11957

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LSC/2015/0292 & LON/00AW/LBC/2015/0091**
Property	:	**Flat 9, 6 Cornwall Gardens, London, SW7 4AL**
Applicant (in the first application)	:	**Mr A.Aziz (leaseholder)**
Representative	:	-
Respondent (in the first application)	:	**6 Cornwall Gardens (Freehold) Company and 6 Cornwall Gardens (Management) Company (freeholder and managers)**
Representative	:	**Mr R. Facta of Urang Property Management Limited and Mr and Mrs Halliday**
Type of application	:	**An application seeking a determination of service charges under section 27A of the Landlord and Tenant Act 1985 and an application for a determination that there has been a breach of the lease under section 168(4) of the Commonhold and Leasehold Reform Act 2002.**
Tribunal members	:	**Professor James Driscoll (Judge) Mr Stephen Mason, BSc FRICS FCIArb**
Date and venue of paper determination	:	**The Tribunal carried out an inspection of the subject premises on the morning of 7 December 2015. The hearing started later that day and finished on 8 December 2015.**
Date of decision	:	**19th January, 2016**

DECISION

Summary of our decisions (service charges)

1. The landlord is not required to fit a new central heating system in the building.

2. The service charges for the periods 2014 and 2015 were reasonably incurred and payable under the terms of the lease. This amounted to the sum of £3,475.41.

3. The leaseholder is entitled to set off against the charges the sum of £1,155 representing loss of rent because of the landlord's failure to carry out remedial repairs to deal with the damp in his flat.

4. The net sum payable by the leaseholder is, therefore, £2,230 which should be paid by the 31 January, 2016.

Summary of our decisions (breach of covenant)

5. The leaseholder is in breach of his lease by letting the flat short-term.

6. The leaseholder is in breach of his lease by letting in such a way as to increase the costs to the landlord of insuring the building.

7. The landlord failed to prove that by letting short-term the leaseholder has caused nuisance or annoyance to occupiers living in the other flats in the building.

Introduction

8. The tribunal considered two applications. First, an application by the leaseholder for the determination of service charges; second, an application by the landlords for a determination that there have been breaches of the lease on the part of the leaseholder.

9. In this introduction we explain the background to the two applications. After this we set out a summary of the evidence and the submissions on the service charge application. We set out our conclusions at the end of that section of this decision.

10. We then examine the evidence and the submissions in the breach of covenant application and this is followed by our conclusions and the reasoning behind them.

11. The leaseholder of flat 9 is Mr Aziz. His flat is one of ten in the subject premises which is a purpose-built block of flats. The freehold is owned by 6 Cornwall Gardens (Freehold) Company following a completion of an enfranchisement claim. We were told that all the leaseholders are entitled to be members of the company and that the company is the landlord under the flat leases. There is a third party to the lease called 6 Cornwall Gardens (Management) Company. All of the leaseholders are entitled to be members of this company as well. The management

company is responsible, amongst other things for the management of the building and the setting and the collection of service charges from the nine leaseholders. A company by the name of Urang Property Management Limited are the appointed managing agents.

12. Mr Aziz is challenging service charges for two accounting periods, 2014 and 2015. His challenge is made under section 27A of the Landlord and Tenant Act 1985. In essence Mr Aziz is withholding service charges because he has claims to have suffered losses as a result of dampness in his flat, Acondition, he submits, is the responsibility of the landlord and the management company. For this application Directions were given on 6 August, 2015.

13. The landlord seeks a determination that Mr Aziz is in breach of his lease by allowing it to be occupied short-term. It also claims that this use of the flat has imperilled the insurance cover for the premises and that is causes nuisance and annoyance to other occupiers. Directions were given for this application on 11 September, 2015.

14. Thus, the leaseholder is the applicant in the service charge case to which the landlord is the respondent; in the breach of covenant case the applicant is the landlord and the leaseholder is the respondent.

The hearing (7th and 8th December, 2015)

15. It was decided at the directions hearing on 11 September 2015 that the two applications should be heard together. The hearing took place on the 7th and 8th December 2015. We heard first, the service charge challenge and then the breach of lease claim.

16. Before the hearing started the tribunal members inspected the premises. We were met there by a Mr and Mrs Halliday who have been closely involved in the management of the premises. They were formerly the owners of one of the flats (since been transferred into the names of their children). Also present was Mr R Facta of the managing agents and the leaseholder, Mr Aziz.

