FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BK/LSC/2022/0399**
Property	:	**Flats 202 and 206 Romney House, 47 Marsham St London SW1P 3DR**
Applicants	:	**Graham Bradley** **Michael Rhodes**
Representative	:	**Mr G Bradley**
Respondents	:	**Abacus Land 4 Limited**
Representative	:	**Mr T Morris of Counsel**
Type of application	:	**Ss20 and 27A Landlord & Tenant Act 1985 and Sched 11 Commonhold and Leasehold Reform Act 2002**
Tribunal	:	**Judge F J Silverman MA LLM** **Mr S Johnson FRICS**
Date and place of hearing		**07 June 2023** **Alfred Place London WC1E 7LR**
Date of Decision	:	**07 July 2023**

Decision

1. The Tribunal finds the service charges demanded by the Respondent in respect of gym maintenance and litigation costs for the years 2013-2023 inclusive to be payable and reasonable in amount.

2. The Applicants' objections to the Respondent's s20 procedure are not upheld.
3. The Tribunal has no jurisdiction under this application to make orders for breach of trust, for variation of the terms of a lease, for breach of covenant or for the refund or set off of service charges.
4. The Applicants' requests for orders under s20C Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 are both declined.

Reasons

1. This application was filed with the Tribunal on 16 December 2022 (page 1242) requesting a determination of service charges relating to a single item for each of the years 2013-2023 together with a request for orders to be made under s20C Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
2. The Applicants' statement of case also included requests for declarations and orders relating to a variety of matters (refunds, set-off, variation of lease, interpretation of lease, breach of covenant and breach of trust) none of which fall within the Tribunal's jurisdiction under the present application.
3. Directions were issued by the Tribunal on 13 January 2023, 08 February, and 04 May (page 2 et seq).
4. The hearing of this matter took place at Alfred Place in London on 07 June 2023 at which the Applicants were represented by Mr G Bradley and the Respondent by Mr T Morris of Counsel.
5. A joint electronic hearing bundle comprising 1,708 pages had been filed by the Applicants, pages of which are referred to in this document by their digital page number. A written skeleton argument with supporting authorities had been served by the Respondent shortly before the hearing.

6. In accordance with current Practice Directions relating to Covid 19 the Tribunal did not make a physical inspection of the property but was able to obtain an overview of its exterior and location via GPS software. The issues before the Tribunal were capable of resolution without an inspection.

7. The Respondent is the registered freehold proprietor of the building known as Romney House, Marsham Street, London SW1P 3DR which the Tribunal understands to be a former office block now converted into 168 self-contained flats. The flats are demised on long residential leases, and the Applicants are the leaseholders of flats 202 and 206 respectively. The Tribunal was told that for all material purposes the flat leases all contained broadly identical clauses which included an unrestricted right for tenants to use the gym and its facilities situated in the basement of the building together with an obligation to contribute (inter alia) towards the upkeep and repairs of that facility. Commercial premises on the ground floor of the block form part of the Respondent's estate but are not relevant to the issues in this application.

8. The Applicants' application concerns only one substantive issue, namely the charges levied through the service charge relating to the maintenance of the gym. The Applicants accept that the service charge provisions of the residential leases include an obligation on each tenant to make a contribution to both maintenance and upkeep of the gym (para 10 Sched 4) irrespective of whether or not they made use of this facility.

9. This liability arises because under the provision cited above the tenants are required to contribute to a fair proportion (as determined by the landlord) of costs, charges and expenses which are 'designated by the landlord' to be chargeable 'to the residential lessees of the building'.

10. The service charge allocations included in the hearing bundle (eg page 37) show proportions in the region of 1.16% - 1.22% being charged to individual tenants in respect of two gym related items:

one for the specific maintenance of the gym and its area its equipment, the other in respect of common parts maintenance.

