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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	**MAN/00BN/LAC/2015/0006**
Property:	**19 Jutland House, 15 Jutland Street, Manchester M1 2BE**
Types of Application:	**(1) Administration Charge: Schedule 11 Commonhold and Leasehold Reform Act 2002** **(2) Section 20C Landlord and Tenant Act 1985**
Applicant:	**Mr Mark Steele**
Respondent:	**Homeground Management Limited as agent for Abacus Land 4 Ltd**
Representative:	**J.B. Leitch, Solicitors**
Tribunal Members:	**Judge M. Davey (Chairman** **Judge J. Holbrook**
Date of decision:	**8 October 2015**
Date of reasons:	**8 October 2015**

DECISION

Decision

1. **Schedule 11 Commonhold and Leasehold Reform Act 2002**

   The sum of £328 demanded by the Respondent from the Applicant by way of administration charges is not payable. A sum of £25 is payable.

2. **Section 20C of the Landlord and Tenant Act 1985.**

   Order granted.

Reasons for Decision

The Applications

1. These are the reasons for the decision of the First-tier Tribunal (Property Chamber) ("the Tribunal") on two applications made to the Tribunal on 24 March 2015 by Mr Mark Steele, ("the Applicant") the current leaseholder/tenant of 19 Jutland House, 15 Jutland Street, Manchester Lancashire M1 2BE ("the Property"). The first application seeks a determination from the Tribunal under schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the reasonableness of charges demanded of the Applicant by the landlord of the Property.

2. The second application is made under section 20C of the Landlord and Tenant Act 1985 and seeks an order that none of the costs incurred by the landlord in connection with the proceedings before the Tribunal should be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

3. The lease held by the Applicant was originally granted on 30 June 2004. The parties to the lease were (1) the freeholder, Watkins Jones & Sons Ltd. (2) the Management Company, Paradise Wharf Management Company Limited and (3) the lessees, Allan Buttery and Jillian Buttery. The lease was granted for a term of 150 years in consideration of a premium of £128,138.00 and an initial annual rent of £150 per annum payable on the first of January each year. The landlord's interest in the property was subsequently acquired by Abacus Land 4 Ltd. on 11 June 2013. The lessee's interest was acquired by the Applicant on 25 July 2014. He became the registered proprietor of the lease on 4 December 2014.

4. Although, the named respondent to the application is Homeground Management Ltd. ("Homeground") it is clear that Homeground is acting as agent of the landlord, Abacus Land 4 Ltd., for the purpose of these proceedings. The Tribunal has therefore treated the latter as Respondent to these proceedings, which have been conducted on its behalf by Homeground, through JB Leitch Solicitors.

Case Management

5. On 1 April 2015, Tribunal Judge Bennett issued Directions to the parties setting out how and when submissions should be made to the Tribunal. The judge directed that the applications be determined on the papers provided by the parties without the need for an oral hearing unless either party requested a hearing. Neither party has so requested. Both parties made written submissions. On 9 July 2015, Tribunal Judge Davey issued further Directions to the parties who both responded with further written submissions as requested.

The Lease

6. Clause 5.1 of the lease is a covenant by the tenant to pay the ground rent whether demanded or not on 1 January each year of the term.

7. Clause 5.17 is a covenant by the tenant

   5.17 "To be responsible for and to keep the Landlord fully indemnified against all liability made against or suffered or incurred by the landlord arising directly or indirectly out of:

   5.17.1 any act omission or negligence of the Tenant or any persons at the Dwelling expressly or impliedly with the Tenant's authority; or

   5.17.2 any breach or non-observance by the Tenant of the covenants conditions or other provisions of this Lease or any of the matters to which this demise is subject.

