant might incur in undertaking repairs or making good the Flat, where the Respondent has failed to comply with his repairing obligations. It does not cover any legal costs. Furthermore the Applicant has not undertaken any repairs or making good the Flat. It follows that neither set of fees is contractually recoverable.

The tribunal's decision

60. The tribunal determines that no administration charges are payable by the Respondent.

Reasons for the tribunal's decision

61. The tribunal agrees with Ms Gourlay. The legal costs and surveyor's fees were not incurred by the Respondent in undertaking any repairs or making good the Flat. The meaning of clause 2(23) is clear. It is not directed at legal costs and the surveyor's fees are not recoverable, as the Respondent has not undertaken any repairs or making good of the Flat. Further the tribunal has already determined the Respondent is not in breach of his repairing obligations, so this clause is not triggered.

Section 20C and refund of fees

62. There was no application by the Respondent for an order under section 20C of the 1985 Act. Equally there was no application for a refund of

the fees that the Applicant has paid to the tribunal in respect of either application¹.

The next steps

63. The breach of covenant application has been partially successful. Breaches have been established in relation to the water leaks and the shouting incident in early 2015. However these were caused by Ms Gregory, rather than the Respondent and have ceased. The other alleged breaches have not been made out and the administration charge application was unsuccessful. The tribunal encourages the parties to try and resolve their differences to avoid the need for further costly and time consuming litigation.

Name: Tribunal Judge
Donegan

Date: 25 October 2016

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.

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

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 168 No 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 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).