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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AN/LSC/2016/0074**
Property	:	**13 Mark Mansions, Westville Road, London W12 9PS**
Applicant	:	**Mr Richard Huard (Leaseholder)**
Representative	:	**In Person**
Respondent	:	**Mark Mansions Limited (Freeholder)**
Representative	:	**Mr Kris Karol of The Residents Management Company Ltd**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Tribunal Judge Richard Percival** **Mr M A Mathews FRICS**
Date and venue of Hearing	:	**27 June 2016** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**22 August 2016**

DECISION

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge year to March 31 2014.

2. The relevant legal provisions are set out in the Appendix to this decision.

The property

3. The property is a two bedroomed flat on the second floor of a purpose built block built in about 1905. There are 36 flats in the building.

The lease

4. By the lease, made for 999 years in 2005, the Applicant covenants to pay 2.78% of the total costs incurred by the lessor in (among other things) complying with its covenant to insure; the maintenance, repair etc of the structure of the building, its pipes and cables and the common parts; the redecoration of external windows and doors; and staff, managing agents' and legal costs (clause 2(2)). Detailed provision is made for the collection of the service charge, including an interim charge.

5. The service charge obligations are mirrored in the Lessor's covenants. The insurance covenant requires the Lessor to "keep the Building ... insured against loss or damage by fire and such other risks as the Lessor may from time to time think fit under such policy or policies as the Lessor may from time to time in its absolute discretion select ...". The "Building" is defined as "the Block of flats and all structures ancillary thereto known as Mark Mansions ...".

6. The Applicant had previously held another lease of the same flat. We were told that 35 of the 36 lessees had leases in similar terms.

7. Mark Mansions Limited is owned by the leaseholders. It acquired the freehold in 2003.

The hearing and the issues

Preliminary

8. The Applicant leaseholder represented himself. The Respondent was represented by Mr Karol, of the managing agents. Also present were Mr

Grotch and Mr Hampson, the Secretary and a director respectively of the Respondent, and Ms Doherty, also of the managing agent.

9. In accordance with the directions given at the Case Management Conference, the parties had compiled a Scott Schedule setting out the issues between them. The hearing proceeded by following the order of the Scott Schedule. In some cases, the issue was effectively resolved by exchanges on the Schedule or before us. In a number of cases, it was, or became, apparent that items on the Schedule were not truly in issue, but rather amounted to demands from the Applicant for information from the Respondent. Item 1 on the Schedule was a generalised challenge to the reasonableness of the service charge upon which we were not addressed.

Items 2 to 5: repairs to individual flats covered by the Respondent's insurance

10. Each of these items related to costs charged to the service charge in respect of repairs to individual lessees' flats which were covered by the Respondent's insurance.

11. The relevant costs were £993 for item 2 and £180 for item 3. Items 4 and 5, it transpired, related to a single incident in respect of which an insurance claim was paid. The cost to the service charge was therefore the excess on the policy, £250. The total cost under this heading is thus £1,423, in respect of which the Applicant's contribution must have been £39.55.

12. The Applicant put his case on the basis that, in each case, the damage had been caused by a leak in a pipe, or an appliance, *within* a flat, which resulted in damage to another flat. He referred to the lessor's obligations to keep such pipes in good repair in clause 2(8) of the lease. The Respondent agreed that a similar covenant appeared in the other leases. On this basis, the applicant submitted that the damage caused to one flat by another flat was, in each case, a matter for the two leaseholders concerned, and not something attributable to the service charge.

13. Mr Karol for the Respondent said that the insurance cover obtained by the freeholder included such lessee-to-lessee risks. He conceded that, in doing so, the insurance covered risks that would not be otherwise born by the Respondent; and that such risks were not directly covered by the lessor's covenant to insure. He referred us to a letter from Lansdown Insurance Brokers which stated "in line with most Residential Property insurance policies, Ecclesiastical's [the insurer's] contract provides cover for all parties who have a financial interest in the property ie freeholders/owners/ leaseholders/mortgagors etc".

14. The leaseholders' names were on the insurance policy, he said, and any one of them could make a claim where such damage occurred. This presented dangers. Mr Karol said he was aware of a block of ten flats in North London in respect of which the annual building insurance was about £30,000 a year, because of multiple small claims lodged by individual flat owners. The Respondent therefore considered that it was incumbent on it to control and organise the claims under the policy. Part of doing so was to pay for moderate reasonable claims that would otherwise fall to be claimed under the insurance, to avoid inflating the premium in subsequent years, and to pay the excess where claims were made. Such payments were subsequently collected under the service charge. Item 2 fell into the first category and 4/5 fell into the second. In item 3, the cost of repair was less than the excess, so no issue of claiming arose.