The disputed charges

8. On 6 March 2015, on his return from working away from home, the Applicant discovered, at his home in France, a letter dated 26 February 2015 which was addressed to him at that address. The letter was from J.B. Leitch Ltd., solicitors acting for Homeground Ltd. It stated that JB Leitch had been instructed by Homeground that "despite formal demands having been lawfully served upon you, you have failed to voluntarily pay ground rent and fees due totalling £295.00. **You are in breach of the terms of your Lease.**" The letter continued, "As a result of our instruction, our Client has incurred legal fees which we assess at £183.00. The letter then demanded payment of the sum of £478.00 within 10 days of receipt of the letter.

9. On the same day, 6 March 2015, the Applicant received a letter dated 2 March 2015 from the letting agents who manage the sub-letting of the Property for him. Enclosed with that letter were two letters that had been brought into the letting agency's office by the Applicant's sub-tenant, who was living at the Property. On opening those letters the Applicant discovered that they were letters from Homeground addressed to him at the Property. The first letter was dated 3 February

2015 and began "We write with regards to your Ground Rent account and the outstanding balance of £195.00 which includes the late payment fee of £45.00 as stated in your previous reminder letter." It went on to say that if payment was not made within the next 7 days solicitors would be instructed to commence recovery proceedings and the Applicant would be liable for their charges in connection with recovery of the outstanding debt. It continued "Further, there is an additional late payment and referral fee of £100 that will be posted to your account." The second letter, dated 20 February 2015, stated that the outstanding balance was now £295.00 and informed the Applicant that the matter had been passed to their solicitors, JB Leitch.

10. The Applicant promptly contacted Homeground and JB Leitch and sent a cheque for the ground rent, which he accepted was payable, but JB Leitch refused to accept this as final settlement of the matter and demanded payment of the outstanding charges of £328 demanded of the Applicant. In his application the Applicant challenges the reasonableness of those charges.

The Law

11. The relevant law is set out in the Annex to these reasons.

The Applicant's case

12. The Applicant's case is that on completion of his purchase of the lease on 28 July 2014, the Applicant's solicitors notified Homeground of the transfer and enclosed a deed of covenant by the Applicant tenant to pay the rent and observe the other obligations imposed on the lessee by the lease. The deed gave the Applicant's address in France. The Applicant says that the first communication he received with regard to payment of the ground rent was the letter from JB Leitch, dated 26 February 2015. He argues that because the reminder letters and demands for late payment/referral fees were sent to him at the Property, which he had sub-let, and not his home address in France, he should not be liable for the administration fees or the solicitor's charge demanded.

The Respondent's case

13. The Respondent says that the ground rent of £150 became due on 1 January 2015. By a letter dated 14 November 2014, addressed to the Applicant at the Property, Homeground gave notice from the Respondent, for the purposes of section 166 of the Commonhold and Leasehold Reform Act 2002, requiring payment of the rent on that date. The Respondent says that the letter also gave the information required by the Landlord and Tenant (Notice of Rent)(England) Regulations 2004/3096. Because payment had not been made by 16 January 2015, Homeground sent a reminder to the applicant, at the Property, on 16 January 2015. That letter gave the applicant a further 7 days to pay and contained a warning that if payment was not received

by then a final reminder would be issued which would incur a late payment charge of £45. When payment remained outstanding, Homeground sent to the applicant, at the Property, the letters dated 3 and 20 February 2015. (See above). On 26 February 2015 J.B. Leitch wrote to the applicant at his address in France demanding the sum of £478 within 10 days failing which court proceedings for recovery may be commenced. (See above).

14. The Respondent says that it was perfectly lawful for the demands for payment to be sent to the Property in accordance with section 166(6) of the Commonhold and Leasehold Reform Act 2002, which provides that if a notice under section 166 is sent by post it must be addressed to the tenant at the property unless he has notified the landlord in writing of a different address in England and Wales at which he wishes to be given notice under section 166. The Respondent says that no such notification was given to it by the Applicant. It submits that the covenant given by the Applicant on assignment of the lease to him was not a notice for the purposes of section 166(6) of the 2002 Act and in any event did not give an address in England or Wales. The Respondent says that having heard nothing from the Applicant by 3 February 2015 it was necessary to instruct its solicitors, which it did on 20 February 2015.

