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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/LSC/2017/0021**
Property	:	**124 Belton Way London E3 4BB**
Applicant	:	**Poplar HARCA**
Representative	:	**Nick Grundy (Counsel)**
Respondent	:	**Mr Kabir Mahmud**
Representative	:	**In person**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge: N Haria** **Valuer Member: Mrs A Flynn MA MRICS**
Date and venue of Hearing	:	**22 May 2017 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**17 July 2017**

DECISION

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Decisions of the tribunal

(1) The tribunal makes the determinations as set out under the various headings in this Decision.

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(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 whether service charges in the sum of £12,384.21 are payable by the Respondent.

2. Proceedings were originally issued on the 13 November 2014 in the County Court Money Claims Centre under claim no. A75YP240 and judgement in default was entered on the 31 December 2014. The Respondent applied for the judgement to be set aside. The matter was transferred to the Bow County Court. At the hearing on 6 January 2017 before District Judge Pigram, the parties entered into a consent order on whereby the Respondent admitted an annual liability for the sum of £573.63 in respect of the service charge from 2005/6 until 2014/15 amounting to £5,736.30 and the remainder of the claim was transferred to this tribunal, for a determination of the service charge payable under section 27A of the Landlord and Tenant Act 1985. The Applicant was given permission to amend its Claim Form and Particulars of Claim to include all service charge claims to date.

3. On the 28 February 2017 a Directions hearing was held by the tribunal. The Applicant was represented by Mr J Dillon of Counsel and the Respondent attended in person.

4. Mr Dillon for the Applicant produced two separate statements of account which included the sum of £5,736.30 paid by the Respondent pursuant to the consent order. The current balance of general service charge was £7,784.34 and a separate charge of £1,765.35 for external decorations works which had been demanded on 7 April 2010. The Respondent was happy for the tribunal to deal with all alleged arrears. He said that his challenge to the reasonableness and payability of the service charge demanded was limited to the following two specific points:-

(i) He considered the Applicant's method of apportioning the service charge (based on the net internal area of each flat) was unfair and the each flat should pay the same percentage.

(ii) He objected to there being three separate categories of service charge, namely an estate service charge, a group buildings service charge and a specific building charge as in his view this leads to a duplication of some of the charges.

5. The Directions issued following the hearing on the 28 February 2017 specifically note that "In answer to a specific question from the Procedural Judge Korn the Respondent confirmed that he was not disputing the charges on any other basis (such as quality of services, value for money, recoverability of a particular head of charge under the terms of the lease, etc)."

6. The tribunal listed the case for a hearing on the 22 May 2017 estimated to last for ½ day (or possibly ¾ day).

7. The Respondent's statement of case raised issues outside those identified by him at the Directions hearing. On the 12 May 2017 the tribunal confirmed the case was confined to the issues identified at the Directions hearing. On the 15 May 2017 after receiving further representations from the Respondent, the tribunal again confirmed that the case was to be confined to those identified at the Directions hearing.

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

The hearing

9. The Application was listed for hearing on the 22 May 2017. The Applicant was represented by Mr N Grundy of Counsel and the Respondent appeared in person.

10. The following persons were also in attendance on behalf of the Applicant, Paul Stannard Home ownership Manager, Matthew Mitchell Leasehold Officer and Mariam Begum Collections officer. Mr Muhammad Abdul Salam a friend of the Respondent was also present.

11. At the hearing the Respondent once again raised areas outside those set out by the Directions as he stated that he had been mistaken to agree to limit the matters to be considered to the two areas highlighted in the Directions. The Respondent argued that at the Directions stage he had not seen all the documents in relation to the service charge. Mr Grundy

for the Applicant objected to an extension of the areas to be considered he stated that he had come prepared to deal with the areas as directed by the Tribunal.