15. In connection with the renewal of the insurance policy, the Respondent did, through its broker, test the market every year for the best deal. It appeared, however, that this market testing was always on the basis of the extended cover described above, rather than cover limited to the Respondent's strict responsibilities under the lease.

16. Thus what had appeared (quite understandably) to the Applicant to be an issue about the relative responsibilities of the lessor and the lessees under the lease in relation to repairs resolved itself into a dispute about the approach of the Respondent to its responsibility to insure.

17. The Respondent's submission amounts to the claim that it is cheaper to "over-insure" (that is, to accept a standard policy that insures lessee-to-lessee risks as well as risks properly covered by the Respondent's covenant to insure), even where doing so means that, in all prudence, the Respondent must also pay out of the service charge for repairs that would otherwise fall to a lessee.

18. We conclude that this is not, at least prima facie, a reasonable approach to the Respondent's obligation to insure the building. It involves insuring more risks rather than fewer, which at least on the face of it should be more expensive; and it also involves the (uncertain) cost of controlling future premiums by paying for repairs that are not the responsibility of the Respondent.

19. It may be that it is, indeed, a reasonably common practice, as the Respondent's broker suggests. It would become a reasonable approach if the Respondent had compared the cost of this approach – that is, the cost of the over-insurance plus the cost of consequential small repairs – with the alternative of only insuring those risks which it falls to the lessor to insure under the lease. But the evidence did not suggest that that was in fact the approach adopted by the Respondent. However, even if the over-insurance approach could be shown to be reasonable after such an enquiry, it is difficult to see how payment of two of the

three examples (all being cases where the risk insured did not fall on the lessor) before us – an excess where an insurance claim *was* made; and where the claim was lower than the excess – would fall to be charged to the service charge, as they could have no impact on future premiums.

20. It may be that a single insurance policy covering risks falling on both lessor and lessees might be a more economically efficient way of discharging both the lessor's obligations under the lease and the lessee's desire to insure their own risks. But that – insofar as it went beyond the lessor's responsibilities under the lease – would amount to a voluntary arrangement between the lessor and the lessees, not an obligation under the lease chargeable to the service charge.

21. However, no doubt because it was only at the hearing that the question resolved itself into an issue about insurance rather than an issue about repair costs, we had no evidence as to the proper cost of insurance. The only alternative available to us is to quantify the issue by reference to the costs associated with the repairs itemised on the Scott Schedule.

22. *Decision*: The approach adopted by the Respondent to its obligation to insure the building was not reasonable. As a consequence, the Applicant is not liable for the element in his service charge attributable to the repair costs set out in the Scott Schedule.

23. The Applicant made other points in relation to the repair costs relating to items 4 and 5. It is not necessary for us to consider them, as a result of our decision above.

Items 6 and 7: Landlord and Tenant Act 1988, section 20 issue

24. In about May 2013, it became apparent that there was significant damp ingress into two adjacent ground floor flats, flats 9 and 10. In flat 10, in particular, the damp had resulted in the floor joists rotting. The bottom of the external wall was covered with a plaster plinth. Concrete slabs tightly abutted this plinth. The opinion of the structural engineer instructed by the Respondent was that the water ingress was a result of the fact that the concrete slabs had elevated the external ground level, and that the plinth was porous. Proposals were made to repair/replace the damaged joists, to provide a damp proof course and to cut back the concrete slabs to reduce the external ground level, and back fill with pea-shingle.

25. The work was carried out, to an eventual cost of £7,496.76.

26. Following the completion of the work, the lessee of flat 10 engaged builders to refurbish the kitchen (in fact, it appears that work preliminary to this refurbishment had revealed the damp problem in the first place). As a result of plaster being stripped from the walls,

structural defects to an external wall were revealed – some brick work was missing with the result that a lintel holding up an arch above a window was not properly supported.

27. The cost of rectifying this defect came to £1,750.00.

28. The sum of these two costs would amount to the equivalent of £256.85 per flat.

29. The Applicant submitted that these two costs were, in truth, attributable to a single set of works, and that there accordingly should have been a consultation process under section 20 of the 1985 Act. The effect would be to reduce his service charge liability by £6.85.