11. The Applicants accepted that when the leases were drafted the gym was intended to form part of the 'common parts' as defined in the lease.
12. No exact explanation of the calculation of the individual percentage breakdown of the service charge between the tenants was offered but it is likely that the allocation between the lessees was based on the relative floor size of the apartments.
13. The Applicants say that until 2013 the tenants had exclusive access to and use of the gym in accordance with the terms of their leases and 100% of the gym maintenance charges were charged to the tenants. There is no dispute about the years from 2006-13.
14. In 2013 the then freeholder granted a 999 year lease of the gym to a third party. The terms of that lease (page 209) were somewhat unusual in commercial terms in that it made no provision for the gym tenant either to be responsible for or to contribute to the upkeep and maintenance of the gym or the common parts of the building. It was, however, subject to a covenant by the gym tenant to allow the residential tenants to continue to have access to and use of the facilities which they had previously enjoyed. From the date of the gym lease the landlord/freeholder had credited the rent received from the gym tenant to the gym upkeep part of the building's service charge account thus reducing the residential tenants' overall liability under that heading by £5,000 pa. No contribution was made however, to the common parts section of the service charge accounts despite the fact that the gym tenant would have had access to and use of these, including the service of porters.
15. The Respondent acquired the freehold subject to the terms of both the gym lease and the residential leases and until recently continued to contribute £5,000 each year to the gym service charge account.
16. From 2013 the tenants continued to use the gym as they had done previously although they were now sharing that facility with the gym tenant and their clients.

17. However, from then onward the gym tenant began to restrict the residential tenants' use of the gym facilities to certain hours which the Applicants say was contrary to the terms of use set out in the their own leases. Despite complaint from the residential tenants the landlord/Respondent has taken no steps to restore the tenants' rights and has not adjusted the proportion of the service charge payable by the residential tenants despite the fact that they are no longer able to enjoy the full benefit of the facilities.
18. The situation worsened in 2020 when, at the end of the Covid lockdown, the gym tenant took and retained possession of the gym key from the porters and from that time onwards has further restricted the tenants' times for use of the gym, keeping the door locked except during the very limited hours when the residents are permitted to use the facilities. The Applicants say this restriction is contrary to the right to use the gym given to the tenants in their individual leases.
19. The enforcement of the tenant's rights to use the gym is not a matter within the Tribunal's jurisdiction under the present application.
20. The Applicants contend that in the light of the gym lease and the restricted hours during which the tenants are now permitted to use the facilities the allocation of 100 per cent of the gym service charges to the tenants is unfair and unreasonable and the Respondent should re-apportion the gym service charge to reflect the current situation ie to allocate a fair proportion of those charges to the gym tenant consistent with that tenant's use of the gym. Those reallocated charges would have to be borne by the freeholder because the gym lease contains no provisions for the gym tenant to contribute to the service charge.
21. Currently, the service charges for the gym area are apportioned in accordance with the terms of the lease under which the Respondent landlord has a discretion as to the inclusion and allocation of charges. This is not therefore a matter over which the Tribunal has jurisdiction under this application which concerns only the payability

and reasonableness of service charges. This issue would need to be dealt with by an application to vary the leases.

22. Similarly, no challenge had been made by the Applicants on the grounds either of payablility or reasonableness of the gym charges until the Respondent decided to undertake a refurbishment of that area which entailed serving s20 major works documentation.

23. It is accepted that mere payment of a service charge does not of itself estop a tenant from pursuing an application under s27A. However, the Respondent argued that the Applicants had agreed or admitted the charges which, by virtue of s27 A(4) would preclude them from pursuing their application.

24. It is clear from *Cain v Islington* [2016] L & T R 13 as subsequently approved in *Marlborough Park Services v Leitner* [2019] H L R 10 that a single payment of service charge would not be regarded as an agreement or admission but '*where there have been repeated payments over a period of time of sums demanded, there may come a time when such an implication or inference [ie of agreement or admission] is irresistible'*. In the present case the Applicants' 'payments' appear to have been made without demur since 2013 when the gym lease was first granted and continued to the present day despite unilateral alterations to the terms of gym usage in both 2013 and further in 2020. This lengthy pattern of undisputed payments inclines the Tribunal to conclude that the implication or inference of agreement or admission is indeed irresistible and precludes the jurisdiction of the Tribunal under a s27A application at least in so far as it relates to charges levied up to 2020.

25. In relation to charges from 2020 onwards and alternatively in relation to earlier years, if the Tribunal is wrong in its conclusion that it lacks jurisdiction as above, the Tribunal considered whether the Respondent freeholder could be said to have acted reasonably in exercising its discretion to allocate 100% of the service charges attributable to the gym to the residential tenants.

