



9007

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

Case Reference : LON/00BB/LSC/2013/0096

Property : 175 Tradewinds ,Wards Wharf
Approach, North Thames Road London
E16 2ER

Applicant : OM Property Management
Limited("OM")

Representative : Urang Property Management Limited

Appearance for Applicant: : Mr James Mark (Senior Property
Manager Urang Property Management
Limited)
Mr Graeme Keenan (Property Manager
Urang Property Management Limited)

Respondent : Mr Antoine Guy and Miss Laura Ruiz
Bussion

Representative : In person

Appearance for Respondents: Miss Laura Ruiz Bussion

Type of Application : **DECISION OF THE LEASEHOLD
VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTIONS 27A &
20C OF THE LANDLORD AND TENANT
ACT 1985**

Tribunal Members : Ms N Haria LLB(Hons)
Mr M C Taylor FRICS
Mrs L L Hart

Date and venue of Hearing : 13 June 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 5/07/2013

DECISION

(NB: Unless otherwise stated: the numbers in the square brackets correspond to the page numbers in the papers produced by the parties)

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £10,752.61 is payable by the Respondent to the Applicant in respect of the service charges for the years 1 March 2009 to 31 August 2012 as detailed in this decision.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (3) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Bow County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 1st March 2009 to 31 August 2012.
2. Proceedings were originally issued in the Northampton County Court under claim no. 2QT75491. The claim was transferred to the Bow County Court and then in turn transferred to this Tribunal, by order of Deputy District Judge Woodcraft on 28 January 2013. The order requires the Tribunal to conduct an "investigation of reasonableness of all sums claimed by the claimant" under s.27A of the 1985 Act.
3. The Tribunal noted that although the County Court Claim names the defendants as Mr Antoine Guy and Miss Laura Ruiz Bussain, the correct spelling of the second defendant's name is in fact Miss Laura Ruiz Bussi3n
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant was represented by the persons named on the front of this decision at the hearing. Miss Bussi3n appeared in person and represented Mr Guy at the hearing.

The background

6. The property which is the subject of this application is a flat on the 7th Floor of one of four buildings known as Tradewinds situated on Wards Wharf Approach together with parking space number 84. The buildings comprise a total of 251 units. The Estate includes the four blocks of flats surrounded by grounds, car parking and includes a gymnasium and a business centre.

7. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Respondents hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The liability to pay and the reasonableness of service charges for the period from 1 March 2009 to 31 August 2009 in the sum of £1,583.40,
 - (ii) The liability to pay and the reasonableness of service charges for the period from 1 September 2009 to 28 February 2010 in the sum of £1,583.40,
 - (iii) The liability to pay and the reasonableness of service charges for the period from 1 March 2010 to 31 August 2010 in the sum of £1,682.65,
 - (iv) The reasonableness of service charges for the period from 1 September 2010 to 28 February 2011 in the sum of £1,682.65,
 - (v) The reasonableness of service charges for the period from 1 March 2011 to 31 August 2011 in the sum of £1,554.69,
 - (vi) The reasonableness of service charges for the period from 1 September 2011 to 29 February 2011 in the sum of £1,554.69,
 - (vii) The reasonableness of service charges for the period from 1 March 2012 to 31 August 2012 in the sum of £1,547.71

Matters Agreed

10. Mr Mark on behalf of the Applicant confirmed that they had agreed to waive all administration and other charges leaving an outstanding balance of £11,295.80 but as they had agreed to charge only £11,188.39 in respect of the service charge as detailed above. Mr Mark confirmed that the Applicant had in the letter of the 3 May 2013 [36] agreed not to pursue all other sums claimed under claim no. 2QT75491 and although the remaining outstanding balance was £11,295.80 as they had agreed to charge only £11,188.39, this was the sum now in issue. Ms Bussian confirmed that she accepted the offer and the sum now in dispute is £ 11,188.39 for the service charge periods as detailed in paragraph 8 above.

11. Miss Bussian confirmed that they accept liability to pay service charges in accordance with the terms of the Lease but dispute the reasonableness and liability to pay service charges for the period prior to their acquisition of the leasehold interest in the property in November 2008. She stated that the service charges claimed included a balance brought forward which related to the period prior to their acquisition of the leasehold interest.

