

9248



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

Case Reference : LON/00/BE/LSC/2013/0142

Property : 55 Sherston Court, Newington Butts,
London SE1 6SG.

Applicant : Mr Geoffrey Morgan (“the Tenant”).

Representative : N/A

Appearances for Applicant: Mr Geoffrey Morgan.
Ms C Asasciow (friend).

Respondent : London Borough of Southwark (“the
Landlord”).

Representative : N/A

(1) Mr Tobias Eaton, Counsel.
(2) Mr Greg Brutton, Enforcement
Officer.
(3) Mr Gulam Dudhia, Accountant.
(4) Mr Steven Kallagher, Fire Safety
Officer.
(5) Mr Joe Bannon, Contracts
Manager.
(6) Mr Kola Jimoh, observer.
(7) Ms Summer Field, observer.
(8) Ms Jo Taylor, observer.

Appearances for Respondent:

Type of Application : Application under Section 27A Landlord
& Tenant Act 1985

Tribunal Members : (1) Mr A M Vance LLB(Hons) (Chair)
(2) Mr T N Johnson FRICS
(3) Mr L G Packer

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

Date of Decision : 22.08.13

DECISION

Decision of the Tribunal

1. The Tribunal determines that the sums set out in the table attached to this decision at Annex 1 are reasonable and payable by the Applicant to the Respondent on account of estimated service charges for major works.
2. The tribunal makes 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.

Introduction

3. This is an application made under section 27A Landlord and Tenant Act 1985 ("the 1985 Act") for determination of the Tenant's liability to pay service charge in respect 55 Sherston Court, Newington Butts, London SE1 6SG ("the Property").
4. The Applicant is the leasehold owner of the Property, a two-bedroom flat on the sixth floor of Sherston Court, a seven-storey residential tower block built in the 1960's ("the Building"). The Building comprises 27 flats and forms part of the Draper Estate ("the Estate").
5. The Respondent, London Borough of Southwark, ("the Council") is the Applicant's landlord and has the benefit of the freehold reversion of the Property.
6. Numbers appearing in square brackets below refer to the hearing bundle prepared by the Council unless stated otherwise.
7. The relevant legal provisions are set out in the Appendix to this decision.

The Lease

8. The relevant lease is dated 12.11.01 initially granted by the Council to Cheryl O'Shaughnessy for a term of 125 years from 12.11.01. The unexpired residue of the term is now vested in the Tenant.
9. The relevant provisions of the lease can be summarised as follows:
 - 9.1. The Tenant covenants to pay by way of a service charge a fair proportion of the costs and expenses incurred by the Council in carrying out its obligations set out in paragraph 7 of the Third schedule to the lease.
 - 9.2. The Council's obligations as referred to in paragraph 7 of the Third Schedule include all costs and expenses of or incidental to the carrying out of all works required by sub-clauses (2) to (4) inclusive of clause 4 of the lease namely:

"Clause 4(2):

To keep in repair the structure and exterior of the flat and of the building (including drains gutters and external pipes) and to make good any defect affecting that structure

Clause 4(3):

To keep in repair the common parts of the building and any other property over or in respect of which the Lessee has any rights under the First Schedule hereto

Clause 4(4):

As often as may be reasonably necessary to paint in a good workmanlike manner with two coats of good quality paint all outside parts of the building usually painted and also all internal common parts of the building usually painted”

- 9.3. The Council's obligations as referred to in paragraph 7 of the Third Schedule also include:
- 9.3.1. The costs of maintenance and management of the Building and the Estate (but not the maintenance of any other building comprised in the Estate) - *paragraph 7(6) of the Third Schedule*; and
 - 9.3.2. The installation (by way of improvement) of double-glazed windows or an entry-phone system should the Council decide to install either of these - *paragraph 7(9) of the Third Schedule*
- 9.4. The service charge year is the period 1st April to 31st March in the following year.
- 9.5. Prior to the first day of April in each year the Council is to notify the Tenant of the reasonable estimated service charge payable for the forthcoming year and the Tenant is to pay the Service Charge, in advance, in four equal instalments.
- 9.6. As soon as practicable after the end of each service charge year the Council is to ascertain and notify the Tenant of the actual Service Charge payable for that year.
- 9.7. The Council may adopt any reasonable method of ascertaining the proportion of the costs and expenses to be paid by the Tenant towards the Service Charge. The actual method adopted by the Council (which was not challenged by the Tenant) is based on the number of bedrooms in a flat. This method results in the Tenant's proportionate share being 3.73% of the total chargeable costs for the Building [45].