17. We started by viewing the basement the entrance to which is at street level from which one descends a staircase. This leads to the front door of flat 10, one of the walls to flat 9 and the entrance to the boiler room. We also saw inside the boiler room which contains a disused boiler which is no longer in operation. The door to the boiler room is kept locked.

18. At basement level we saw one of the external walls to Mr Aziz's flat. This is several yards from the basement entrance. Below the staircase is a bin area. This is where the residents leave their rubbish. It appeared to us to be clean and tidy.

19. After this we retraced our steps and we were let into the main entrance to the premises leading to a well-maintained and smart communal hall.

We then followed Mr Aziz to flat 9 the entrance to which is off the communal hall and down the stairs to the basement area. Those with us confirmed that only flat 10 has a street entrance. The other flats can only be accessed via the front door to the premises by using the communal hall and staircases.

20. We were shown Mr Aziz's flat which appeared to be occupied. He told us that it is currently occupied by his girlfriend. We saw a disused central heating radiator. Flat 9 is a studio flat with a separate bathroom and shower and a kitchen area. There were signs of new plaster work to the walls and this is consistent with remedial works having been carried out to deal with the damp.

21. The hearing started later that day. The same people who attended the inspection earlier that day were present at the hearing. We were told that both sides, that is the leaseholder and the landlord, had taken legal advice but had chosen not to be legally represented at the hearing. Neither side would be calling witnesses.

22. Each party prepared a very detailed and full bundle of documents.

The Service Charge application

23. Mr Aziz spoke to his detailed statement of case a copy of which is in his bundle. He purchased his flat in 2007 as an investment with the assistance of a mortgage to finance the purchase. He described the mortgage as a buy to let mortgage. It has been his practice to let the flat in various ways. Mr Aziz has let the flat on assured shorthold tenancies and on far shorter lets some as short as one to three days. South Kensington, London, is a popular place with tourists and there is a thriving market for short-term lettings. He has also let to students.

24. He described what he sees as a difficult working relationship with the other leaseholders and the current managing agents. His principal complaints are as follows. Damp has been present since 2011. The managing agents arranged for one of the companies in same group as their company to undertake the remedial works. The works were not successful and additional works have had to be carried out. We were told that the managing agents are seeking to recover the money that was paid for the unsuccessful works from the contractor concerned.

25. Mr Aziz also contends that the way the service charges are calculated by reference to rateable values is out of date and needs to be replaced. His studio flat is the smallest flat in the premises and it follows, in his view, that his share of the costs should be lower than that paid by the owners of the other flats. One way of doing this, he suggests, is link the relevant service charge contribution to the floor areas of the flats. He considers that the failure to modernise the service charge proportions in the leases means that service charges are not recoverable.

26. Another concern of his are the arrangements for the keeping of rubbish. Mr Aziz says that this is unsightly and causes unpleasant odours. He is upset that the landlord has not adopted his suggestion that the storing of rubbish should take place in the now defunct boiler room. Mr Aziz told us that the rubbish has led to vermin appearing close by.

27. Turning to the central heating, he complains that there is no central heating provided. He accepts that the non-supply predates his purchase of the flat. Unlike the landlord he considers that the leases requires that central heating must be provided.

28. As to management fees, he considers that the quality of management by the current managing agents is so poor (in that they have failed to deal expeditiously, or at all with his concerns) that no management fee should be paid.

29. He also expressed complaints at the failure to allow him access to a communal TV aerial and to repair a bathroom extractor fan. However, we were told at the hearing that he no longer wished to pursue those complaints.

30. Mr Aziz has also demanded damages by way of a counter-claim, which as we pointed out to him, cannot exceed the service charges the landlord seeks. He claims damages for the landlord's failure to deal with the various complaints summarised above. In all he claims the sum of £19,133.95 though he accepts that any damages determined in these proceedings cannot exceed the unpaid service charges.

31. On the service charges challenge, both Mr Facta of the managing agents and Mrs Halliday spoke on behalf of the landlords. They accept that the first set of works to remedy the damp were not effective though they claim that Mr Aziz took charge of these works and he was instrumental in the decision to appoint the contractor (who may not have had the necessary experience). It is also accepted that the failure to deal with the damp had caused inconvenience and loss to the leaseholder.