The Applicant's Case

12. Mr Mark stated that the Applicant relied on the statement dated 3 May 2013 [34-35] as well as their letter of the 3 May 2013 [36] and the comments on the Scott Schedule [37], the accounts [38-109] as well as oral submissions at the hearing.
13. Mr Mark explained that OM was managing the Estate until Urang Property Management Limited ("Urang") took over the management on 10 September 2012. He stated that OM insists that it was not informed of the sale of the leasehold interest in the property until July 2010. He referred to the letter of the 12 November 2010 from OM to the Respondents [28] which states that the freeholder became aware of the assignment of the leasehold interest in October 2009 and contacted the Respondents representative. The letter states that OM tried unsuccessfully to confirm ownership of the property with the freeholder on several occasions and it was not until July 2010 that they received confirmation of the assignment.
14. In relation to the Respondent's reliance on s.20B of the Act, Mr Mark stated that the Respondents had confused the issue as if it could be proved that the demands for the service charge were served correctly and within time they would be compliant with Section 20B. In his view the letter of the 22 September 2010 was a Legal Notice of Proceedings and not a service charge demand. He was of the view that service charge demands must have been issued prior to the Notice of Proceedings. He stated that by looking at the statements, the service charges demanded are valid particularly given that OM did not receive confirmation of the new ownership until June 2010. He stated that he had attempted to obtain copies of the service charge demands from OM but he had been unable to obtain copies of the demands relating to the period prior to 10 September 2012. He confirmed that it was the Applicant's position that the service charge demands had been validly served,
15. Mr Mark stated that it appears from the copy letters produced by the Respondents that they acquired the leasehold interest in the property from Cheltenham & Gloucester Plc. He suggested that this may have been a sale by Cheltenham & Gloucester Plc as a result of a repossession of the property.
16. He stated that he could not comment on the general management of the Estate whilst it was managed by the Applicant as this pre-dated their involvement. He stated that when they took over management of the Estate they had retained the services of the concierge that had been employed by the Applicant, and the process in relation to the day to day management of the Estate and mechanisms for reporting any problems had not changed

dramatically. He stated that he was of the opinion that the Applicant provided a basic management service and in his view a management fee of around £153 including VAT was about average. He stated that their current management fee for the year 2012 is £170.00 which is not much more than the Applicant's charges.

17. Mr Mark referred the Tribunal to the accounts for the year ending February 2010 [74 – 86] in support of the charge of £3166.80 (ie 2 x £1,583.40). He explained that the accounts show the expenditure separated out into schedules as follows:
 - (i) Schedule 1 – relates to the common parts costs of which are borne by all four blocks, the lease provides the Respondent's proportion of this cost to be 0.4% (i.e.1/251).
 - (ii) Schedule 2 – relates to common parts relating to each block, the relevant schedule in respect of this property being Schedule 2C, the lease provides that the Respondent's proportion to be 2.67%.
 - (iii) Schedule 3 – relates to cost for external areas and car parks the lease provides that the Respondent's proportion to be 0.53%, and
 - (iv) Schedule 5 – relates to the water and sewerage charges the lease provides that the Respondent's proportion to be 0.51%.
18. Mr Mark explained that the annual service charges from year to year have been about the same in each year, except in the year ending February 2011 when the annual service charge was a little higher due to redecorations. He stated that in his view the charges were reasonable. He stated that there are no service charge accounts available as yet for the charge of £1547.71 being the charge for the half year for the period 1 March 2012 to 31 August 2012 as the sum charged is a budgeted sum. He confirmed that it was based on the previous year's service charge.
19. Mr Mark clarified that the amounts in dispute all relate to the period after the Respondents acquired the property in November 2008.

The Respondents Case

20. Miss Bussión stated that the Respondents relied on their statement of case dated 9 April 2013 [21-32] and the comments included in the Scott Schedule [33] as well as her oral submissions at the hearing. The Respondents submit that the service charges should be reset from 1 September 2012.
21. In relation to the balance brought forward Miss Bussión relies on the copy of the completion statement dated 31 October 2008 issued by her solicitors

Simpson Millar upon completion of the purchase of the leasehold interest in the property which shows a sum of £853.20 in respect of the service charge apportionment.

22. In relation to the service charges for the period prior to Urang taking over the management, the Respondents state that these should be waived. The Respondents submit that OM lacked professionalism and were unwilling to separate the charges into two categories, disputed charges and current balances. The Respondents submit that as a consequence the service charges should be reset so that service charges incurred prior to 1 September 2012 are not payable.
23. Miss Bussión initially stated that she disputed the management fees as she did not receive any management services from OM she was of the view that the fee should be waived. She stated that it took OM almost two years to contact them after they had acquired the property. She stated that the first letter received from OM was dated 22 September 2010. Miss Bussión was not able to produce a copy of the letter of the 22 September 2010. She stated that a series of correspondence was exchanged with OM who failed to address her concerns and instead of dealing with the matter they deferred the matter and passed blame to the Respondents solicitors.
24. Upon being questioned by the Tribunal Miss Bussión accepted that although there may have been some failings in the level of management service provided by OM, they had arranged the insurance for the building and had managed the services provided, and she also confirmed that they even arranged for the repair of a leak which she had reported. Upon reflection she stated that she accepted that OM did provide some management services and in her view a 50% reduction in the fees charged by OM would be reasonable. Miss Bussión submitted that the change in managing agents from OM to Urang shows that the other leaseholders were also dissatisfied with the level of management service provided by OM and supports her view of the management service.
25. Miss Bussión sought to rely on the provisions of s.20B of the Act in relation to the service charges notified to the Respondents in the letter of the 22 September 2010.
26. Miss Bussión stated that they had no complaints with the management of the Property since Urang took over the management and they had paid the service charges demanded by Urang in a timely manner.
27. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's decision