15. The Respondent says that it is entitled to recover the costs of such action from the Applicant and relies on clause 5.17.2 of the Lease whereby the applicant covenanted to indemnify the landlord against liability which arises out of any breach of covenant by the tenant. (See above). The Respondent says that failure to pay the ground rent was a breach of the lease and that the charges claimed were incurred in pursuing payment of the ground rent and late payment fees claimed. Homeground's solicitors have provided a list of tasks which they claim to have carried out in connection with the breach when seeking to justify their charge as reasonable. They claim that "There is an inevitable and direct causal connection between the costs incurred by the Respondent and the Applicant's breach of Lease. The Respondent had to incur such costs following the Applicant's failure to make payment of ground rent."

16. The Respondent relies on two authorities as being directly in point. First, the decision of the Court of Appeal in *Church Commissioners for England v Ibrahim and another* [1997] 1 EGLR 13 where it was held that a landlord who brought possession proceedings on the basis of non payment of rent under an assured shorthold tenancy was entitled to a costs order on an indemnity basis where the tenancy contained a tenant's covenant to "pay and compensate the Landlords fully for any cost expense loss or damage incurred or suffered by the Landlord as a result of the consequences of any breaches of the agreements on the part of the Tenant in this Agreement and to indemnify the Landlords from and against all actions claims and liabilities in that respect."

17. The Respondent also relies on the decision of the Upper Tribunal (Lands Chamber) in (1) *Alexander Christoforou (2) Diogenes & Costas Diogenous v Standard Apartments Ltd* [2013] UKUT 0586 (LC). The lease in that case included a clause which the Respondent claims to be in very similar terms to that of clause 5.17 in the lease of the subject property. The relevant clause (3.22) contained a covenant by the tenants

> "To be responsible for and to keep the Landlord fully indemnified against all damage, damages, losses, costs, expenses, actions, demands, proceedings, claims and liabilities made against or suffered or incurred by the Landlord arising directly or indirectly out of –
>
> > 3.22.1 Any act, omission or negligence of the Tenant or any persons at the Premises expressly or impliedly with the Tenant's authority or
> >
> > 3.22.2 Any breach or non-observance by the Tenant of the covenants conditions or other provisions of this lease or any of the matters to which this demise is subject."

18. The Upper Tribunal held that the clause was sufficiently wide to enable the landlord to recover the costs of tribunal proceedings that it brought under section 27A of the Landlord and Tenant Act 1985 to determine the payability and reasonableness of the service charge which the tenant had refused to pay.

The Applicant's response

19. The Applicant does not deny that he was liable to pay the ground rent. However, he says that the Respondent did not, as it claims, *have to* incur legal costs in order to secure payment of the ground rent. He denies that the action taken by the Respondent was reasonable. He says that Homeground was aware that his home address was in France but chose not to use that address despite their assertion that their internal credit controls had been applied to this case. He says that the *Christoforou* case is distinguishable because in that case the tenant had refused to pay the service charge and it was not unreasonable for the landlord to establish the payability and reasonableness of the charge by making an application to the tribunal under section 27A of the Landlord and Tenant Act 1985. By contrast, as soon as he became aware of the ground rent demand, the Applicant paid the outstanding ground rent. He says that the other charges demanded are therefore unreasonable.

Discussion and decision

20. The issue to be determined is whether the sums demanded by the Respondent from the Applicant, by way of further charges in respect of non-payment of ground rent constitute variable administration charges within paragraph 1 Schedule 11 of the 2002 Act and if so what sum, if any, is payable. A variable administration charge is payable only to the

extent that the amount of the charge is reasonable. (Paragraph 2 of Schedule 11 to the 2002 Act).

21. An administration charge is defined in paragraph 1(1) of Schedule 11 to the 2002 Act as meaning

"...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."

