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**HM Courts  
& Tribunals  
Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985 and  
SECTION 20C OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference LON/00AK/LSC/2012/0800**

**Premises:**

**FLAT 6 KARYATIS COURT 49 CHARLES STREET ENFIELD EN1 1FG**

**Applicant: MICHAEL PAWLICKI**

**Respondent: KARYATIS COURT MANAGEMENT LTD**

**Appearances:**

The Applicant appeared in person

For the Respondent: Ms M Allen, director of Respondent  
Ms W Taylor RMG Management  
Ms F Rugo (Day 1 only)

**Dates of hearing: 22<sup>nd</sup> and 23<sup>rd</sup> April 2013**

**Leasehold Valuation Tribunal:**

**Mrs T Rabin  
Mr T Sennett  
Mr J Francis OPM**

**Date of determination: 2<sup>nd</sup> May 2013**

### **The Tribunal's decision**

**The Tribunal determines that all monies paid were reasonably incurred and payable by the Applicant and there should be no refund.**

### **The application**

1. The Applicant issued an application in the County Court which was transferred to the Tribunal to make a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the proportion of service charge demanded was respect of the service charge years from 16<sup>th</sup> March to 31<sup>st</sup> December 2011 were reasonable and payable by the Applicant. The application relates to Karyatis Court 49 Charles Street Enfield EN1 ("the Building"). The Applicant is the long leaseholder of the Flat 6 Karyatis Court aforesaid and the Respondent is the freeholder of the Building.
2. The issues before the Tribunal were:
  - (a) Whether services charges for the service charge year 2011 were reasonable and payable
  - (b) In particular the Applicant raised complaints about the alleged failure to clean the communal carpets, replace missing light shades in the communal area, ensure that there were adequate locks on the entrance doors, damaged rendering, damage to the entrance to the bin store making access difficult.
  - (c) Whether the management fee should be paid at all in the light of the poor management during the period in question
3. The Tribunal noted that the Appellant paid the annual service charge for that year by way of 10 instalments. The service charges therefore related to the whole of the service charge year 2011 and not March to December 2011 as stated by the Applicant.
4. The application to the County Court made reference to the Respondent and also Residential Management Group Ltd ("RMG") as joint Respondents. RMG were the managing agents appointed in 2011 but they are no longer acting for the Respondent. The Respondent is the manager named in the leases under which the flats are held and their obligations are to provide the services set out in the leases. As such they are contractually bound to provide services and

are responsible to the long leaseholders in relation to the delivery of the services. For that reason the Tribunal considers that it is not appropriate for RMG to be named respondents. Since this is a referral from the County Court, the Tribunal has no power to remove a respondent but would suggest that the learned County Court judge should amend the pleadings accordingly. This was raised at the hearing and agreed by all parties.

5. The Applicant had issues regarding damage to his bicycle and his claim for compensation. It was explained to him that this issue was outside the Tribunal's jurisdiction and that he would have to pursue any claim for compensation in the County Court.
6. The relevant legal provisions are set out in the Appendix to this decision.

### **Inspection**

7. The Tribunal inspected the Building on the morning of 22<sup>nd</sup> April 2013 in the presence of the Applicant and two directors of the Respondent, Ms M Allen and Ms F Rugo. The Building is a late Victorian structure converted about fourteen years ago into 16 flats. The Building is on 2 storeys with solid walls and painted render to the front. There are two entrances from the street, one leading to Flats 1-11("Block 1") and the other to Flats 12-16 ("Block 2"). Internally there is no interconnection between the two parts of the block.
8. The Tribunal was shown a refuse store to the front of the Building with a door that had been repaired to its frame and locks and a secure garage with an electric roller shutter constructed beneath some of the flats. The garage forms part of the communal area. The common parts of each part were inspected and carpeting was noted to be stained throughout, particularly with watermarks throughout the ground floor. The common parts had working lights and, apart from some evidence of dampness and perished plaster to both ground floor commonways, internal décor and general cleanliness was considered good.
9. The self closer to the entrance door to Block 2 was noted to need adjustment. Similarly the latch to the entrance door to Block 1 needed minor adjustment. Other items that the Applicant identified were noted at the time.

