



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

Case reference : **LON/00AC/LSC/2019/0138**

Property : **9 Cousins Court, 3 Alwyn Gardens,
London NW4 4XW**

Applicant : **Holding & Management (Solitaire)
Limited**

Representative : **Rebecca Ackerley instructed by J.B.
Leitch**

Respondent : **Leslie Stafford Miller**

Representative : **Self**

Type of application : **Referral of claim from county court
and/or for the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Judge Hargreaves
Marina Krisko BSc FRICS**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR
5th June 2019**

Date of decision : **24th June 2019**

DECISION

1. In relation to the claim under the service charge account in respect of replacement windows and front door at Cousins Court the Tribunal determines that a reasonable amount for the Respondent to pay is (i) £280 including VAT and (ii) in respect of surveyors' fees and associated costs of that project the sum of £224.36 including VAT (totalling £504.36) (as particularised below).
2. No administration charges are recoverable (as particularised below).
3. Further or alternatively the claim for £1056 (or the balance thereof after deduction of any claimed administration fees) described in the county court claim form as "legal costs incurred to date in connection with the default" is refused on the grounds that it is irrecoverable (particularised below).
4. The claim for interest on unpaid arrears is refused whether under s69 County Courts Act 1984 or pursuant to the lease.
5. If required, and for the avoidance of doubt, an order is made under *s20C LTA 1985* in favour of the Respondent on the grounds that it is just and equitable to make such an order.
6. The Respondent's counterclaim is struck out and/or dismissed.

REASONS

1. All references are to pages in the Applicant's trial bundle save where otherwise made clear. Where appropriate, references are made to documents in the Respondent's bundle (prefixed by "R"). As to the Applicant's bundle, it contained multiple versions of basic documents (such as the lease), and omitted any evidence relating to the relevant point. As the Applicant's managing agent only managed to provide relevant information by dint of being allowed nearly two hours to track down the critical evidence by telephone, and the Tribunal was prepared to accept her evidence as to the content of documents emailed to her, it is fair to repeat, so that those who prepared the bundle are aware, that little thought had gone into making the bundle user friendly or relevant to the issues at the heart of the Respondent's resistance to paying the charges demanded of him (when it is perfectly clear from the documentation in front of us that he is anything but a persistent defaulter and has been careful to pay what he thinks is properly due and owing even if his approach is not the most straightforward).
2. The Applicant's failure to prepare its case properly needs to be emphasised given that we were only able to really deal with the case effectively after the required adjournment had been granted so that the Applicant could provide the Tribunal with basic information, and it was all the more remarkable because the figures provided equated to the information which the Respondent had been asking for for months. It is no real answer for a firm of solicitors to argue that the Respondent did

not plead his case properly: they are professionals, he is not. If it was obvious to us on reading the papers for the first time today what the crux of the dispute was, it must have been clear to them, or should have been. There was a failure on behalf of the Applicant to focus on the issue and decide how to address it efficiently in advance of the hearing. This is relevant not only to an investigation of the parties' respective merits but also to the point as to whether the Applicant is entitled to recoup its costs of this exercise.

3. We wish to stress however that the Respondent, and Mr Rivlin, who was assisting him, were positive in their praise for Emily Ruggieri who attended the hearing on behalf of the managing agents, First Port Property Services: their criticisms of the Applicant did not extend to her personally, and we have noted that she was instrumental in providing the Tribunal with the evidence we needed during the course of the day.
4. It follows that more needs to be said by way of background, both procedurally and as to the dispute. To be clear, the Respondent does not contest ordinary ie the usual estate or block service charges.
5. The Respondent is the leaseholder of 9, Cousins Court, a one bedroomed flat in Hendon (office copy entries at p176). He has owned the flat since 1994. It is one of a three storied block, with four flats per floor. It has one door and three windows, being a one bedroomed flat. All the flats in Cousins Court have three windows, but flats 5 and 8 have one each that are slightly bigger than the others. Cousins Court is one block on an estate which consists of twelve blocks with twelve flats each, and six with six flats each. In addition, there are some houses on the estate, but we are not concerned with those today. The reversions are owned by the Applicant (p160) and they are managed by First Port Property Services: the Respondent complains that this is merely a change of name to hide unsatisfactory management, but that point does not assist us to determine the case and we have put that to one side as irrelevant.
6. The lease is at p27. It was agreed at the hearing by all parties that the windows (but not the glass) are excluded from the definition of the flat: see *clause 1.3, Part I, First Schedule*. Therefore, the window frames fall within the Applicant's repairing covenant and within the remit of the service charge: see *clause 4, Fifth Schedule*. See for example *paragraph 1(b) Fifth Schedule*. In addition, the service charge includes the costs of managing the block: *paragraph 5(a), Fifth Schedule*.
7. The Respondent's service charge obligations are, briefly, as follows. The basic obligation is to pay the service charge (as defined) by two equal instalments in advance on half-yearly days and subsequently as adjusted: see *clause 3*. The contractual obligation to pay interest on arrears is at *paragraph 2(a), Third Schedule* and *paragraph 2(b)* obliges the Respondent to pay "On a full indemnity basis all costs and expenses incurred by [the Landlord] ... in connection with any

