12200

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AG/LSC/2016/0348**
Property	:	**18A Lady Somerset Road, London NW5 1UP**
Applicants	:	**1. Don Kaufman 2. Richard Kaufman 3. Henna Kaufman**
Representative	:	**Don Kaufman**
Respondents	:	**1. Anthony Brian Collier 2. Jacqueline Comerford**
Representative	:	**Anthony Collier**
Type of application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	:	**Judge Hargreaves** **Helen Gyselynck BSc MRICS**
Date and venue of hearing	:	**10 Alfred Place, London WC1E 7LR** **27th March 2017**
Date of decision	:	**31st March 2017**

DECISION

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Decisions of the Tribunal

(1) Richard Kaufman and Henna Kaufman are added as Applicants because together with Don Kaufman they are the three (surviving) registered co-proprietors of the freehold interest in the property and it is important that they are bound by the outcome of this decision, and should have been parties from the outset.

(2) Jacqueline Comerford is added as Second Respondent because she is a co-registered proprietor of the property, and should have been a party from the outset as it is important that she is bound by the outcome of this decision.

(3) The Tribunal makes its determinations as set out under the various headings in this Decision.

(4) The Respondents are not liable to pay the Applicants any of the sums claimed for the reasons set out below.

(5) The Tribunal makes an order (if required and for the avoidance of doubt) under section 20C of the Landlord and Tenant Act 1985 so that none of the Applicants' costs of the Tribunal proceedings may be passed to the Respondents through any service charge.

(6) Any other costs issues will have to be referred to the county court, as will the outstanding issue of the unpaid ground rent.

REASONS

The application

1. As it only came to the Tribunal's attention very late in the hearing that Don Kaufman is one of three remaining co-registered proprietors of the freehold interest in 18 Lady Somerset Road, London NW5, he will be referred to throughout as "Mr Kaufman". Similarly we refer to Mr Collier by name, though have added his partner Jacqueline Comerford as a Respondent for the same reason. The added parties have played no active part in the proceedings.

2. References are to the trial bundle as prepared by Mr Kaufman, save where otherwise made clear.

3. Some time on or shortly before 4th June 2015 Mr Kaufman issued proceedings in the county court against Mr Collier in respect of unpaid service charges, ground rent and interest on arrears. precise total outstanding is something of a mystery due to the lack of a

particularised claim form or statement of case on the county court file. The County Court at Central London claim number is B1QZ04K7. Unhappily, but as is often the case, Mr Kaufman obtained judgment in default of defence against Mr Collier who spent time reversing that decision (on the grounds, as appears to be the case, that he had in fact filed a defence amongst other factors), before the county court "stayed the proceedings pending the transfer of the matter to the First-tier Tribunal to determine the issue as to whether the correct procedure has been followed regarding service charge demands". The Tribunal takes a pragmatic view of the terms of that referral in order to deal with as many disputes as possible, effectively and expediently, though we can do no more in the case of the ground rent arrears than to observe that it is outstanding.

4. In an email to the Tribunal the day after the hearing Mr Kaufman explained that he limited the amount claimed in the county court proceedings to £5000 because that cost him £185 in issue fees. This is a good example of the hapless approach to management: it is plain on the face of the documents before us that the relevant service charge demands were for sums in excess of this amount by June 2015. It also appears (from the same email) that those proceedings were issued after negotiations to extend the Respondents' lease had broken down. In the course of those negotiations Mr Kaufman was informed by the Respondents' solicitor that the service charge demands were invalid, so he produced a revised one dated May 2015 with the Applicants' address for service on it (which alerted the Tribunal to the additional parties). It is in the court file but not the trial bundle.

5. The county court order was made on 8th August 2016 and on 24th November 2016 Judge Mohabir held a case management conference at Alfred Place attended by both Mr Kaufman and Mr Collier. As Judge Mohabir noted, the best he could do was quote (we think) Mr Kaufman and indicate that the unpaid charges had been "accumulating over several years" (p10-14). We have concluded, taking account of the documents on the court file and the trial bundle, that we should determine what is due under the demands served prior to the issue of the county court proceedings, and in this case the range is from 1st January 2008 – 1st January 2015, and May 2015, excluding 2009. Whilst Mr Kaufman did not include service charge demands after 1st January 2013 in the trial bundle, there seems little point in not dealing with the validity of the demands prior to the issue of the county court proceedings, particularly when the county court District Judge was focusing on the validity of the service charge demands (presumably before the county court) and Judge Mohabir asked for them, and they are on the Tribunal court file.