22. In the present case the landlord seeks to recover, in addition to the rent of £150, a late payment charge of £45, demanded in its letter of 3 February 2015; a further late payment and referral charge of £100, demanded in its letter of 20 February 2015 and legal charges of £183 demanded in the letter from JB Leitch of 26 February 2015.

23. The sums demanded clearly fall within the definition of an administration charge contained in sub-paragraphs (c) and (d) of paragraph 1 of Schedule 11 to the 2002 Act. The Respondent's solicitor has suggested that if a charge falls within one or more of sub-paragraphs (a) to (d) the charge is recoverable. However, this argument is untenable. The charge must also be payable in accordance with the terms of the lease or permitted by some other statute. Only if this logically prior question can be answered in the affirmative will the issue of whether the regime in Schedule 11 applies arise. With regard to whether the sums claimed are chargeable under the lease, the Respondent relies on the indemnity covenant in clause 5.17 of the lease whereby the tenant covenanted

5.17 "To be responsible for and to keep the Landlord fully indemnified against all liability made against or suffered or incurred by the landlord arising directly or indirectly out of:

5.17.1 any act omission or negligence of the Tenant or any persons at the Dwelling expressly or impliedly with the Tenant's authority; or

5.17.2 any breach or non-observance by the Tenant of the covenants conditions or other provisions of this Lease or any of the matters to which this demise is subject.

24. The Respondent says that it incurred a liability to pay its solicitors because the need to instruct them arose directly from the Applicant tenant's breach of his covenant to pay the rent and therefore Clause 5.17 enables the Respondent to recover "any costs incurred in pursuing payment of the Ground Rent and Fees." It submits that the costs had to be incurred and are reasonable in amount. The Respondent relies on the decision of the Court of Appeal in *Church Commissioners for England v Ibrahim and another* [1997] 1 EGLR 13. In that case a landlord successfully brought possession proceedings based on arrears of rent, under an assured shorthold tenancy, amounting to £8,000. The question was whether the landlord was entitled to a costs order on an indemnity basis by virtue of clause 9 of the lease which obliged the tenant

to "pay and compensate the Landlords fully for any cost expense loss or damage incurred or suffered by the Landlord as a result of the consequences of any breaches of the agreements on the part of the Tenant in this Agreement and to indemnify the Landlords from and against all actions claims and liabilities in that respect."

25. The court held that, whilst a costs order was within the court's discretion, the contractual right to costs on an indemnity basis, which it found to be contained in clause 9 of the lease provided a sound reason for making an order in such terms, unless there was good reason for not making that order or there was a good reason for depriving the landlord of part of their costs, such reason to be found in their conduct. On the facts of the case it was held that the landlords were perfectly justified in bringing the proceedings and that an order for costs on an indemnity basis was appropriate. But Roch LJ added, "Of course a landlord cannot by contract provide that he should recover a greater sum by way of costs than the costs that he has actually and reasonably incurred."

26. The court held therefore that the costs incurred in that case fell fairly and squarely within the terms of clause 9 of the lease. The indemnity clause in the lease in (1) *Alexander Christoforou (2) Diogenes & Costas Diogenous v Standard Apartments Ltd* [2013] UKUT 0586 (LC). was even more clearly worded so as to permit recovery of the costs of tribunal proceedings claimed in that case. In the present case the Respondent landlord has not initiated any court or tribunal proceedings to recover payment of the charges claimed. Nevertheless, although it could be argued that clause 5.17 of the lease is more narrowly worded than the indemnity clause in the two cases relied on by the Respondent, the Tribunal is on balance persuaded that clause 5.17 of the lease is worded in terms that would permit the landlord to recover costs reasonably incurred, in seeking to recover unpaid rent, albeit that proceedings have not been issued. Such costs can in

principle be said to be a liability incurred by the landlord arising directly or indirectly out of a breach of a covenant in the lease by the tenant.