30. We conclude that the two sets of work were separate, and the Respondent was not obliged to undertake a consultation process. The defects were discovered at about the same time (although the second a month or more after the first). But a defect to brickwork affecting a lintel is quite different from a defect at ground level causing damp ingress.

31. In any event, the Respondent asked us, in the alternative, to dispense with the consultation requirements under section 20ZA of the Act. Had we not concluded that the two sets of work were distinct, we would have acceded to his application for dispensation. The discovery of the defects in the brickwork in flat 10 created a situation of urgency that it was right that the Respondent rectified immediately. There was no identifiable prejudice caused to the Applicant as a result of losing the opportunity for consultation.

32. *Decision*: The works described under item 6 were different from those described under item 7. Accordingly, their costs should not be summed so as to trigger a requirement to consult under section 20 of the 1985 Act. Had that not been so, the Tribunal would have granted the Respondent a dispensation from consultation under section 20ZA of the Act.

Item 6: Lessor's responsibility for defects

33. The Applicant submitted that the concrete slabs were, or may have been, placed as they were by either the lessees, or by a predecessor in title of the lessees. The managing agent should have entertained this possibility, and taken action against one or the other. Asked what proportion of the remedial work should have been attributed to the lessee, he suggested £500, in respect of the cutting back of the concrete slabs.

34. The Respondent thought that the slabs had "always been there". There was some argument about whether all or some of the other ground floor

flats had the same or similar slabs externally. We did not consider it necessary to resolve the question.

35. We are not satisfied on the evidence that the damp ingress was in any part the responsibility of either lessee. If it had been the responsibility of one or both of their predecessors in title, it was certainly within the bounds of a reasonable judgement by the managing agents not to pursue them.

36. *Decision*: The expenditure on remedying the damp ingress to flats 9 and 10 was reasonably incurred.

Item 8: Additional management fees

37. The Applicant objected to a payment of £1,103.40 to the managing agent in fees additional to its standard rate of £215.00 (including VAT) per unit. The relevant invoice (dated 8 September 2014) described the fees as relating to "major works". The Applicant points out that in the contract between the Respondent company and the managing agent, "major works" are defined as works for which a consultation process under section 20 of the 1985 Act is required. These fees cannot apply to such works.

38. The Respondent responded that the additional fees were agreed with the directors of the company in each case. They charged additional fees in respect of works, usually works valued at over £500, which were not otherwise inspected by paid professionals. They were approved under a specific provision in the contract headed "additional fees".

39. It is perhaps unfortunate that the managing agent used the term "major works" in the invoice. However, the defining provision limiting that term to works attracting section 20 consultation is limited to the use of the term in the contract. We are satisfied that the charges were authorised and properly payable under the agency agreement. The Applicant raises no issue on the merits of these payments, the contractual position aside.

40. *Decision*: The costs incurred by the managing agent as additional fees were reasonably incurred.

Items 9 to 11: Various legal costs

41. It became apparent during the hearing that these items were recorded as charged to the service charge account merely as an accounting device. The fees were subsequently charged to the individual lessees concerned as administration fees and the relevant sums credited to the service charge account. There was accordingly no cost associated with them in the service charge.

Item 14: Accountancy fees for PAYE

42. At the relevant time, the salary of a part-time employee was chargeable to the service charge. The accountant also responsible for certifying the service charge accounts undertook the task of dealing with the PAYE for this employee. The employee's take-home monthly pay was, the Respondent said, about £520 a month. The accountant charged £1,750 plus VAT a year to process this sum.

43. The Applicant obtained a quotation from a local accountant for the same service at a cost of £180 plus VAT a year. The Applicant submitted that the Respondent should use a cheaper local accountant, rather than Begbies, a City of London firm, to undertake this function.

44. The Respondent said that they had used a local firm, but it had been taken over some years ago by Begbies, and they had continued to use the same accountant in the City firm. He said that it had been explained that the cost was so high because of the complexity of dealing with tax credits in relation to the employee. The Respondent had not market tested accountancy services. Mr Karol saw benefits in continuing to use the same person, he said.