### **The hearing**

10. The hearing took place on 22<sup>nd</sup> and 23<sup>rd</sup> April 2013, commencing after the inspection of the Building. The Applicant attended in person and gave evidence. Ms Melanie Allen, who had been appointed a director of the Respondent in 2012, conducted the hearing on behalf of the Respondent. She was accompanied on both days by Ms Wendy Taylor of RMG and on the first day only by Ms Federica Rugo, a director of the Respondent, also appointed in 2012. The Tribunal heard from Ms Allen and Ms Taylor on behalf of the Respondent.

11. Both parties provided bundles of documents and the Tribunal had regard to the contents prior to making its determination. The Applicant's bundle contained a number of photographs as well as links to videos on You Tube but the Tribunal had no access to a computer in the hearing room. The photographs, all dated, were helpful.

### **The Evidence**

12. The Parties' evidence is set out in the application to the Tribunal, the contents of the bundles and the oral evidence of the witnesses. The Tribunal will deal with each of the issues separately as follows:

#### **Damaged ceiling in garage**

13. The Applicant pointed out that there had been a hole in the ceiling of the garage between March 2011 and April 2012. The Applicant stated that this was too long a period for inaction and indicative of bad management.
14. Ms Taylor said that the damage was caused as the result of a water leak, apparently from one of the flats. It took some time to identify the source and for the necessary repairs to be undertaken. Once the source was discovered, the insurers required the area to be left to dry out for six months for the plaster and joists to dry. The damage was subsequently repaired under an insurance claim with the owner of the flat from where the leak had emanated paying the excess.

#### **The Tribunal's decision**

15. Ms Taylor explained why there had been a delay. In the view of the Tribunal allowing the area to dry before re-plastering is normal procedure where there has been water ingress and is good practice. The cost of repair did not form part of the service charge. The delay is not attributable to bad management but to sensible commercial practice and the requirements of the insurers.

#### **Bin store**

16. The Applicant complained about the broken handle and hinges on the bin store door. He also complained that the lock was not aligned properly, making it difficult to open. These defects were in place from March to October 2011 and the hinges were still not repaired satisfactorily, although they have now been moved and access is better. There was often rubbish left outside the bin store due to the inability to access the bins during that period.
17. Ms Allen said that there were historic problems with the bin store doors as the bins provided by the local authority were too large to be pushed through the door easily. The refuse collectors were careless and caused damage. There were a number of repairs undertaken, supported by purchase orders in the

Respondent's bundle, and a metal reinforcement around the door frame is now in place which has stopped the problem. A new lock has been fitted and the door has been re-hinged. Ms Allen, who lives in the Building, was not aware of any time when the bin store door could not be opened. Although she was aware that there had been rubbish left outside the store, this was on very few occasions and left by other residents in the street. The problem is addressed as the Council send a van every day to collect rubbish left on the street by local residents, so any rubbish is soon removed.

### **The Tribunal's decision**

18. The Tribunal consider that it was unfortunate that the problem was not rectified more quickly. The Tribunal accepts Ms Allen's evidence that the bin store door could always be opened, even though it may have been difficult to shut, and there had been no complaints by any other person. The Tribunal are aware that sometimes rubbish is left outside properties by persons from neighbouring properties and there is little that can be done to prevent this. However the Council has recognised the problem and is addressing this by regular litter patrols. This does not appear to have been an issue to other residents and the managing agents dealt it with as and when there was a need for repair.