32. As to the complaints about the rubbish the landlords claim that the long-standing arrangements are satisfactory and the leaseholder's complaints are not accepted. The suggestion that rubbish is stored in the disused boiler room is rejected as impractical as it would involve all the leaseholders leaving their rubbish there and arranging for it to be left in the street for the weekly collection. To prevent the boiler room being entered by intruders it has to be kept locked which is another reason why it is not suitable for the storage of rubbish as the door would have to be unlocked and re-locked whenever a resident wants to dispose of rubbish.

33. Turning the central heating, the landlord's interpretation of the lease is that the landlord has a discretion to supply central heating. It has not been supplied centrally for years and there was no central heating when Mr Aziz purchased his flat. A decision to install central heating would

require the approval of all leaseholders. Installing central heating would be extremely expensive and it is unlikely that this would be approved by all of the leaseholders.

34. The landlord's representatives accept that the current service charge provisions are unsatisfactory but they reject Mr Aziz's suggestion that the service charge provisions should be linked to the floor area of the five flats. It would be very expensive to employ a surveyor to undertake the measurement involved. A decision to change the service charge proportions for each of the 10 leases is ultimately a matter for the majority of the leaseholders to decide. They showed us a table of the different percentages for each flat. His (5.19%) is the lowest and the larger flats are between 10.38 and 14.17%.

Reasons for our decision on the service charge application

35. We turn to our decisions and the reasons for them. As a general comment - one that we made at the hearing - this is a leaseholder controlled company owned by the leaseholders. As we pointed out to the parties, if one or more of the leaseholders fail to pay, bills will either be unpaid, or the other leaseholders will have to contribute to the unrecovered costs.

36. On the leaseholder's complaint that no central heating is provided we note that the supply of space heating through a central heating system is provided for in paragraph 4(4) of the lease but that this '..at the discretion of the Company'..(a reference to the management company). On this issue we agree with the landlord as this covenant is not an unqualified covenant to provide central heating. As we have noted, the boiler is disused, this form of heating has not been provided for years and it was not there when Mr Aziz purchased his flat. We note that the fitting of a new heating system would be very costly and experience has shown that the majority of the leaseholders who are members of the 'Company' and the landlord company have not resolved to undertake such expenditure.

37. Turning to the complaint about the service charge contributions we agree that they are far from satisfactory linked as they are to obsolete rateable values. However, we reject the leaseholders's submission that this is a justification for withholding payment of service charges. Any updating of the service charge contributions is a matter for the leaseholders and there may also be the right to apply to the tribunal for an order varying the charges (under the Landlord and Tenant Act 1987).

38. As to the complaints about the provisions for rubbish, as we noted above, we saw during our inspection, the current storage is some way from the leaseholder's flat and looking out the window in his flat which overlooks the open basement area one had to strain to bring them into sight.The leaseholder's attempt to describe them as unsatisfactory was not made out.

39. The leaseholder complains about the quality of the management. However, we were impressed with the way in which Mr Facta conducted himself and the way in which he represented the landlords. There is little doubt that he and the leaseholder have had a difficult relationship. But the other leaseholders appear to be satisfied with the management arrangements. We do not consider that the management fees should be reduced (or, according to the leaseholder, reduced to zero).

40. Taking these various stands together we are satisfied that the charges are recoverable under the leases and that they were properly incurred.

41. As to their payability we accept that the leaseholder has the right at common law to set off against the charges his claim for damages. In this case we accept that because of the debacle over the work to the dampness in his flat that the flat became difficult or impossible to let. We were told that the costs first undertaken amounted to the sum of £5,940 (which includes VAT). Mr Facta told us that his company is seeking the recovery of this sum.

42. The leaseholder claims the rent lost for the period January 2015 to 10 June 2015, a period of 21 weeks. On the basis of the figures supplied, we accept that the leaseholder is entitled to withhold the sum of £1,155.00. As the total for the charges claimed for 2014 and 2015 is the sum of £3,475.41 the net sum payable by the leaseholder to the Company is £2,320.41. We arrived at the set off by taking the market rent for the flat in good order as put to us by Mr Aziz as £255 per week. We thought Mr Aziz could probably have let it at a discounted rent of about £200 per week and we therefore calculated is loss as £55 x 21 = £1,155.