27. Nevertheless, because such charges are a variable administration charge within Schedule 11 to the 2002 Act, they are recoverable only to the extent that they are reasonable. The Applicant says that they are not reasonable because Homeground knew his address where he lived in France and should have written to him at that address. The Respondent relies on section 166(6) as justification for writing to him at the Property. The Tribunal agrees with the Respondent that it properly complied with section 166 when sending the initial rent demand addressed to the Applicant at the Property. Section 166(6) says that such a notice must be addressed to the tenant at the property unless he has notified the landlord in writing of a different address (in England and Wales) at which he wishes to be given notices under section 166 (in which case it must be addressed to him there). The deed of covenant on assignment did not give an address in England and Wales for the purposes of section 166.

27. However, the Applicant does not deny that he is liable to pay the rent and indeed he has paid it. The questions to be decided are whether Homeground acted reasonably first, in sending chase up letters to an address at which they knew he did not live and second, in instructing solicitors to write to the Applicant. If it did, the secondary issue is the extent to which, if any, the costs incurred were reasonable. The Tribunal does not accept the Respondent's argument that the address provided in the deed of covenant was ineffective for all purposes in connection with recovery of charges arising from the non-timely payment of the ground rent. Section 166 is confined to the notification referred to in that section. The Tribunal agrees with the Appellant that Homeground could have written to him at his address in France before instructing solicitors, who did in fact write to him at his French address. It is instructive to note that in the *Christoforou* case the Deputy President, when construing the lease, said that

> "It is important to consider the specific circumstances in which these costs were incurred ..... Whatever may be the circumstances of other cases, these costs were incurred, as the respondent submits, because the appellants were refusing to pay the service charge and in order to put the respondents in a position to commence proceedings for its recovery.

28. The Tribunal therefore considers that it was not reasonable for the Respondent to have sent reminder letters to the Property when it knew of the Applicant's actual address. Nor was it therefore reasonable to have instructed solicitors when it failed to get a response to those reminders. The Tribunal has accordingly decided that the sums of £45; £100 and £183 are not reasonable and are not payable. It would have been reasonable for Homeground to have written a reminder letter to the Applicant in France and the Tribunal determines that a reasonable charge for their time and cost of postage would have been in the order

of £25. This sum should be paid by the Applicant to the Respondent. A late payment and referral fee of £100 is unrelated to any cost incurred by the Respondent and therefore unreasonable and not payable.

29. The solicitor's charge of £183 was also unreasonable having been unreasonably incurred. The Tribunal would also comment that some of the contents of that letter were unprofessional. For example "In default of payment we have instructions to commence proceedings without further notice or warning incurring further legal costs, court fees and interest for which you will also be liable. It would then be our Client's intention to enter Judgment against you causing both your name and current address to be registered at the Central Register of Courts used by all national credit reference agencies. When seeking to enforce the Judgment our Client will consider all available remedies including our advice on the merits of forfeiture. We suggest you obtain legal advice in this respect."

30. The solicitors were perfectly aware of the fact that forfeiture was not available in this case because of section 167 of the 2002 Act which prohibits that remedy where the unpaid rent and administration charges (excluding default charges as defined in s.166(3)) does not exceed £500.

32. Quite apart from the above determinations, the Tribunal finds that if, as the Respondent claims, and the Tribunal has found, the sums demanded are administration charges for the purpose of Schedule 11 to the 2002 Act, there is no evidence that the Respondent or its solicitors complied with the requirements of paragraph 4 of Schedule 11 to the 2002 Act which provides that

> 4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
>
> (2) The appropriate national authority 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 an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.
>
> (4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

33. The prescribed requirements are set out in the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007/1258. No evidence of compliance was contained in the Respondent's evidence nor was it referred to in the letter of 26 February 2015 from JB Leitch. It followed that the Applicant was entitled to withhold the charges demanded. Furthermore, by virtue of paragraph 4(4) of Schedule 11, the Respondent would not have been

entitled to rely on clause 5.17 of the lease to recover the costs of instructing solicitors in relation to pursuing alleged late payment of such charges.