### **Doorknob to exterior of the entrance door to Block 2**

19. The Applicant said that the outside decorative doorknob from the entrance door to Block 2 had been missing from March 2011 until it was replaced recently. This was another example of bad management.
20. Ms Allen said that a purchase order was raised in February 2010 but, due to lack of funds, this was cancelled, as it was low priority and did not affect the use of the door or security of the Building. She was unable to spend money that was not there.

### **The Tribunal's decision**

21. Ms Allen had stressed that there were often shortages of funds. Although the Applicant has always paid on time, the Respondent has difficulties in collecting funds from some of the long leaseholders. It is important that funds actually held are spent on matters of health and safety before replacing a decorative feature. The failure to replace the knob, which serves no purpose since the doors are self-closing, is not indicative of bad management and the Tribunal accepts the explanation that it was low priority.

### **Door closers and door handle in Block 2**

22. The Applicant said that the closer to the front door of Block 2 was not properly adjusted so that it banged every time the door was closed and this disturbs him when he is at home, especially at night when it is quiet. It was like that

when the Tribunal inspected. He has reported the problem on a number of occasions and nothing was done. There is a damaged door handle on the inside of the door that has been damaged since March 2011 and as far as he was aware, had not been fixed.

23. Ms Allen said she had received no complaints about the door handle or the closer from occupants other than the Applicant. If it is loose, it needs to be looked at. She was unaware of any issues herself as she lived in Block 1 and relied upon the cleaners to undertake minor repairs and to report back on issues found.

### **The Tribunal's decision**

24. This is a matter drawn to the managing agents' attention by the Applicant. In any event, the managing agents or the cleaners should have identified it. This is an indication a lack of a pro-active action on their part.

### **Door lock on Block 1**

25. The Applicant pointed out that there was a loose keep on the front door of Block 1. The lock is not strong enough to provide a secure entrance and the lock has been changed a number of times following damage, but for the same type. This is not the answer and a better lock is required. It is not an effective use of the service charge funds to put in the same lock again and again and not seek to improve the security. A better lock in the first place would have been more economical but he had no comparative figures. These same type of locks have been used since 2007.
26. The Applicant suggested that there could be security issues as a result of the poor lock with strangers able to gain access. He reiterated that money collected for service charge had not been used effectively.
27. Ms Allen said that there had been problems with the front door locks but these were mainly due to vandalism. Residents jammed the lock with paper if they lost their key so they could have access at any time. When this happened, there had been five or six attendances to repair or replace the lock. The directors are formulating a ten-year plan and that included looking at the installation of a better and more secure system, possibly with fobs. Currently there were insufficient funds but this was a priority, as it related to health and safety, and it was anticipated that a new lock system would be installed within 12 months.

### **The Tribunal's decision**

28. The Tribunal are aware that, where there is a mixed use block with frequent changes of subtenants there are often problems with locks arising from subtenants losing keys or failing to return them. Ms Allen has described one

such incident where paper is used to keep the lock free. Although it would be preferable for a better system to be installed for security purposes, In the light of the difficulties in collecting funds (although not from the Applicant) there is little that can be done other than to fix damage as and when it occurs to the best standard possible in the lights of the funds held. The Tribunal noted that it is a priority for a better system to be installed within 12 months. This is not indicative of poor management.

### **Meter cupboard handle missing**

29. The Applicant stated that the meter cupboard door handle had been missing since 2011
30. Ms Allen said that she had not noticed that the handle was missing but that it had now been repaired

### **The Tribunal's decision**

31. The handle to the meter cupboard was not needed as it is opened with a mortise lock. It is not a matter of high priority, particularly where there is a shortage of funds.

### **Lamp covers and light bulbs**

32. The Applicant complained that on one occasion five light bulbs needed changing. He also pointed out that a light cover was missing. He also complained that the building was in darkness on occasion
33. Ms Allen agreed that a lamp needed replacing and the cleaners were asked to check on a weekly basis. The lights can all go off when a bulb blows, causing the fuse to trip and needs to be reset. The lamp cover has been replaced .