28. The Tribunal determines that the sum of £10,752.61 is payable by the Respondent to the Applicant in respect of the service charges for the years 1 March 2009 to 31 August 2012. The sum payable is made up as follows:

Service charge period	Amount claimed £	Amount determined to be payable £
1 March 2009 to 28 February 2010	3,166.80	2,975.92
1 March 2010 to 28 February 2011	3,364.50	3,236.68
1 March 2011 to 29 February 2012	3,109.38	2,992.30
1 March 2012 to 31 August 2012	1,547.71	1,547.71
Total	11,188.39	10,752.61

Reasons for the Tribunal's decision

29. The jurisdiction of the Tribunal in this case is confined to the issue transferred to it by the County Court.
30. The lease provides under Clause 3 that the Respondents shall pay ".....on demand by way of further or additional rent the Lessee's Proportion.
31. The Particulars of the lease defines the Manager as "PEVEREL OM Limited..."
32. The Particulars of the lease defines the Lessee's Proportion as follows:

$$\text{"Part A Proportion } \frac{1}{x}xy(\text{Estate Costs})$$

where:

x = the total number of leases of Dwellings legally completed by the Lessor up to the end of the relevant financial period

y = all expenses reasonably and properly incurred within the relevant financial period by the Manager in connection with the matters referred to in Part A of the Sixth Schedule together with whatever of the matters referred to in Part F of the said Schedule as are relevant to the matters mentioned in the said Part A

Part B Proportion 2.67% (Block Costs)

Part C Proportion	N/A% (Undercroft Parking Costs)
Part D Proportion	0.53% (Surface Parking Costs)
Part E Proportion	0.51% (Water Consumption /Drainage Costs)

33. Clause 1 of the lease further defines the “Lessee’s Proportion” as “...the proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Seventh Schedule”
34. Clause 1 of the Lease defines the Maintenance Expenses as “...the moneys actually expended or reserved for periodical expenditure by or on behalf of the Manager or the Lessor at all times during the Term in carrying out the obligations specified in the Sixth Schedule”
35. The Respondents admitted liability to pay the service charges in accordance with the terms of the lease. The Respondents did not claim that the works had not been undertaken or that services had not been provided or that the charges were unreasonable. The Respondents disputed liability to pay any service charges which:
- (i) related to the period prior to their ownership of the leasehold title to the property,
 - (ii) fell within the provisions of s 20B of the Act, and
 - (iii) constituted the management fee charged in respect of management services provided by OM.
36. The Eighth Schedule of the lease contains the covenants enforceable by the Lessor and the Manager, Paragraph 27 of which requires the lessee to “...give written notice within 28 days to the Manager (or its agents) of any assignment transfer mortgage charge grant of probate letters of administration order of court or other matter disposing of or affecting the Demised Premises or devolution of or transfer of title to the same with a certified copy of the instrument effecting any such dealing AND ALSO to pay or cause to be paid at the same time to the Manager such reasonable fee appropriate at the time of registration in respect of any such dealing ...”.
37. **Service Charges for the year ending 28 February 2010:** The Tribunal noted that the accounts produced [78-81] supported a service charge of £3,274.68 for the year but as the Applicant has claimed the sum of £3,166.80, this is the sum the Tribunal considered in determining the amount of service charge due for the year in question.
38. The Respondents acquired the leasehold interest in the property on the 31st October 2008, and the Respondents claim that the first notification they received from the Applicant of the service charge was on the 22 September 2010 demanding the sum of £7,192.77. The Respondents rely on the

completion statement prepared by their solicitors on the completion of the purchase of the leasehold interest in the property and contend that all sums due in respect of any outstanding service charge up to the date of their purchase of the property was accounted for and they were required to pay £853.20 in respect of the service charge apportionment. The Tribunal notes that there is no indication as to which period the service charge apportionment covers. In addition the Tribunal notes that there is no indication on the Completion Statement of any payment of a fee to OM to register the transfer/assignment of the leasehold title. This is consistent with the letter dated 12 November 2010 to the Respondents from OM which states "When you purchased your property your solicitor would have needed to send a notice of assignment and a notice of charge (these are legal terms for the notice that changes the lessee name and the notice that changes the mortgage company name) to the freeholder to receipt and until this is done you are not recognised as the lessee.....There is always a fee involved with this and as I understand the situation, the Freeholder did not receive the notice until October 2009. At this time they contacted your representative and advised of the charges...." .