The Section 20C application

34. Section 20C of the 1985 Act provides that a tenant may apply to...the First-tier Tribunal for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before [the Tribunal] 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.

35. The Tribunal makes the order requested by the Applicant tenant who has been substantially successful in his application.

Annex

Commonhold and Leasehold Reform Act 2002

Section 158 - Administration charges

Schedule 11 (which makes provision about administration charges payable by tenants of dwellings) has effect.

Schedule 11 - Administration charges

Part 1 - Reasonableness of administration charges

Meaning of "administration charge"

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.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3 (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a) any administration charge specified in the lease is unreasonable, or

(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

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

(2) The appropriate national authority 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 an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

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

Liability to pay administration charges

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

Interpretation

6 (1) This paragraph applies for the purposes of this Part of this Schedule.

(2) "Tenant" includes a statutory tenant.

(3) "Dwelling" and "statutory tenant" (and "landlord" in relation to a statutory tenant) have the same meanings as in the 1985 Act.

(4) "Post-dispute arbitration agreement", in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen.

(5) "Arbitration agreement" and "arbitral tribunal" have the same meanings as in Part 1 of the Arbitration Act 1996 (c. 23).

Section 166 Requirement to notify long leaseholders that rent is due

(1) A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice.

(2) The notice must specify—

(a) the amount of the payment,

(b) the date on which the tenant is liable to make it, and

(c) if different from that date, the date on which he would have been liable to make it in accordance with the lease,

and shall contain any such further information as may be prescribed.

(3) The date on which the tenant is liable to make the payment must not be—

(a) either less than 30 days or more than 60 days after the day on which the notice is given, or

(b before that on which he would have been liable to make it in accordance with the lease.

(4) If the date on which the tenant is liable to make the payment is after that on which he would have been liable to make it in accordance with the lease, any provisions of the lease relating to non-payment or late payment of rent have effect accordingly.

(5) The notice—

(a) must be in the prescribed form, and

(b) may be sent by post.

(6) If the notice is sent by post, it must be addressed to a tenant at the dwelling unless he has notified the landlord in writing of a different address in England and Wales at which he wishes to be given notices under this section (in which case it must be addressed to him there).

(7) In this section "rent" does not include—

(a) a service charge (within the meaning of section 18(1) of the 1985 Act), or

(b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).

(8) In this section "long lease of a dwelling" does not include—

(a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,

(b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or

(c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).

(9) In this section—

- "dwelling" has the same meaning as in the 1985 Act,
- "landlord" and "tenant" have the same meanings as in Chapter 1 of this Part,
- "long lease" has the meaning given by sections 76 and 77 of this Act, and
- "prescribed" means prescribed by regulations made by the appropriate national authority.

Section 167 Failure to pay small amount for short period

(1) A landlord under a long lease of a dwelling may not exercise a right of re-entry or forfeiture for failure by a tenant to pay an amount consisting of rent, service charges or administration charges (or a combination of them) ("the unpaid amount") unless the unpaid amount—

(a) exceeds the prescribed sum, or

(b) consists of or includes an amount which has been payable for more than a prescribed period.

(2) The sum prescribed under subsection (1)(a) must not exceed £500.

(3) If the unpaid amount includes a default charge, it is to be treated for the purposes of subsection (1)(a) as reduced by the amount of the charge; and for

this purpose "default charge" means an administration charge payable in respect of the tenant's failure to pay any part of the unpaid amount.

(4) In this section "long lease of a dwelling" does not include—

(a) a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,

(b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or

(c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).

(5) In this section—

- "administration charge" has the same meaning as in Part 1 of Schedule 11,
- "dwelling" has the same meaning as in the 1985 Act,
- "landlord" and "tenant" have the same meaning as in Chapter 1 of this Part,
- "long lease" has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant's total share,
- "prescribed" means prescribed by regulations made by the appropriate national authority, and
- "service charge" has the meaning given by section 18(1) of the 1985 Act.