The breach of covenant application

43. On behalf of the landlord it is alleged that Mr Aziz is in breach of his lease. In their application, made under section 168(4) of the 2002 Act, the principal claim is that Mr Aziz has unlawfully sublet his flat. Allied to this complaint is the linked allegation that allowing several different people access to the building has imperilled the insurance cover and will lead to an increase in the costs of the insurance. It is also alleged that allowing different people access to the building is a nuisance or annoyance to other occupiers. The other complaint is that by withholding service charges Mr Aziz is in breach of his lease. (It was also claimed that Mr Aziz left the keys to the main building and his flat by attaching a 'key safe' to the external wall in the basement. His guest will be given the code to open the 'safe' and retrieve the keys. However, this practice has stopped because the landlord told Mr Aziz that for security reasons they are unhappy with such an arrangement for handing over or leaving keys).

44. We were told that Mr Aziz lets short-term through a company by the name of Airbnb which operates internationally by arranging short-term stays in accommodation for visitors such as tourists or business people. It is an alternative to taking a room in a guest house or a hotel. Airbnb make all the arrangements, the advertising, the taking of the deposit, checking the personal details of the person seeking the accommodation and so on.

45. Mr Aziz told us that he purchased the flat as an investment and financed the purchase in part by a 'buy to let' mortgage. He added that the landlords were aware that he would not himself occupy the premises. Mr Aziz states that many of the other leaseholders sublet their flats on assured shorthold tenancies (ASTs). During his period of ownership he has let on ASTs as well as short-term using Airbnb. Airbnb administers the letting of short-term of accommodation. It checks the personal details of anyone applying for accommodation. Such lets can be for one night or several nights. It is for the person seeking the accommodation to arrange payment and to collect the keys. At the request of the landlord he no longer uses the 'key safe' method of arranging for the key collection. Instead he either leaves the keys with one of the branches of 'Key Cafe' which will take the keys and hand them over (for a fee) or meets the accommodation seeker to give him or her the keys. The person accommodated is required to return the keys at the end of their stay.

46. The parties told us that they did not agree on the wording of the lease of Flat 9. We were referred to a copy of the original lease dated 31 January 1990 and to deeds of variation dated 23 July 1999, and 14 December 2000. The original lease contains in clause 2(15) a covenant by the leaseholder to '*use and occupy the demised premises as a private residence only for the sole occupation of the Lessee and his family and members of his family and for no other purpose*'.

47. The deed of variation dated 23 July 1999 appears to '*rectify*' (paragraph 4) the lease by removing the covenant in clause 2(15) but the 2002 deed replaces it with a covenant '*to use and occupy the demised premises as a private residence only and for no other purpose*'. The 2000 deed also revoked the 1999 deed. It also added a new right for the leaseholder to have access to the flat by using the entrance hall.

48. Mr Aziz submitted that the 2000 deed was ineffective as the copy in the bundle was not signed by the then leaseholder. For the landlords the point was made that this copy is probably the counterpart. They add that the important matter is that the 2000 deed is noted on the Land Registry.

49. We noted that under clause 2(9)(a) the lease forbids the assignment, transfer, underlet (etc) of part of the premises (emphasis added) ; during the last seven years of the lease not to assign underlet (etc) the whole of the premises without the landlord's consent. From this we have concluded that there are no prohibitions on letting the whole of

the premises except during the last seven years. On balance we conclude that the covenant in clause 2(15) of the lease does exist and that it supports the view that there is the right to sublet the whole ('to use and occupy') as this allows the leaseholder to 'use' the flat by letting it unless the leaseholder is occupying it in which case he or she may not sublet part of it, (The flat is, of course, a studio flat, so subletting part is hardly practical. As so many of the other flats are sublet and given the history of the variations of the lease we have concluded that the intention of the variations was to recognise that some leaseholders may want to sublet their flats. We have also reached this conclusion as we note from an official copy from the Land Registry (issued on 22 September 2015) a reference to the original deed 'as varied by a deed dated 14 December 2000).

50. Mr Aziz argues that as the 2000 deed is ineffective there is no requirement that the flat has to occupied or used as a residence. As an alternative, however, he argues that the temporary use via Airbnb is not a breach of covenant. He relies on various authorities on this including the case of *Westbrook Dolphin Square Limited v Friends Life Limited* [2014] EWHC 2433. As we pointed out to Mr Aziz this is a case concerning collective enfranchisement claims.