39. The Tribunal concludes on a balance of probabilities that the freeholder was not notified of the sale of the leasehold interest in the Property until October 2009 and OM were not notified of the sale of the leasehold interest in the property until June 2010 and they did not receive formal notice of assignment /transfer until some time after that date. There was no suggestion that OM had failed to serve valid service charge demands on the previous leaseholder on time prior to the transfer of the leasehold interest to the Respondents. Therefore it would seem likely that the service charge demands continued to be served on either the previous leaseholder or his mortgagees. Mr Mark stated that Urang did not have any information as to the identity of the previous leaseholder and could not produce copies of the service charge demands that had been served on the previous leaseholder. In the absence of any evidence to the contrary the Tribunal considers it likely that the service charge demands would have been sent to the previous leaseholders or his mortgagee.
40. Basically s. 20B provides that where a demand for payment of service charge is served on a tenant more than 18 months after costs have been incurred a tenant is not liable for so much of the service charge relating to such costs unless, the tenant had been notified in writing that the costs had been incurred and he would be required under the terms of his lease to contribute to them by way of a service charge.
41. In this case, it appears that as a result of a failure on the part of the Respondents solicitor, OM were not aware of a change in leaseholder until June 2010. It is therefore highly unlikely any service charge demand could have been served on the Respondents prior to June 2010. OM may have served the demands on the previous leaseholder but since the previous leaseholder had disposed of his interest in the property this cannot be deemed to amount to service on the "tenant" for the purposes of s.20B. Accordingly the Tribunal finds that the Applicant failed to comply with the provisions of s.20B in respect of the sums incurred 18 months prior to the notification on the 22 September (ie prior to the 22 March 2009). The Respondents were clearly in breach of the terms of their lease as they had failed to notify OM of the change in ownership,

and as a result OM failed to notify the Respondents of the service charges due until the 22 September 2010. The provisions of s.20B make no allowance for the fact that the failure was due to the landlord being unaware of a change in ownership. On the evidence before the Tribunal it is not possible to establish what proportion of the service charge for the year ending February 2010 relates to the period prior to the 22 March 2009, in addition there was no evidence to show precisely when the various costs had been incurred. Accordingly, the Tribunal considers it just and equitable in the circumstances to apportion the charges on a daily basis and disallows service charges for the period from 1 March 2009 to 22 March 2009 in the sum of £190.88.

42. In respect of the remainder of service charges for the period in question. The Respondents did not challenge any of the items charges except the management fee. The reasonableness of the management fee was challenged simply on the basis that OM failed to communicate with the Respondents and some minor failings in the level of the cleaning service provided. The management fee of £38,327.00 equates to a fee of £152.70 per unit inclusive of VAT. The Respondent's contribution amounting to £153.31 per annum. The Tribunal considers the issues with the management service to be insignificant and does not consider the level of charges to be unreasonable for managing 251 units including a gymnasium and a business suite in the London Docklands.
43. **Service Charges for the year ending 28 February 2011:** The Applicant demanded the sum of £ 3,364.50 in respect of the service charge for the year, however the accounts produced supported a charge of £3,236.68. The Applicant provided no explanation for the difference and the Tribunal was unable to find any evidence to support the extra charge. The only issue raised by the Respondent in relation to the service charge related to the management fee. The points made at paragraph 41 apply equally here and so in the circumstances the Tribunal considers the fee to be reasonable.
44. **Service Charges for the year ending 28 February 2012:** The Applicant demanded the sum of £ 3,109.38 in respect of the service charge for the year, however the accounts produced supported a charge of £2,992.30. The Applicant provided no explanation for the difference and the Tribunal was unable to find any evidence to support the extra charge. The only issue raised by the Respondent in relation to the service charge related to the management fee. The points made at paragraph 41 apply equally here and so in the circumstances the Tribunal considers the fee to be reasonable.
45. **Service Charges for the period from 01 March 2012 to 31 August 2012:** The Tribunal considers the sum of £1547.71 charged to be reasonable as it is a budgeted sum based on the previous years service charge. This is a normal and prudent practice in the management of residential properties. This determination in respect of the budgeted service charge does not prevent the leaseholder from challenging the actual service charges once these are known.

The next steps

46. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Bow County Court.

Chairman:

N Haria

Date:

5 July 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

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

Section 19

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

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.

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

Section 20B 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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

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 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.