6. It is necessary to consider various provisions of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents including ss18, 19, 20B, 20C , 21B, and 27A, as well as s47 Landlord and Tenant Act 1987. It transpired during

the hearing that Mr Kaufman's knowledge of any statutory regulatory regime in relation to residential service charges is minimal at most. During a relatively long career in management, the basics of even the existence of a statutory regime appear to have eluded him. In relation to this particular property, Mr Collier's flat is the only long leasehold interest, and the three floors above (converted) consist of six bedsits, all managed by Mr Kaufman.

7. Some of the relevant legal provisions are set out in the Appendix to this decision.

8. Before we turn to the lease and the facts we should clarify an important finding of fact. In the trial bundle Mr Kaufman produced one set of service charge demands and Mr Collier another. The two sets are not identical. Mr Collier produced the original demands he had received to us for inspection. They are fairly unique in that they were produced on old fax paper, glossy, with ink now fading. Mr Kaufman said he could not swear that he had served the revised copies in the trial bundle on which he relies against the Respondents. We find as a fact, on the balance of probabilities, that the only service charge demands served on the Respondents are those exhibited by Mr Collier. We further take the view, and put it to Mr Kaufman, that in relying on service charge demands which had not been served on the Respondents, Mr Kaufman was deliberately misleading the county court and the Tribunal. He had some difficulty appreciating this. That conduct is entirely unacceptable in terms of managing a property and conducting litigation. One possible conclusion was to treat this as an abuse of the process and strike out his proceedings: we decided that this would do little to resolve the actual ongoing disputes between the parties, and that it would be more effective in terms of dispute resolution (and the referral from the county court), to proceed to deal with the proceedings.

9. The other notable feature of Mr Kaufman's case, is that despite the clear case management directions, he had not one piece of supporting evidence to back up any of his cost claims, though the day after the hearing he emailed evidence about the current insurance premium to the Tribunal (a debit note for £960.22 dated 21st December 2016 for the year beginning 1st January 2017, with no evidence that it has been paid). The explanation given at the hearing that he did not keep records was probably true, and again, indicative of a totally hapless approach to management. Mr Collier stressed that he wants the property managed properly, to which Mr Kaufman's response was "but that would always cost more." That is the tension between Mr Collier's capital asset and Mr Kaufman's bedsit income. For many years he used an odd job man called George to carry out works, inside and out: Mr Collier stopped paying both ground rent and service charges after he was advised by a surveyor that works carried out by George (see below) were sub-standard. We accept Mr Collier's evidence that he attempted to persuade Mr Kaufman to use alternative builders and to get the required jobs done, properly and professionally. Having heard

explanations from both parties, we understand why Mr Collier gave up and on several occasions took matters into his own hands to effect repairs. Had he ever received a copy of the statutory rights and obligations of course, the current debacle might have been cleared up earlier.

The lease

10. The lease of the basement flat (see the First Schedule) is at p31, and is dated 27th May 1994. By clause 2 (p34) the Respondents are liable to pay *"one quarter of the total cost to the Lessor of the expense outgoings and matters mentioned in Clause 6 hereof or of otherwise fulfilling the obligations on the part of the Lessor hereinafter contained from time to time by the Lessor whose decision shall be final and which sum shall be paid within fourteen days following the receipt by the Lessee of a notice certifying the aforesaid amount"*. The service charges are recoverable as rent. Clause 6 (p38) provides for the Applicants' repairing and insuring covenants in respect of the *"Building"*. In slight conflict clause 3(ii) provides that the Respondents will pay *"to the Lessor a fair proportion to be determined by the Surveyor for the time being of the Lessor whose decision shall be binding upon the Lessee of costs and expenses or estimated costs and expenses and management and auditing fees payable in respect of* [a long list of items] *and all other things the use of which is common to the demised premises and to other premises such proportion to be payable on demand and recoverable as rent in arrear."* Interest at the rate of 5% above base is payable on arrears.

11. Some photographs of the building were provided in the hearing bundle. 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.

The issues

12. The only approach to the application is to take it chronologically by reference to the service charge demands served on the Respondents shortly after 1st January of every year. For limitation purposes, the date of issue of the county court proceedings appears to be 4th June 2015. The six year limitation period would apply because arrears are recoverable as rent.