proceedings taken against the Lessee to recover any rents Service Charge Maintenance Adjustment or other monies payable by the Lessee under the terms of this Lease.” See also paragraph 2, Part II, Fourth Schedule which defines the Annual Maintenance Provision.

8. The Respondent’s share of the block provision is 8.3334% and his share of the estate charge is 0.3448%.
9. Turning to the pleadings, the situation is as follows. On 15th January 2019 the Applicant issued a claim form (F6CW9461, at p1), claiming the sum of £2,440.47 from the Respondent. This was pleaded as (i) arrears of (ground) rent, service and administration charges, interest and fees due under the lease amounting to £1123.03 (ii) 8% pa statutory interest pursuant to s69 *County Courts Act 1984* at £76.44 to date and then 23p per day (iii) in the alternative, contractual interest (not particularised) (iv) legal costs payable under the lease amounting to £1056. The claim form was stated to be the first step in potential forfeiture proceedings. In his defence (p3) the Respondent alleged that the £1123 was a claim for his contribution to replacement windows (etc) when he had previously paid £200 for permission to install new windows in his flat himself. He basically challenged the propriety of the claim and the other charges for that reason. He counterclaimed the sum of £490 plus interest for distress/damage to health and paid a counterclaim fee of £50.
10. To focus on the real issues, while we sympathise with the Respondent’s sense of personal grievance for being sued for arrears for the first time in his life, his counterclaim discloses no cause of action and is struck out. Alternatively, there is no evidence to support his claim, and alternatively, it would be wholly disproportionate in the context of this dispute to allow it to continue. The Respondent will, we hope, be satisfied with having made out his main argument (see below).
11. The Applicant filed a relatively detailed Reply and Defence to Counterclaim in the county court proceedings, see p14, but which repeated its entitlement to the sums claimed without responding to the windows point substantively. Two further claims were added to those set out above including (iv) £105 court fee and £80 solicitors fixed costs. The Applicant clarified that the main claim was for arrears of service charge and administration fees only (not ground rent) and sought an order striking out the Defence and the Counterclaim on the grounds that they disclosed no reasonable cause of action. The county court claim was transferred from Barnet to Gee Street (Clerkenwell & Shoreditch) on 21st March 2019 (p292-3). The critical direction of District Judge Rand dated 29th March 2019 is not in the bundle but states: “This claim be sent to the First-tier Tribunal (Property Chamber)”. Dealing with that order on the face of it, we have decided that the District Judge intended to pass the whole of the claim to the Tribunal, otherwise he would have made that clear (eg if limited to a s27A unreasonable charges claim). We therefore intend to deal with the whole of the claim, having already disposed of the counterclaim. The

Tribunal has jurisdiction over service charges and administration fees and it would be wholly disproportionate not to make final decisions after a lengthy day in court. The fact that Judge Brilliant in his Tribunal directions on 10th April 2019 treated the case as a referral under s27A does not prejudice either party if we do this, particularly since Judge Brilliant referred to the whole of the claim for £2,255.47 in paragraph 5 of his directions, thereby making that the subject matter of the directions in question. So it should have come to no surprise to the Applicant that we expected evidence about that whole amount.