26. Paragraph 10 of Schedule 4 of the lease (page 144) requires the landlord to act reasonably both in designating which expenses to allocate to the tenants' service charge account and the amount of the apportionment of those charges between the tenants. This gives the landlord a wide discretion which has to be viewed in the context of the circumstances of the particular case. The exercise of reasonableness is summarised in Woodfall at 7.193 as follows: '…*In determining the reasonableness of a service charge, the Tribunal must take into account all relevant circumstances as they exist at the date of the hearing in a broad, commonsense way giving weight as it thinks right to the various factors in the situation in order to determine whether a charge is reasonable. Whether costs have been reasonably incurred is not simply a question of the landlord's decision making process. It is also question of outcome, but it must be borne in mind that where the landlord is faced with a choice between different methods of dealing with a problem in the physical fabric of a building, there may be a number of outcomes each of which is reasonable. So the Tribunal should not simply impose its own decision: if the landlord has chosen a course of action which leads to a reasonable outcome the cost of pursuing that course will have been reasonably incurred even if there was another cheaper outcome which was also reasonable. (…) The requirement that costs be reasonably incurred does not mean that the relevant expenditure must be the cheapest available, although this does not give the landlord a licence to charge a figure that is out of line with the market norm. The exercise is not just the mathematical one of looking at the estimates and the amount claimed. The fact that the landlord has adopted appropriate procedures in incurring the costs does not mean that such costs were reasonably incurred if they were in excess of an appropriate market rate. In considering whether the landlord's final decision is a reasonable one, the Tribunal must accord him a margin of appreciation'.*

27. This approach is amplified by the following passage from *Regent Management Ltd v Jones* [2010] UKUT 369 (LC):

'The test is whether the service charge that was made was a reasonable one; not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem of management. All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT may have its own view. If the choice had been left to the LVT it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable.'

28. In the present case the landlord appears to have had two options from 2013 onwards: to continue to charge the gym expenses to the tenants as before or to bear part of the charges itself to reflect the shared use of the gym between the residents and the gym tenant. The Respondent landlord chose the first option which it was entitled under the terms of the lease to do. That choice, although unpalatable to the residential tenants cannot therefore be said to be unreasonable. It was not a decision of the type where it could be said that no reasonable landlord in a similar position could ever have made it.
29. Further, the Applicants have brought no evidence eg by way of alternative quotations, to demonstrate that the actual amounts charged were unnecessary or excessive. Neither has any challenge been made to the quantity or quality of works done. In these circumstances the Tribunal has little choice but to find that the amount of the charges allocated to the residential tenants were reasonable.
30. An alternative argument mooted by the Applicants was that from 2020 when the residential tenants' rights to use the gym were further curtailed the landlord had effectively lost control of the gym area which could no longer be considered to be 'common parts' and therefore charges relating to it could not be attributed to the residential tenants' service charge. Attractive as this argument is, it is

regrettably unworkable. Whatever the relationship is between the gym tenant and the landlord, the fact remains that the premises which comprise the gym are defined by the lease between the residential tenants and the landlord (page 144 et seq) as part of the 'common parts', and remain so unless and until the residential lease is varied. Variation of the lease is not within the Tribunal's jurisdiction under the present application.

31. The Applicants also suggested that the service charges demanded were not reasonable or should not be payable because the Respondent had not complied fully with the s20 major works procedures in that they had failed properly to take notice of the Applicants' observations in which they raised objections to the works.
32. The Tribunal notes that the Respondent's obligations to repair and maintain the gym contained in the gym lease (page 209) overlap with the obligation to maintain common parts contained in the residential leases and in both cases is sufficiently widely drafted to include 'replacement' as well as 'repair'.
33. The Applicants suggested that the Respondent's plans to carry out a full refurbishment of the gym area were connected with a dispute which had led to litigation between the Respondent and the gym tenant. Irrespective of motive, the Respondent's proposals would have resulted in a charge to each residential tenant which substantially exceeded the modest £250 per flat limit under s20 Landlord and Tenant Act 1985 and the Respondent correctly issued a s20 notice to all residential tenants in respect of these proposed works.
34. The Applicants allege that the s20 procedure was not properly complied with because the Respondent failed to have proper regard to their observations objecting to the works.
35. Factually this allegation is incorrect. The Respondent considered and responded to the Applicants' observations (pages 542-547 and statement of Mr Watson page 1047). What they did not do, and were not obliged to do, was to follow the recommendations made by the Applicants. The Respondent's obligations under the Act were to

'have regard' to the observations and the Tribunal is satisfied that this was done. The question of non-compliance and need for a s20ZA application does not therefore arise.