1st January 2008

13. See Mr Kaufman's version at p4 and what he served on the Respondents at p20. The demand omits the name and address of the Applicants pursuant to *s47 Landlord and Tenant Act 1987*. The demand is headed Hen-Don Properties, gives a residential address, and

asks for cheques to be paid to "Kaufman". This is a breach of *s47* and accordingly the sums claimed are not payable[1]. Furthermore, the demand does not contain the information as to rights and obligations required by *s21B Landlord and Tenant Act 1985* and that also suspends the Respondents' obligation to pay[2]. Since the items claimed were incurred in 2007, the Applicants are time barred now from seeking to recover these charges.

14. If a valid demand had been served, our approach to the items claimed is as follows. As to the Respondents' share of the insurance, we now have the information on page 3 of the bundle, and for the first time it is possible to see what premiums were actually paid by the Applicants (on balance) to insure the property. We have concluded that in the circumstances of this case it is not reasonable for the Applicants to claim any more than 25% of the premium charged: we ignore the figures listed by Mr Kaufman under the heading "Retail" as wholly unsupported by any evidence, and reject his addition of a further 15% as a "handling" or management fee. There is nothing express in the lease which entitles him to add these amounts and his management of the property has been so poor that it is unreasonable to allow any payment to himself in respect of it. The correct allowance for insurance would be £135.18, though not recoverable.

15. The sums charged in respect of repairs to the front elevation and roof repairs were calculated at 50% not 25% and the correct figures if recoverable would be £10 and £18.75. The failure to serve a valid service charge demand is sufficient to deprive Mr Kaufman of his £75 claim for management completely and we disallow it as unreasonable pursuant to *s27A*: there has to be a basic level of management competence and nothing in Mr Kaufman's evidence displayed it.

16. Though not recoverable, the reasonable amount for service charges for the year prior to 1st January 2008 would have been £163.93.

1st January 2009

17. This was not disputed and Mr Collier paid it in full, despite the fact that it lacks validity (see paragraph 13 above).

1st January 2010

18. See p21, p5. The same findings as set out in paragraph 13 apply so the Respondents are not currently liable to make payment.

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[1] See generally, Tanfield Chambers' Service Charges and Management, 3rd edition at 14-005

[2] Op. cit 14-006

19. If the service charge demand were valid then the correct reasonable figure for insurance would be £158.47.

20. Unpacking the available evidence, it appears that George carried out over £7000 worth of work to the rear roof and elevation in 2009. No s20 notice was served on the Respondents in advance. There was a complete lack of paperwork to evidence what was done and why. We accept Mr Collier's oral and photographic evidence about the standard of works. He had agreed to pay half of his share up front and did so in the sum of £909. We consider that was reasonable and the limit of the Respondents' liability for these works, being far from satisfied that Mr Kaufman can justify charging the Respondents more. We note the fact that Mr Kaufman had agreed to give Mr Collier credit for the sums of £211 and £200 in relation to costs and expenses incurred by Mr Collier on Mr Kaufman's behalf in relation to the previous year, and such sums will clearly remain to be accounted for in Mr Collier's favour should any valid demand ever be served.

21. Again, we disallow any additional management or handling charges levied by Mr Kaufman as contractually unsupported and unreasonable.

22. The Respondents' reasonable liability for the year up to 1st January 2010 would, if payable, be limited to £1067.47 (insurance plus the £909, paid in fact and therefore not actually due).

1st January 2011

23. See p21, p6. Again, the demand for service charges is invalid for the reasons given in paragraph 13.

24. The correct and reasonable allowance for insurance is £217.

25. We allow as reasonable the sum of £17.50 being one quarter of the £70 repair bill for the loft hatch. For the reasons we have already given, the 15% handling or administration charge and the £100 management fee are disallowed as unreasonably charged.

26. If anything is payable for the year to January 2011, the limit of the Respondents' liability would be £234.50.

1st January 2012

27. See p22, p7. The version sent to Mr Collier is almost unintelligible. It falls short of any reasonably clear demand by a long way. That apart, the demand for service charges is invalid for the reasons given in paragraph 13.