12. The tribunal considered the matter and the options available and determined that the appeal should be restricted to the areas set out in the Directions. It is clear from the Directions that the Respondent had agreed to the areas to be covered. The tribunal appreciates the Respondent is unrepresented but he agreed to the areas of his own volition, it would be unjust and prejudicial to the Applicant for the tribunal to agree to extend the scope of the areas to be covered on the day of the hearing and it was not in the interests of justice to adjourn the hearing to allow the Applicant time to deal with the other issues raised by the Respondent. The tribunal had regard to the overriding objective as set out in the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. To allow the Respondent to extend the scope of the areas to be covered on the day of the hearing is tantamount to ambushing the Applicant it was not proportionate to adjourn the case to another day. The Respondent could if he chose submit a separate application to the tribunal to deal with the other issues.

The background

13. The property which is the subject of this application is a two bedroom maisonette with a balcony located on the second and third floors of a purpose built block of flats on the Lincoln Estate. There are a total of 1280 properties on the Lincoln Estate, comprising 413 leasehold properties and 857 tenanted properties. There are 56 blocks on the Lincoln Estate and some freehold houses that are not a part of a block.

14. The Respondent holds a long lease of the property dated 5 March 1990 ("the Lease"). The Lease requires the Applicant as landlord to provide services and the Respondent as leaseholder to contribute towards their costs by way of a variable service charge. The specific provisions of the Lease and will be referred to below, where appropriate.

15. The Respondent is also a leaseholder of 138 Knapp Road which is a 3 bedroom maisonette and is also situated on the Lincoln Estate.

16. 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

17. At the start of the hearing the parties and tribunal identified the relevant issues for determination as:

(i) whether the Applicant's method of apportioning the service charge (based on the net internal area of each flat) was unfair and the each flat should pay the same percentage, and

(ii) whether three separate categories of service charge, namely an estate service charge, a group buildings service charge and a specific building charge was fair and reasonable or leads to a duplication of some of the charges.

18. The tribunal had before it detailed and lengthy documents and written submissions by both parties. The contents of these have been taken into account but are not repeated in this decision save for where relevant.

19. 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 Lease

20. Under the provisions of the Clause 4(4) of the Lease [258] the Respondent as Lessee covenants to "Pay the interim charge and the Service Charge at the times and in the manner provided in the Fifth Schedule.....".

21. The Fifth Schedule [278-280]defines:

(i) the "Total Expenditure" to mean " the total expenditure incurred by the Lessors in any Accounting Period in carrying out their obligations under Clause 5(5) of this Lease less sums expended from the monies set aside under Clause 5(5) (p)of this Lease and also of insuring against the making good of structural defects and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the cost of employing Managing agents (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Lessee hereunder a sum equal to the Lessors reasonable costs and charges in affecting the administration and management of the Building and of the Common Parts and (c) an annual sum equivalent to the fair rent of any accommodation owned by the Lessors and provided by them rent

free to any of the persons referred to in Clause 5(5) of this Lease.

(ii) the "Service Charge" to mean "..such reasonable proportion of the Total Expenditure as it attributable to the Demised Premises....."

(iii) the "Interim Charge" to mean such sum to be paid on account of the Service charge in respect of each accounting Period as the Lessors or their Managing Agents shall specify at their discretion to be fair and reasonable interim payment.

22. Clause 5 of the Lease sets out the Lessors covenants. Clause 5(5)(a) is a conditional covenant requiring the Lessor to maintain and keep in good and substantial repair and condition the following:

(i) The main structure of the Building,

(ii) All gas and water mains, pipes , drains and other service media

(iii) The common parts

(iv) The boundary walls and fences of the Building

(v) The flats or flats or accommodation used by any caretaker

(vi) All other parts of the building that are not let.

23. Clause 5(5)(b) is the Lessors covenant to paint and varnish etc. the outside of the Building, the interior of the Building and any caretakers accommodation.

24. Clause 5(5)(c) is the Lessors covenant to insure and keep insured the Building.

25. Clause 5(5)(d) is the Lessors covenant to keep the Common Parts clean and lighted.

26. Clause 5(5)(e) is the Lessors covenant to pay and discharge any rates including water rates etc.

27. Clause 5(5)(f) is the Lessors covenant to employ caretakers, porters maintenance staff gardeners cleaners or such other persons as the

Lessors may consider necessary and to provide accommodation for such staff.