Pre-Trial Review and subsequent events

10. A pre-trial review took place on 22.07.13 at which both parties attended. The Tribunal identified the issues to be determined to be the

Applicant's liability to pay towards the estimated costs of major works as well as the reasonableness of the annual service charges for the 2011/12 service charge year.

11. Directions were issued by the Tribunal on the same day.

Inspection

12. Neither party requested that the Tribunal inspect the Property and we did not consider this to be necessary.

The Hearing

13. The following documents were handed up to the Tribunal during the by the Council course of the hearing. The Tenant did not object to their admission as evidence and we allowed their admission.
 - 13.1. An undated report from Landers & Associates ("Landers") (added to the bundle as pages 254 -256); and
 - 13.2. A summary of lift repairs for the 2011/12 service charge year (added to the bundle as page 257).
14. We heard witness evidence from Mr Kallagher, Mr Bannon and Mr Dudhia. The Applicant did not wish to add to his statement of case by way of oral evidence and the Council did not seek to cross-examine him on the evidence set-out in his statement. The Applicant was afforded the opportunity to cross-examine the Council's witnesses (which he did on occasion) and to make oral submissions.

Major Works

15. These works followed on from a fire risk assessment of the Building commissioned by Mr Kallagher. The resultant report from Turner & Townsend Project Management dated 19.04.10 [155] identified 15 items as requiring attention in order to reduce the fire risk rating of the Building. Two of these required urgent attention. Nine gave rise to a moderate level of risk and the remaining four to a tolerable risk.
16. In light of the recommendations in this report the Council carried out a consultation exercise with tenants under Section 20 Landlord and Tenant Act 1985. The Tenant did not challenge the Council's compliance with the requirements of the statutory consultation procedure.
17. A Notice of Intention to carry out works appears to have been sent to tenants on 28.03.11 followed by a tendering process, the results of which are summarised in a tender report from Potter Raper Partnership ("PRP") dated 14.11.11 [195]. PRP recommended appointing the contractor who submitted the lowest tender, J Murphy & Sons Limited. Mr Bannon's evidence to the Tribunal was that when the tender was produced it was assumed that 50% of the flat entrance

doors would need to be replaced and 50% upgraded, subject to further and more detailed on-site assessment.

18. The Council sent a Notice of Proposal to tenants on 09.12.11 [44] confirming the intention, subject to the outcome of the s.20 consultation process, to appoint J Murphy & Sons Limited to carry out the required fire safety works.
19. Before the works commenced a further fire safety assessment was obtained, this time from London Fire Solutions ("LFS"). The LFS report dated 26.06.12 concerned the condition of the 27 individual flat entrance doors in the building. The conclusion reached in the report was that it was not possible to upgrade the existing flat doors in the Building and that total replacement of all the doors was required.
20. The major works commenced after the LFS report and, according to a certificate of practical completion [232], were completed on 28.03.13. The defects liability period expires on 27.03.14.
21. The Tenant's position in respect of these major works was that they amounted to works of *improvement*. As his lease only allowed for the Council to recover the costs of improvement in two limited circumstances (the installation of double-glazing or an intercom) he disputed that he was liable to pay any of the charges sought. He did not challenge the need for these works nor did he argue that the estimated costs were unreasonable or that the works were carried out to a poor standard. His challenge was entirely concerned with his liability to pay towards the costs incurred.
22. The Tenant's proportion of the estimated costs of the major works (in the sum of £3,574.33) was demanded from him in an invoice dated 30.03.12 [48]. This invoice was sent out under cover of a letter from the Council to the Tenant dated 27.04.12 [47]. A detailed breakdown of these costs [46] accompanied an earlier Section 20 Landlord and Tenant Act 1985 consultation notice sent by the Council to the Tenant dated 09.12.11 [44].
23. However, prior to the hearing the Council confirmed that not all of the intended works detailed in that initial breakdown were, in fact carried out. The Council confirmed that the estimated sum demanded from the Tenant towards the major works should be reduced to remove the costs of the following items set out in the breakdown but not actually carried out:-
 - 23.1. Intake cupboard door;
 - 23.2. Upgrade 13 existing entrance doors to flats;
 - 23.3. Asbestos removal (the cost of testing was still sought);
 - 23.4. Additional requirements in respect of door closers and secure locks;
 - 23.5. Additional works to upgrading existing doorbells; and
 - 23.6. Works to communal area screens