12. The Respondent's handwritten statement of case is at p78. It is not a masterpiece of legal clarity but it explains that having asked the managing agents to replace windows due to their poor state on about 28th March 2014, he finally paid a sum of £200 for permission to install his own three replacement windows at a cost of £1920 in February 2016, and so his response to the service charge demand for a contribution to reserves in September 2017 which was calculated on the basis that he would have to contribute to replacement windows for the rest of the block, was to deduct 50% and pay the balance. He added that he was not the only person to be affected by a charge despite having replaced windows at his own expense: five out of twelve flats in Cousins Court had adopted this pro-active approach (and used the same contractor). So began the saga which ended up with the Respondent being sued for an unpaid service charge balance. In our judgment whether the demand was on account or a contribution to reserves makes no difference to the point of principle we have decided. The letter of consent and invoice for £1920 are at p91-92. The Respondent's explanatory letter of 16th November 2017 is at p93 and he is basically stating that being asked to pay twice for replacement windows, his own and then other people's, is unfair, particularly having paid £200 for permission to do so. Letters exhibited by the Respondent show that he stated his position with firmness from November 2017-July 2018.
13. All the flats in the block are the same except flats 5 and 8 which each have one window which is slightly bigger than the others. Each block has one communal window which was replaced plus the glass round the front door to the block.
14. The Applicant's statement of case with related documents starts at p130. Counsel accepted that the arrears as set out on p130 were "not quite accurate" (they total £917.91 for a start) and in relation to one administration charge (1st October 2018 for £60) no lawful demand had been made. The other administration fees are for two £60 charges relating to demands dated 23rd April and 9th July 2018, again not matching the county court claim form. In responding to the Respondent's statement of case the Applicant sets out the relevant provisions of the lease and the position it adopted at the hearing: the Respondent's decision to replace his own windows does not affect his contractual liability to contribute to the block service charge which includes replacement windows for the other seven flats, though the Respondent benefited from the fact that the costs were overall reduced.

See eg letter 25th July 2017 at p221, p227, paragraph 13. It is not altogether straightforward to isolate the relevant disputed figures from the demands exhibited by the Applicant at pages 137-145.

15. By way of further background, it is clear from the first s20 notice sent to the leaseholders that the plans to replace the windows were estate-wide, and would not affect “previously installed uPVC units”: p230-231. See the second s20 notice stating the Respondent’s share would be £1569.77, p233-234, p235, p238, p241.
16. Details of the contract price for the estate works are at p242: the contractor’s price ex VAT was £336,544.34, plus the surveyor’s fee at £13,125.23 and the contract administration fee at £20,529.20, totalling (inc VAT) £447,018.44. The evidence (from the managing agent orally) is that the charges for the block were for the replacement windows (ie 7x3=21 for this block), as well as glass round the front door, the front door, and a communal window. The evidence did not help on block charges.
17. In the end, and as a consequence of adjourning to make inquiries, the Applicant produced a figure of £20,121.30 including VAT as attributable to the Respondent’s block’s costs of replacing 21 windows, the door, and communal glass, as well as fees. We accept that figure as correct for the purposes of considering the reasonableness of the service charges. There is no issue as to the reasonableness of the decision to replace the windows etc, or with the overall price.
18. Ms Ackerley’s skeleton argument accepts at paragraph 15 that the Tribunal can decide whether the amount re-charged to the Respondent for the replacement windows is reasonable, but maintained that the decision to re-charge incurred costs which were reasonably incurred and with no evidence to suggest an unreasonable price, it follows that the Respondent’s challenge must fail. She argued that the burden of proof as to unreasonableness fell on the Respondent and he could not discharge it. Ms Ackerley did not approach the question the way we did, and with respect to the details of the authorities she cited, they do not assist on the approach or the point we decide, being fact specific and relating to different circumstances.
19. We have considered the question carefully. In our judgment it was unreasonable to re-charge those leaseholders such as the Respondent with a share of the costs of the 21 windows required for the other seven flats in the block. The Applicant had already benefited by the works undertaken by the Respondent. The other leaseholders who had not funded their own replacement windows would benefit disproportionately and for no good reason that the Applicant could identify, if the other five leaseholders subsidised their replacement windows. The decision to leave those recently replaced windows alone evidences that the replacements carried out previously were perfectly acceptable to the landlord.