36. As an alternative argument, the Applicants suggested that the Respondent had 'lost control' of the gym in 2013 since which time the tenants' rights to use the gym had been restricted. They considered therefore that the gym could no longer be classified as 'common parts' and thus the service charge provisions had no application to it. Unfortunately, the definition of common parts in the lease itself (page 132) does not allow for this liberal interpretation of the phrase. The Tribunal remains of the opinion that the gym remains fully part of the building within the expression 'common parts' and its use and upkeep therefore is permitted expenditure within the service charge provisions.

37. A further related issue concerns the allocation by the Respondent of litigation costs to the tenants' service charge account. The Applicants say that these costs relate to separate litigation between the Respondent and the gym tenant and should not be charged to the residential tenants because it does not concern them. The logic of the tenants' argument is diminished by paragraph 10 Schedule 4 of the lease (page 144) which gives the landlord discretion to decide what charges to allocate to the service charge account and in what proportions. It appears therefore that the Respondent has the right to allocate these sums to the service charge account unless it could be said that it was wholly unreasonable for it to do so. No detail has been given of the nature of the litigation but since it was conducted between the Respondent landlord and the gym tenant it might be assumed that the subject of the litigation concerned the gym lease ie related to the building and common parts of the building and could therefore be regarded as a legitimate service charge item.

38. The Applicants requested the Tribunal to make orders under either or both of s20C Landlord and Tenant Act 1985 and Sched 11 Commonhold and Leasehold Reform Act 2002 restricting the Respondent from adding litigation/administration costs to future

service charge accounts. In respect of s20C such an order can only benefit Applicants named in the application. In the present case the Applicants said they were bringing the application on behalf of 61 other tenants who had consented to the application and whose names and flat numbers were appended to the application. The Tribunal accepted that the additional leaseholders could in this case be regarded as persons who could be named on such as order as beneficiaries of that order.

39. As far as the orders themselves are concerned, although the Tribunal sympathises with the Applicants' predicament the Tribunal has been unable to assist because the remedies which the Applicants have sought have largely been outside its jurisdiction under the present application or have not been proved to the required standard of evidence. As a result, the Respondent has been obliged to defend the application. This is not therefore an appropriate situation in which an order under either of the above sections would normally be granted and the Tribunal declines to make the orders requested. This refusal does not prevent the Applicants from making a further application under s27A to challenge the reasonableness of any litigation costs which may be added to future service charge bills.

40. The Applicants may choose to seek further legal advice in relation to the issues which the Tribunal has been unable to deal with under the present application.

41. **The Law**

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 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.

21B Notice to accompany demands for service charges

(1)A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2)The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3)A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4)Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5)Regulations under subsection (2) may make different provision for different purposes.

(6)Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

S22 Landlord and Tenant Act 1985

22 Request to inspect supporting accounts &c.

(1)This section applies where a tenant, or the secretary of a recognised tenants' association, has obtained such a summary as is referred to in section 21(1) (summary of relevant costs), whether in pursuance of that section or otherwise.

(2)The tenant, or the secretary with the consent of the tenant, may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities—

(a)for inspecting the accounts, receipts and other documents supporting the summary, and

(b)for taking copies or extracts from them.

(3)A request under this section is duly served on the landlord if it is served on—

(a)an agent of the landlord named as such in the rent book or similar document, or

(b)the person who receives the rent of behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4)The landlord shall make such facilities available to the tenant or secretary for a period of two months beginning not later than one month after the request is made.

(5)The landlord shall—

(a)where such facilities are for the inspection of any documents, make them so available free of charge;

(b)where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6)The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as

precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

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.

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).

Judge F J Silverman
07 July 2023

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.