51. However, he was right to point out that one of the issues was whether some of the premises were not held for 'residential purposes', as where premises include parts which are not occupied for residential purposes, and the floor area of any non-residential part exceeds 25% of the internal floor area of the whole of the building, the building does not qualify for enfranchisement.

52. The judgement on that case referred to flats in Dolphin Square which are owned by a company which arranges short-term lets, many of them as short as two days. In fact the arrangements for booking a short stay in one of those flats is broadly similar to the Airbnb. In this section of his judgement Mr Justice Mann concluded that this short use involved living activities such as sleeping, cooking, washing, laundry and other living activities. This was different, in his view, to occupying a room in a hotel. The flats were self-contained. They could be properly treated as residential and the shortness of the stay did not affect this.

53. This is a useful analysis but it must be borne in mind that it was a conclusion on one of the issues that arose in a complex enfranchisement claim. It is also a decision on the application of a statutory definition unlike, as in this case, the correct interpretation of a covenant in a lease. The *Westbrook* case concerned a very large mixed-use development unlike this case where the building is exclusively residential and the freehold owned by the leaseholders. The operation in the *Westbrook* case is large-scale unlike Mr Aziz who is letting the one flat he owns in the building.

54. The landlord argued that the leaseholder was in effect using the flat for commercial use by letting it short-term and that this was in breach of

the covenant that it would only be let for residential purposes. They too referred to various authorities and in particular to the case of *Caradon District Council v Paton* [2000] EGCS 59. This case concerned a dwelling purchased under the statutory right to buy (contained in the Housing Act 1985) where a restrictive covenant was imposed restricting use of the property as a private dwelling. Could the owners be prevented from letting on holiday lets?

55. It was held that the use for lettings of one or two weeks at a time were not lettings as a private dwelling house, since they lacked the necessary permanence to be treated as a residence. The tenants could not be said to be using the properties as a home even for the short period, and the lettings were in breach of that restrictive covenant. The use as a private dwelling-house required some occupation as a home. That element implied a permanence and intention to reside in the property which was missing from such lets. The Court of Appeal emphasised that covenants must be construed in their context. The context here was the desire to preserve the availability of housing stock built with public funds. Given this finding it was unnecessary to decide whether the use was in breach of the covenant against use for business.

Reasons for our decision on unlawful use

56. The competing submissions were finely balanced and this was not an easy matter to decide. On balance we prefer the landlord's submission.

57. There is much to be said for the landlord's argument that - in effect- Mr Aziz is using the flat for business purposes. But such a conclusion overlooks the fact that other leaseholders in the subject premises are allowed to sublet on assured shorthold tenancies. Such tenancies may be let at a market rent. Allowing this, it seems to us to be as much of a business as Mr Aziz letting via Airbnb.

58. As we have already noted, the *Westbrook* case was concerned with the exclusion of buildings with more than 25% non-residential use. In assessing this the Court had to distinguish between 'residential' and non-residential use. This explains why the Court concluded that shortness of the periods occupied did not prevent those units from being treated as in residential opposed to commercial or some other non-residential use. In this case there is a covenant restricting use to that of a 'private dwelling'.

59. We do not accept that occupation by a tourist for short periods can be treated as using the flat as a private dwelling. Here we found the reasoning in the *Caradon* decision useful and persuasive. Letting on an AST is one thing as there is usually a minimum period of the right to occupy, a deposit i taken and the arrangement is regulated to a significant extent, so far as security and rent increases are concerned (see: Part I, Housing Act 1988). Moreover, they are let at a market rent which are, known to be very high in prime central London and where landlords or their agents will take references before the letting is

granted. This is different in our view to a let for one or a few nights. There is, therefore a breach of covenant 2(15) of the lease. Mr Aziz is perfectly entitled to let on an AST (as some of the other leaseholders do and which he has in the past). To let out the flat on the Airbnb, is however, a breach of his lease.

60. We turn to the other complaints which relate to using the flat under Airbnb arrangements. The first one can be disposed of fairly shortly. It is alleged that by letting by Airbnb Mr Aziz is in breach of clause 3 and schedule one of the lease by doing acts which could cause a nuisance or annoyance to the landlord or the other leaseholders. We do not think that the landlord's representatives pursued this complaint with any vigour. They did not call evidence supporting the allegation that the use of the premises by Mr Aziz is some form of nuisance or that it causes annoyance to other residents. Much as we accept the misgivings of the leaseholders who have expressed concerns over the Airbnb arrangements, the handing over of keys to the main entrance, the succession of people visiting the premises for short stays, we find that the landlord failed to prove a breach of this covenant by Mr Aziz.