20. Apart from construing the service charge provisions to make the Respondent liable as a matter of blanket application of those provisions, the Applicant could not explain why it was reasonable for a leaseholder in the Respondent's position to make a contribution to the other seven flats' windows when he had already borne the cost of his own replacement windows. The decision to make the re-charge was not reasonable. Part of the charge is unreasonable within s27A.
21. That means we now have to determine what is a reasonable charge for the replacement windows scheme for the block.
22. Of the sum of £20,121.30 including VAT attributable to the block charges (see paragraph 17 above), £11748 inc VAT was attributable to 21 windows, £3360 inc VAT was attributable to the communal window and the replacement front door, and £5013.30 inc VAT to fees. The evidence supplied by the Applicant was that these figures broke down as follows. Each of the standard size 19 windows replaced was £410 plus VAT ie £492, and the two larger windows (flats 5 and 8), £1000 plus VAT (£1200) each. Total costs for the 19 windows are £9348, to which we add the £2400 for the larger windows: £11, 748. That sum is divided by the seven flats in which these were installed.
23. But the Respondent is clearly liable for the reasonable costs of the communal window and the front door, to which we allocated the sums of £800 plus VAT and £2000 plus VAT respectively. That totals £3360. The Respondent's one twelfth share of £3360 is £280 including VAT.
24. The next step is to calculate what the Respondent should reasonably pay for his share of the fees, which are £5013.30 inc VAT for the block or £40,385 inc VAT for the estate (see p242, this being the total of the surveyors' fee plus the contract administration fee plus VAT). Again we consider that it is reasonable to apportion these to reflect the less attention required as far as the Respondent's flat is concerned.
25. Dividing the block price by 12 produces a figure of £417.78 which we consider unfairly high and therefore unreasonable to the Respondent. In the event we consider it reasonable to take the estate costs and divide by 180 units (12.41%), so that the Respondent pays £224.36 inc VAT towards fees. We rejected a third approach (dividing the £40,385 by 0.3448%) which produced a figure of £140, as too low.
26. In the circumstances the Respondent has made out his challenge to the reasonableness of the charges in respect of the replacement windows. In our judgment, it is fair and equitable, having heard the evidence (or finally having managed to extract the relevant figures from the Applicant), to make a s20C order. At the end of the hearing, the Respondent was invited to apply for an order under section 20C of the 1985 Act. With this procedural background, he could not have done so (easily) before then, particularly as a litigant in person. It is plainly just and equitable in the circumstances for an order to be made, so that the Respondent may not pass any of its costs incurred in connection with

the proceedings before the Tribunal through the service charge. The Applicant failed to grapple with the nub of the Respondent's entirely reasonable challenge prior to issuing court proceedings and in the context of this referral from the county court. It took an unmeritorious position and came unprepared to meet the Tribunal's obvious questions. As the Respondent observed, he finally obtained the information he had asked for previously: the challenge to his proper share was well outlined before the end of 2017 (see correspondence in the Respondent's bundle eg December 2017).

27. That leaves the question of the administration charges. Again, while we accept that these are recoverable in principle from the Respondent, they have to be reasonable under the relevant provisions of the *Commonhold and Leasehold Reform Act 2002*.
28. The charges are claimed under *paragraph 2(b), Third Schedule*. Again it was impossible to reconcile the amount in the claim form of £1056 with any useful evidence in the bundle. That is troubling. Reference was made to the chasing letter dated 23rd April 2018 at p310, see p314, and an administration fee of £60 for sending the letter. A further legal review fee was charged on 15th July 2018: see p302. Despite providing the Applicant's representatives with time to justify how the £1056 came about, no proper explanation was forthcoming. It is a substantial sum when the only evidence in the bundle for any demands at all are for the two described above for £120, and in respect of those we are at a loss to see what justification there is for a £60 charge. No invoices were supplied to explain the charges and there was no description of the work done to justify them. It follows that there is no evidence to sustain the claims and they must be dismissed as unreasonable. These sums were plainly part of the claim referred to the Tribunal. The Applicant could and should have been prepared to support them, particularly given the proportionality with the service charge sums in dispute and as we have now quantified them appropriately within s27A. Its representatives could not, with predictable consequences.
29. As the result of our determination, there are no grounds for allowing interest on the sums as claimed, whether statutory or contractual, the charges having been incorrect and/or not evidenced. In the circumstances the Applicant is not entitled to recover the court fee or the solicitors' costs either.

Judge Hargreaves

Marina Krisko BSc FRICS

24th June 2019

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

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).