- 24.** The Tenant did not seek to challenge the costs of preliminaries (£2,076.07) or Dayworks (£571.83). He also confirmed that no challenge was made in respect of the following items in the breakdown:
- 24.1. Fire Safety Signage
 - 24.2. Fire Proofing and sealing
- 25.** That left the following items of the major works still in dispute:
- 25.1. Renew of the existing entrance doors to flats;
 - 25.2. Door and screen between staircase and corridor;
 - 25.3. Refuse hoppers;
 - 25.4. Main riser panels and ducts;
 - 25.5. Remove and make good all work disturbed;
 - 25.6. Additional fire proofing works;
 - 25.7. Clear existing drying rooms and secure doors; and
 - 25.8. Asbestos testing.
- 26.** The Tenant's assertion in respect of *all* of that these remaining items is that they amounted to works of improvement and that that they were therefore unrecoverable from him. This was the case in respect of all of the items set out below in this section and was, unless stated otherwise his only challenge to each item.
- 27.** Mr Eaton, on behalf of the Council, disagreed arguing that all the items amounted to works of *repair*. He also contended that the costs were in any event recoverable as the council's numerous obligations under the lease, such as to provide services and carry out repairs, carried with it an implied obligation to ensure a safe working environment in the Building for visitors providing those services and repairs.

Renewal of the existing entrance doors to flats

- 28.** The Council's original assumption, at the time the tender was prepared, was that only 50% of the doors would need to be completely renewed, whilst a further 50% were likely to only need upgrading. However, in light of the subsequent LFS report the Council decided to replace 24 of the doors in question together with their frames, thereby bringing them up to current fire safety specifications.
- 29.** The Tenant was of the view that only the doors had been replaced and not the frames. Mr Bannon was uncertain as to whether or not this was correct and agreed to check the position. He gave an assurance that

when the actual cost of the works is known tenants would not be charged for the anticipated costs associated with the frames if these were not, in fact, changed.

30. As 24 doors were replaced and there are 27 flats in the Building, that leaves three flats unaccounted for. We were informed that the Council did not replace the doors for these 3 flats because the flats are located past the communal exit points on each floor.