28. If valid, the correct and reasonable charge for insurance would be £219.06.

29. At pages 46-48 of the bundle, there is a quote from George for works to the front of the property, and a competing quote obtained by Mr Collier, which has the merit of being recognisable as the type of document we would hope to see in a bundle of supporting documents. Mr Collier was prepared to pay 25% of Artinville Limited's quote for the same works, totalling £2520. The demand appears to include a claim for £201, being 25% of a gutter repair (£60), repairs to the front elevation (£600) and further drain works (£144). Bearing in mind that the works seem to have been required, we would allow the £201 as reasonable but again disallow for the reasons already given, the 15% administration fee and £100 management fee.

30. If validly charged, the reasonable amount for the year ending 1st January 2012 would be £420.06.

1st January 2013

31. See p22, p8. The demand is invalid for the reasons given in paragraph 13.

32. If valid, the reasonable insurance charge would be £223.39.

33. Considering the explanations for the £545 service charges (see p8 for clarification), we conclude that a reasonable allowance would be 25% of £245 ie £61.25. We accept that some work in the nature of that described was done, but are far from satisfied that the charges were proper without supporting evidence.

34. Again there is no question of allowing 15% for administration, or the £100 management charge.

35. If a valid service charge demand had been served, the Respondents' liability for the year ending 1st January 2013 would be £284.64.

1st January 2014

36. See the court file. The demand is invalid for the reasons given in paragraph 13.

37. If valid, the insurance premium payable by the Respondents would be £201.59.

38. Mr Kaufman charged £1200 for further front elevation repairs and redecoration. He did not serve a s20 notice. As Mr Collier had moved

out of his flat by this time, he could not give details of the works, if any were done. We are prepared to accept Mr Kaufman's evidence about George's last job but will limit the Respondents' reasonable share to £250 being the maximum allowable when no s 20 notice is served, plus £25 for their share of down pipe and gutter repairs.

39. If a valid demand for the year ending 1st January 2014 had been served, the Respondents' liability would be limited to £476.59. Again, for the same reasons, we reject as unreasonable any 15% administration charge or management fee.

1st January 2015

40. See the court file. The demand is invalid for the reasons given in paragraph 13.

41. If a valid demand had been served, the reasonable amount to charge for the insurance premium would be £185.06.

42. There are repeat repairs for a downpipe and unblocking the rear rainwater pipe, plus 25% of a sum of £80 for further external stone repair. Without further information as to which downpipe and why (there being a regular history of repairs to downpipe, at least one of which was not secured properly by George and one repaired with tape), we would disallow those charges as unreasonably incurred. We allow the stone repair work. We disallow for reasons given any management charge and 15% handling or administration fee.

43. If a proper demand had been served for the year ending 1st January 2015, the amount payable by the Respondents would be £205.06.

14th May 2015

44. This is in the court file. It was an attempt by Mr Kaufman to comply with his statutory obligations prior to issuing court proceedings. It contains the names and addresses of the Applicants. The copy on the court file does not contain a statement of rights and obligations and remains invalid. So far as it attempts to revisit items charged for the period 1st January 2014 to 1st January 2015 (including items such as lighting and cleaning of common parts, never previously claimed) and increase charges already claimed, we would disallow for this period anything beyond the allowances we have made for reasonable charges in respect of the years up to 1st January 2014 and 1st January 2015. It is totally unreasonable and verges on the dishonest to re-write two years' worth of service charge demands shortly before issuing proceedings, particularising various new items (further examples: fire alarm testing, parking, legal advice, repairs to one of the bedsits) and still failing to support anything with documentary evidence. The claimed total figure

of £2271 is dramatically different to that claimed in January 2015 (over £7000), and the document is of no evidential or other value. We would comment that although the lease (Clause 3 1(ii)) allows for the recovery of a "fair proportion" of the costs of 'cleansing and lighting', we consider that the tenant derives no benefit from the cleansing and lighting of the common parts as he has an independent entrance. Recovery of these costs is therefore unreasonable.

45. We should add for the sake of clarification that as no proper demands have been served, the Applicants are unable to claim contractual interest, a significant feature of the sums allegedly due by the Respondents.

Application under s.20C and refund of fees

46. At the end of the hearing, the Applicant was invited to apply for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines (although the Respondent indicated that no costs would be passed through the service charge), for the avoidance of doubt, that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Judge Hargreaves

Helen Gyselynck BSc MRICS

31st March 2017

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).