### **The Tribunal's decision**

34. This is a minor matter and the cleaners change light bulbs as necessary. Replacement of the cover is a minor matter and not high priority where there is a lack of funds. A bulb replacement regime is in place.

### **Intercom to Block 2**

35. The Applicant said that the intercom had not been working from March 2011 to October 2011.
36. Ms Allen said that the door entry system maintenance was complicated, as the leases do not include an obligation to maintain the individual intercoms. This is down to the individual long leaseholders but the Respondent attends to

problems with the panels by the front doors. She was aware of no complaints about the intercom although she knew that Flat 16 had a problem with the internal phone at one point.

### **The Tribunal's decision**

37. The lease provides that the Respondent is responsible for Service Installations except where they exclusively serve a flat. This means that where individual intercom units are not working, it is for the individual long leaseholders to attend to them. Ms Allen said she was aware that some were not working but that this was not the responsibility of the Respondent and the Tribunal agreed with this view. Although the occupant who opened to the door of Block 2 for the Tribunal on inspection had to open the door, the Tribunal did not see any evidence that the main door panels were not working

### **Carpets and internal cleaning**

38. The Applicant complained that the carpets were dirty and the general cleaning of the common parts was poor. The carpets smelled bad and were never subjected to steam cleaning. The Applicant produced photographs showing stained carpets and said that they had not improved since October 2011 when the last photograph was taken. The carpets should be steam cleaned very regularly
39. The Applicant also complained about a rip in the stair carpet in Block 2, which had been nailed down but could create a health and safety issue.
40. Ms Allen did not agree that there was no cleaning. She has lived at the Building since 2006 and she sees the cleaners when she leaves for work. They attend regularly and Hoover the carpet, remove cobwebs, and clean the garage and bin store. The cleaners appointed in 2011 are no longer there as Ms Allen was able to find a firm that would offer a cheaper service. During the period in question the Respondent instructed property managers and they were asked to deal with the rip and it was made safe.
41. Ms Allen noted that the Applicant wanted regular steam cleaning of the carpets but this is at a cost of £500 for each visit and there are simply not the funds. She accepts that the carpets need replacing but many of the stains are caused by a damp problem that has not yet been eradicated. Although some of the stains are dirt, others are damp to the touch.
42. The Respondent undertook works to the Building but during the currency of the works a serious damp problem came to light. The damage started in Flat 1 that was damaged by water ingress from the adjoining building. Inspection indicated that the adjoining building did not have a suitable party wall, but relied on support from the Building. The previous owners had absolved themselves from responsibility and the current owner purchased from receivers. The Respondent had no option but to undertake repairs



themselves, most of which was not covered by insurance. They were obliged to spend some £26,000 in damp work that could not have been identified before work was commenced. The consequence was that there was insufficient money to do all the planned work. The damp problem needs to be addressed before the carpets are replaced, particularly since they are suffering from damp patches.

### **The Tribunal's decision**

43. The Tribunal accepts Ms Allen's evidence that the cleaning was done regularly as she has seen the cleaners. The Applicant appeared to be relying upon the state of the carpets, as he made no complaints about any other aspect of the cleaning. The Tribunal noticed that there were damp patches on the carpets at ground floor level and there was evidence of damp in both the hallways near the front doors. Ms Allen has acknowledged that the carpets need replacing but it would be pointless to do this until the damp problem has been identified and eradicated.
44. The torn stair carpet has been made safe and, from the photographic evidence, this appears to have been made safe in 2011. This problem will disappear once the carpets are replaced.

### **Damage to rendering**

45. The Applicant pointed out there were a number of small holes in the rendering, apparently caused by the removal of cables or wires and a loose wire on the front elevation. There was also a loose wire on view. He believed these holes were caused when the Sky dish was installed and the damage occurred after the rendering was repaired in 2011. The Applicant had complained to RMG but his complaint had been ignored.
46. Ms Allen said she had not noticed the damage to the rendering until the Applicant made this claim. The holes were caused by the removal of cables deemed to be unsightly. The Sky contractors removed this and they are being chased to make good. One of the directors, not by the managing agents, undertook the installation of the Sky dish. The exterior will be redecorated in two years in any event and the damage is insignificant. No complaints have been received.