28. Clause 5(5)(g) and (h) are the Lessors covenant to provide and maintain a communal heating and hot water system.

29. Clause 5(5)(j) is the Lessors covenant to employ staff and at the Lessors discretion a firm of Managing Agents to manage the Building and to employ or enter into contracts with surveyors, builders, architects, engineers, tradesmen, accountants or other professionals as is necessary for the proper maintenance safety and administration of the Building.

30. Clause 5(5)(k) is the Lessors covenant to maintain (if installed) a communal TV aerial.

31. Clause 5(5)(l) is the Lessors covenant to maintain and any existing fire fighting equipment and any further fire fighting equipment.

32. Clause 5(5)(m) is the Lessors covenant to maintain any lift(s).

33. Clause 5(5)(n) is the Lessors covenant to maintain a rented electric porter system

34. Clause 5(5)(o) is the Lessors covenant to do such works etc. as the Lessor deems necessary or advisable for the proper management maintenance safety amenity or administration of the Building.

35. Clause 5(5)(p) is the Lessors covenant to set aside a reserve fund.

36. Clause 1 of the Lease defines "the Building" as "means the buildings of which the Demised Premises forms a part and specified in Paragraph 4 of the Particulars".

37. Paragraph 4 of the Particulars provides as follows: "BUILDING AND ADDRESS: 102 -124 (EVEN) BELTON WAY E.3.

38. Clause 1 of the Lease defines "the Common Parts" as "means all main entrances passages landings staircases (internal and external) gardens gates access yards roads footpaths parking areas and garage spaces (if any) passenger lifts (if any) means of refuse disposal (if any)and other areas included in the Title above referred to or comprising part of the Lessors Housing Estate and of which the Building forms a part provided by the Lessors for the common use of residents in the Building and their visitors and not subject to any lease or tenancy to which the Lessors are entitled in reversion.

39. The Lease shows that at the time of the grant of the Lease the Lessors Title was registered under Title Number NGL 283254. The Property Register of the office copy entries of Title Number NGL 283254 shows the extent of the land included by reference to the Title plans.

The Applicant's submission

40. The Applicant has detailed its submissions in its statement of case [164-167].

41. The Lincoln Estate was established on the grant of the leases in 1990. The previous freeholder the London Borough of Tower Hamlets transferred the whole of the Lincoln Estate to the Applicant.

42. The London Borough of Tower Hamlets used rateable values as their main apportionment method. They used floor areas for rented properties and also where they had new build properties where rateable values were not available. Rateable values were last updated in 1973 and are now regarded as an undesirable method of apportionment.

43. The Applicant on acquiring the London Borough of Tower Hamlets housing stock on a large scale voluntary transfer of its stock changed the method of apportionment of service charges to floor areas for the following reasons:

    (i) It is measurable

    (ii) It is easily understood

    (iii) It is widely used for service charge apportionment

    (iv) It is permitted in leases which allow any reasonable basis of apportionment

    (v) It can be calculated consistently for new dwellings, alterations and knock through.

    (vi) It was approved by a panel of residents after consultation and consideration of alternatives.

44. The floor area information witness statement exported from London Borough of Tower Hamlets and downloaded into the Applicant's Orchard system.

45. The Administration charge is a flat fee as the work involved in calculating each lessee's service charge is similar.

46. In relation to the remainder of the service charge the Respondent's apportionments are as follows:

(i) Property area =67 sq m

(ii) Block area =798 sq m

(iii) Lincoln 1 North = 60,824.16 sq m

(iv) Lincoln (all) = 81,235.25 sq m

47. Mr Mitchell clarified at the hearing that the areas are the aggregate areas of the properties managed by the Applicant in the Lincoln Estate and do not include the areas such as the area occupied by a school.

48. The three different types of service charge are calculated by apportioning the cost according to who benefits from the service or works and there is no double counting. The formula for the calculations are as follows:

(i) Property Area ÷ Block Area x Total Cost

(ii) Property Area ÷ Lincoln North Area x Total Cost

(iii) Property Area ÷ Lincoln Area x Total Cost

The Respondent's submission

49. The Respondent has detailed his submissions in his statement of case [156-163].

50. The Respondent disagrees with the number of properties within the Lincoln Estate. He claims that he has established by looking at the ordinance map that the Lincoln Estate includes over 2000 properties plus new residential developments within the Estate.