61. The other complaint though has in our view more substance. This is the complaint that letting under Airbnb increases the costs of insuring the building. This is because the building is insured on the basis that it is occupied either by a leaseholder of sublet on an AST which confers at least six months security and which can last for much longer periods in practice. A letter written by the landlord's insurance brokers St Giles insurance stating that using any of the flats for very short term lettings would double the premium payable. This letter, dated 6 October 2015, sets out the greater risks in some detail. In response, Mr Aziz claims that insurance at a more competitive rate could be obtained. He may be correct in this but we are not in the least surprised that the current insurers will increase the premiums quite dramatically given the additional risks that arise where there is a constantly changing occupation of one of the flats in the building.

62. We can also understand the concerns expressed by the landlord that the other leaseholders are opposed in principle to this form of letting and are against having to pay larger premiums. At the hearing Mr Aziz told us that he has obtained a quotation from another insurer which would not charge extra for insuring where one or more of the units are occupied very short-term. He did not have any correspondence with him but he forward it after the hearing. Whilst it does make a statement to that effect, we could not find any figures that supported Mr Aziz's submission on this point. The tribunal wrote to Mr Aziz but no reply was received at the date of this decision.

63. It would have been helpful to have had more direct evidence on this point but on the basis of our own professional knowledge and experience we are not surprised to hear that the costs of insuring a building is more expensive where there are short-term lets. The letter

from the landlord's insurance brokers supports the conclusion that short-term lettings do have an effect on the insurance costs.

64. We find that in these circumstances Mr Aziz is in breach of his lease by contravening clause 3(2) which forbids actions that might imperil the current insurance cover or lead to the premium to be larger.

65. The final allegation of a breach of covenant is that by withholding his service charge Mr Aziz has breached the covenant in the lease to pay charges (set out in clauses 2(1) and 8(1). In the reference to this in the application the landlord very fairly stated that it recognises that Mr Aziz is disputing his obligation to do so by his application to the tribunal under section 27A of the 1985 Act. It is well-established that a leaseholder has the common law right to set off against charges demanded by the landlord where the leaseholder has a claim for damages against the landlord. In this case Mr Aziz claims the right to set off amounts he claims he lost in rent because his flat had become for a period uninhabitable. As we noted above, he also challenges the recovery of service charges and we set out our conclusions on those challenges earlier in this decision.

66. We conclude that Mr Aziz was entitled at common law to set off against the charges claimed a sum that he claims he is entitled to because of the landlord's alleged breach of its obligations to repair. He is also statutorily entitled to challenge service charges. We have concluded that he is not in breach of the covenant to pay charges under clauses 2(1) and 8(1) as he was in the circumstances entitled to withhold payment.

Costs

67. We completed the hearing by hearing submissions on costs and in particular section 20C of the 1985 Act which states that any costs incurred by the landlord in proceedings may not to be recoverable as a service charge at the discretion of the tribunal. On balance we decided not to make such an order. The landlord really had no alternative but to defend its position on the challenge to service charges. In view of the concerns expressed about the use of short-term lettings the landlords were justified in bringing proceedings under the 2002 Act.

68. No order is made under section 20C of the 1985 Act.

James Driscoll and Stephen Mason
19 January, 2016

Appendix (extracts from relevant statutory provisions)

Landlord and Tenant Act 1985, section 19

Limitation of service charges: reasonableness.

(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 provision 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 20B

Limitation of service charges: time limit on making demands.
(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

Limitation of service charges: costs of proceedings.
(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.]

Commonhold and Leasehold Reform Act 2002, section 168

No forfeiture notice before determination of breach

(1)
A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
(2)
This subsection is satisfied if—
(a)
it has been finally determined on an application under subsection (4) that the breach has occurred,
(b)
the tenant has admitted the breach, or
(c)
a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.
(3)
But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
(4)
A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.
(5)

But a landlord may not make an application under subsection (4) in respect of a matter which—

(a)

has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b)

has been the subject of determination by a court, or

(c)

has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.