### **The Tribunal's decision**

47. The holes were small and, although they were visible, were not serious. The cost of repairing these would be out of proportion to the minor damage and, in the light of the lack of funds, would in the Tribunal's view be low priority. The contractors are being chased up and should be pressed to make good at their own expense if this is a practical solution.

### **Items left in the common parts**

48. The Applicant stated that pushchairs and other items were left in the common parts and produced photographs of a pushchair a chest of drawers, a pushchair and a child's bicycle in the hallway and boxes in the garage. This was against the provisions of the leases and he had complained to RMG on a number of occasions.
49. Ms Allen said that occupants leaving items in the hallway was always a problem. The occupants are asked to remove them and there is now a system where the cleaners put warning stickers on the items and, if they are not taken away, they are removed by the cleaners and can be collected at a later date. Permission had been sought to temporarily store the chest of drawers pending collection and permission had also been sought to leave the buggy. It is a problem but the directors have put in place procedures to ensure that the common parts are, as far as possible, left free of personal items.

### **Management fee**

50. The Applicant submitted that during the period in question he had no service provided or service that was well below the standard required. The management fee charged by RGS was £3,500, including VAT of which the Applicant's share was £189 for the service charge year in question. He also complained that there had been an overpayment of service charges that had not been credited to his bank account.
51. Ms Allen said that RGS were no longer appointed. There had been an accounting error which resulted in the accounts showing a negative balance requiring a balancing charge when in fact the account was in credit. The Respondent lost confidence in RGS and terminated their appointment. There was a sum of £514 demanded from the Applicant, which was paid on 23<sup>rd</sup> November 2011. Once the error came to light, all long leaseholders were advised of the error and offered the option of having the excess funds credited to their future service charges or, if specifically requested, it would be refunded to their bank account. No such request was received from the Applicant and the funds were credited against future service charges. The account relating to the Applicant was produced showing the payment in and the credits against service charges.

### **The Tribunal's decision**

52. The budget before the Tribunal was an estimated budget and the amounts estimated seem reasonable. They are only estimates and will be balanced against actual expenditure. RMG who were managing the Building at the time clearly undertook management functions and the items complained about by

the Applicant were mainly minor matters where the failure to remedy was often due to lack of funds.

53. There was an error in the calculation of the service charge but this was identified and rectified and the overpayment of £514 was credited. This would have been paid into the Applicant's bank account had he asked for this to be done, which he did not do, and he received credit on his future service charges. The Tribunal cannot see that he suffered any prejudice since the mistake was identified and rectified. The directors of the Respondent took a serious view of the error and dismissed RMG. The fee charged by RMG to the Applicant was £189 including VAT and this is, in the Tribunal's experience, the lower end of the scale for managing properties. It is accepted that the managing agents could have been more proactive in some areas but the involvement of the resident directors of the Respondent mitigates any deficiencies. The Tribunal finds that the level of the management charges is reasonable and payable by the Applicant.

#### **Additional items**

54. The above items were those included in the application to the County Court and the Tribunal's decision is limited to those items. However, at the end of the hearing the Applicant reviewed the estimated service charges and queried a number of items. These were the accountants' fees, on the basis that there had been an error in preparation of the accounts, the company secretarial fees as they form part of the management fees. He also objected to the inclusion of terrorism cover for the first time and the health and safety inspection charge of £27 on the grounds that the stair carpet was torn and this indicated that there was no effective inspection by the management. He also objected to the demand for sundries on £6.52 and general repairs at £79.60 on the basis that no invoices had been provided.
55. The Applicant suggested that he should pay nothing towards the service charges for the year in question on the grounds that he had experienced no effective management and the Respondent was not taking a sensible and commercial view of management of the Building. Moneys collected were poorly used and there were many faults as itemised above.
56. Even though the Tribunal has no jurisdiction as these items had not been included in the claim, Ms Taylor gave explained these items. She pointed out that the terrorism cover was always included but that this year it was listed as a separate item. An independent company undertakes company secretarial services and the recovery of these costs is allowed for in the lease. Health and safety is undertaken every other year but is collected annually. Sundries and general repairs are shown in invoices but these were not produced in the light of no mention of these items having been made.