45. By any account, the charge for administering this small sum is disproportionate. We see no reason why the Respondent does not market test accountancy services at least on a periodic basis. The quotation obtained by the Applicant illustrates the savings that might be obtained if it did so. A local firm may well be better placed to deal with complexities such as tax credits than one based in the City of London.

46. *Decision*: The fees charged to the service charge in respect of accountancy fees in connection with the PAYE of a part-time employee were not reasonably incurred. A sum of £180 plus VAT should be substituted.

Item 15: Accountancy fees for preparation of service charge accounts

47. Initially the Applicant appeared to be suggesting some irregularity relating to fee charged for the preparation of the service charge account. He had obtained an alternative quotation for the service, but it was considerably more than that actually charged by the Respondent's accountant. It transpired at the hearing that there had been an error attributable to the managing agent, rather than the accountant, in presenting the accountant's fee in the service charge accounts. The Applicant submitted that the managing agent's fee should be reduced by £200 to reflect the error.

48. The managing agent made an unfortunate but minor error that did not result in any additional cost to the lessees.

Decision: The cost of the accountants in respect of the preparation of the service charge accounts was reasonably incurred; and the error made by the managing agents in the presentation of the accounts does not warrant a reduction in their fee.

Item 16: the per unit management fee and additional fees

49. The Applicant's submissions sought to test the reasonableness of the fees, but in the event, merely asked the Tribunal to give "guidance" to the managing agent as to how its fees should be presented. It is not the function of the Tribunal to give such guidance on an application under section 27A of the 1985 Act.

Items 17 to 23, 26 and 27

50. The Applicant addressed the Tribunal on these items, all of which are formulated as questions on the Scott Schedule. In no case, however, was there a clear challenge to the reasonableness or payability in respect of the service charge for the Tribunal to adjudicate.

Item 24: The accountants

51. Presented on the Scott Schedule as a question about the relationship between the accountants and the managing agent, at the hearing the Applicant claimed that the cost of accountancy services in respect of the auditing of the service charge accounts was low (compared to a local accountant's quotation) because the accounts themselves were inadequate. He suggested that their fee should be halved to reflect this inadequacy.

52. His claim was based on the submission that the managing agents fees were not transparent, because of the separate invoicing for additional fees, and that a payment in respect of an insurance claim was inadequately represented. The Applicant's concern, it appeared, was primarily motivated by the fact that the accountant retained to audit the service charge account was also the managing agents' own accountant.

53. This is nothing inherently improper in the managing agent using its own accountant to audit the service charge account, provided its fees are reasonable. The Applicant did not provide any evidence that the fees were unreasonable.

Decision: The accountancy fees for the auditing of the service charge account were reasonably incurred.

Application under section 20C of the 1985 Act

54. At the end of the hearing, the Applicant made an application for an order under section 20C of the 1985 Act that the costs of the hearing should not be charged to the service charge.

55. The Applicant addressed us on his difficulties in understanding how the service charge had been arrived at, and submitted that he had been forced to take proceedings in the Tribunal to extract the relevant information and explanations from the Respondent.

56. Mr Karol, for the Respondent, argued that they had provided the Applicant with everything he had asked for, and had spent a considerable time attempting to assist him, as had the directors of the Respondent company.

57. The extent of success before us is not determinative of whether we should make an order under section 20C, but it is an important consideration. In this case, while the Applicant has been successful to some degree, the preponderantly successful party is the Respondent. It will be unusual for an order to be made against a successful landlord.

58. However, in this case, we have considerable sympathy with the Applicant's submissions. It is clear that relations between the Applicant on the one hand, and the managing agents and directors of the Respondent company on the other are somewhat strained. Nonetheless, the Tribunal shared some of the Applicant's frustration in understanding the way that the service charge had been calculated and recorded. On a number of occasions before us, the Respondent as well as the Applicant found it necessary to refer to the (impeccably) handwritten notes that the Applicant had written at a meeting at the managing agents offices to explain elements of the service charge. On occasions, explanations were not as immediately clear as Mr Karol clearly thought they were. No doubt there is fault on both sides. But it does seem to the Tribunal that, at least in some respects, the Applicant *did* need to embark upon these proceedings to establish certain matters clearly. That, when clarified, the expenditure concerned largely turned out to have been reasonably incurred, does not detract from that.

59. *Decision*: Accordingly, we order under section 20C of the 1985 Act that *half* of the costs of these 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 Applicant.

Name: Tribunal Judge Richard Percival **Date:** 22 August 2016

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).