51. The Respondent claims the service charge for all former London Borough of Tower Hamlets lease properties was based on rateable values. The Respondent claims the Applicant did not consult with the leaseholders or make an application to the tribunal for a lease variation prior to changing the method of apportionment of service charge.

52. The Respondent stated that he is the leaseholder of a property on Knapp Road which is also within the Lincoln Estates and the property at Knapp Road is 76 sq m and is larger than the subject property at

Belton Way but the service charges for the property at Knapp Road are lower.

53. The Respondent also raised some other points in relation to the service charges but these were outside the scope of this case.

The tribunal's decision

54. The tribunal determines that:

    (i) the apportionment of the Service Charge based on the net internal floor area of each flat is a fair and reasonable method of apportioning the service charge in accordance with the provisions of the Lease, and

    (ii) the three different categories of service charge namely Estate Service charge, Group Buildings Service charge and a specific Building Charge are a reasonable method of charging for different categories of expenditure and does not lead to a duplication in charges.

Reasons for the tribunal's decision

55. The tribunal accepts that the legal submissions made by Mr Grundy in his skeleton argument is a correct representation of the law.

56. In relation to the proportion of the Applicant landlord's costs payable by the Respondent this is usually specified in the lease. In this case the Lease specifies that the Respondent should pay "..such reasonable proportion of the Total Expenditure as it attributable to the Demised Premises.....". Where the service charge proportion is to be calculated by the landlord or his surveyor acting reasonably, the question is whether the decision is a reasonable one: if it is, it does not matter that other reasonable decisions could have been taken **Westminster CC v Fleury [2010] UKUT 136 at [10]: PAS Property Services v Hayes [2014] UKUT 0026(LC)at [52]**.

57. Where a lease obliges the leaseholder to pay a 'such reasonable proportion" of the costs of works or services, it will be a question of fact and degree in each case whether the resulting charge meets these conditions. In this case the Applicant decided to apportion the costs by reference to the floor area of the Respondents flat as a proportion of the floor area of the demised premises benefitting from the service or works in issue. The Lease simply states the service charge is a such reasonable proportion of the total costs and the tribunal finds that apportioning the service charge by reference to floor areas is fair and reasonable. The fact

that the service charge could be calculated using some other method or formula does not make the use of floor area unreasonable.

58. The Respondent's proposal that the service charge is calculated so that each property pays an equal proportion is another method of apportioning the service charge. In this case since the Estate is large and comprises properties of varying sizes requiring each property to pay the same amount by way of service charge may lead to unfairness in that a large property occupied by a greater number of residents would pay the same as a smaller property occupied by fewer residents.

59. The fact that the previous landlord used rateable values as a method of apportionment does not mean that the landlord cannot decide to use an alternative method of apportionment provided of course that whatever method is used it results in the lessee being required to pay 'such reasonable proportion" of the total expenditure in relation to any works or services.

60. The total number of properties within the Lincoln Estate is not relevant to the issue to be determined since the apportionment is by reference to areas not number of properties.

61. The tribunal considered that on the basis of the floor area method of apportionment mathematically the larger property at Knapp Road would if all things were equal be liable to pay a higher service charge than the subject property. There was insufficient evidence before the tribunal to make a comparison of the service charges demanded in respect of Knapp Road and the subject property and to comment as to whether or not Knapp Road was in fact paying a larger proportion of the service charge than the subject property.

62. The tribunal considers the apportionment of the three different categories of charges by reference to three geographical areas limited to the areas actually managed by the Applicant to be fair and reasonable as the costs are apportioned so that:

    (i) The costs that benefit only the Building are apportioned by reference to the aggregate area of the demised properties in the Building,

    (ii) The costs which benefit the Lincoln North Area are apportioned by reference to the aggregate area of demised premises in Lincoln North,

    (iii) The costs which benefit the Estate as a whole are apportioned by reference to the area of the Estate as a whole.

Application under s.20C

63. There was no application for an order under section 20C of the 1985 Act. The tribunal has found in favour of the Applicant in this case and so the tribunal does not consider it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.

Name: Judge Haria **Date:** 17 July 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).

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.