## **The Tribunal's decision**

57. The Applicant sought to introduce new matters at the end of the hearing and, even though the Tribunal has no jurisdiction, Ms Taylor gave a helpful explanation relating to each of the issues raised late. This explanation appears to the Tribunal to be wholly satisfactory. The Applicant can hardly complain that invoices were not produced when no mention of any dispute was made at any time through these proceedings until the very end and after his case had been completed. The Tribunal cannot make a decision due to lack of jurisdiction.

## **Conclusion**

58. The Tribunal are well aware of the problems faced by tenant owned management companies to collect the service charges demanded. Since the Respondent is tenant run, there is no source of funds other than the service charges collected. This means that the directors have to make difficult decisions as to the deployment of the funds they have. The Tribunal is well aware that the Applicant does not fall into the category of a late payer but the reality is that they are often low in funds.
59. Added to the continual problem, there was the additional issue of the extensive and unexpected damp work that used up funds that had been allocated elsewhere. This was unfortunate but an unforeseen complication, which had to be dealt with by the directors as an emergency.
60. In the Tribunal's view Miss Allen and her co-directors appear to be committed and efficient and willing to undertake a lot of work for the benefit of the Building for which they receive no reward. The Applicant complained that the subtenants were not allowed to actively participate in the running of the Building. This is hardly surprising as they have no financial obligations to contribute, are not parties to the leases and are not shareholders in the Respondent company. Their views have no bearing on the decisions made by the directors and shareholders. The Applicant said that he felt excluded from the proceedings. Ms Allen said that all long leaseholders are invited to the AGM and are also invited to suggest items for inclusion in the agenda. She and her fellow directors are in regular e-mail contact with long leaseholders and are always ready to listen to any issues. The Applicant has not attended any AGM since he was voted off the board in 2010 and never asks for an item to be included in the agenda.
61. The Tribunal has no reason to doubt that the directors are inclusive and consult the other long leaseholders before anything is done. The directors do their best to ensure that long leaseholders pay the sums demanded but not all are as assiduous as the Applicant in paying. The Respondent has no funds of its own and can only rely on service charges. This means that service charge items need to be prioritised.

62. The Applicant is seeking refund of all the service charges for service charge year 2011. This is in spite of the fact that he has had services to which he has not objected, such as insurance, electricity to the common parts, use of the garage shutter and the reserve fund. His argument appears to be that he has not had good value and therefore does not consider he has an obligation to make any payment.
63. **The Tribunal does not share this view and determines that all monies paid were reasonable and payable by the Applicant and there should be no refund.**

### **Section 20C**

64. The Applicant made an application at the hearing for an order under Section 20C of the 1985 Act requesting that the costs of these proceedings should not be considered relevant costs for the purpose of calculating the service charge. In the light of the Tribunal's findings the Tribunal does not consider that an order under Section 20C is appropriate and subject to the leases allowing collection of such monies, the costs can be added to the service charge. It should be noted that the costs would fall upon all the long leaseholders in the appropriate proportions. Accordingly no order will be made.

**Tamara Rabin**

Tamara Rabin – Chair

2<sup>nd</sup> May 2013

**Appendix of relevant legislation**

## **Landlord and Tenant Act 1985**

### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

### **Section 19**

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

### **Section 27A**

- (1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.
- (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).