Decision and Reasons

31. The original breakdown of costs that accompanied the major works invoice provided for the replacement of 12 doors at a cost of £9,540.00 and the upgrading of 13 of the doors at a cost of £18,875.00.
32. This breakdown was based on what appears to be a sample survey of the doors carried out by Turner and Townsend in April 2010. Their report identifies that some doors were damaged and that all of the doors they inspected needed fire safety improvements.
33. Turner and Townsend described the doors as “ranging from those which were generally in a good condition to those that need attention” and that some doors did not provide 30 minutes fire resistance. Due to the likely cost of replacement it was recommended that where doors were generally in a good condition that the Council consider if the doors could be upgraded by, for example, retro-fitting a self-closing device to the existing doors.
34. It is clear from the wording of their report that it was anticipated that Turner and Townsend’s recommendations in respect of replacement or upgrading was to be the subject of further consideration by the Council. The subsequent LFS report identifies specific defects with all of the doors, with every door having at least two items of physical damage such as damage to frame or leaf, gapping or bowing. This was in addition to not meeting the latest fire safety standards.
35. Based on the contents of these two reports, in particular the LFS report, we are satisfied that all of the flat doors in the Building were, to a greater or lesser degree, in a state of disrepair. We consider the Council were entitled under the terms of clause 4(2) and 4(3) of the lease replace the doors as recommended by LFS (as opposed to repairing them) and to seek to recover the cost of doing so from the tenants through the service charge. In doing so, we consider that the Council was entitled to replace them with doors that meet current safety standards.
36. This is particularly so where the anticipated costs set out in the breakdown of *renewing* 12 doors (which we understood from the Council’s evidence to relate to *replacing* the doors) is only £9,540. That is almost half of the anticipated cost of *upgrading* the 13 existing entrance doors at a cost of £17,875.
37. If the door frames have not been replaced (as the Tenant alleges) then, the anticipated costs of doing so should not be charged to the Tenants when the actual costs of these works are calculated and demanded from tenants. However, this does not alter our view that the Council was

entitled to include the costs in the sum demanded by way of an *estimated* charge.

38. Counsel for the Council confirmed that as the estimated figure in the breakdown for the replacement of 12 doors was £9,540.00 that the sum payable in respect of replacing 24 doors should be £19,080.00, in other words double the sum of £9,540.00. We consider this to be appropriate as far as an interim demand is concerned. Any variations in the actual costs can be resolved once the final figures are known. We therefore consider that the sum that it is reasonable for the Tenant pay sum in respect of this item his apportioned share of £19,080.00.

Door and screen between staircase and corridor - estimated charge: £23,700

39. This item relates to the Crittall fire doors and Georgian wire mesh panels that separated the stairwell from the residential areas. The Turner & Townsend report identifies that some of the glass panels had been damaged. The Landers report states that the original steel doors “were dilapidated”; that they “did not sit within their frames properly” and that “The existing doors could not be repaired and so new screens had to be fitted.”
40. In evidence, Mr Bannon stated that there were six sets of doors in total, one on each floor apart from the top floor. He said that all were found to be incapable of being upgraded [254]. The Council therefore replaced them with new doors and screens. In doing so, they were upgraded to meet current safety standards including achieving a 60 minute fire-rating.

Decision and Reasons

41. The evidence (as set out in the Townsend & Thompson and the Landers reports) indicates that all of the doors and screens were, to a greater or lesser degree, in a state of disrepair. We consider the Council were entitled under clause 4(2) and 4(3) of the lease to replace them (as opposed to repairing them) and to do so with items that met current safety standards.
42. We determine that the Tenant is liable to contribute towards these estimated costs in the full amount demanded from him by the Council.

Refuse hoppers - estimated charge: £1,561.00

43. These costs relate to replacing the hoppers in communal refuse chutes which also provide protection in the event of a fire in the bin room or chute. The Townsend & Thompson report indicated that several of the hopper covers were damaged and not closing properly [162].
44. The estimated cost of £1,561.00 as set out in the breakdown was calculated on the basis that five hoppers needed to be replaced. However, the Council informed us that on further consideration only one hopper needed to be replaced. This is confirmed in the Landers report [255].

Decision and Reasons

45. On the evidence (as set out in the Townsend & Thompson and the Landers reports) and not contradicted by the Tenant we consider that the hopper cover was defective and that the Council were entitled under the terms of the lease to replace it with a cover meeting current safety standards.
46. We determine that the Tenant is liable to contribute towards one fifth of the estimated costs demanded from him by the Council, namely his apportioned contribution towards total costs of £312.20.

Main riser panels and ducts - estimated charge: £528.00

47. The Council's position is that that panels needed to be removed so that ducts, fixings and seals could be inspected and repaired, if required. This was to help prevent fire spreading from one floor to another [191]. The Townsend & Thompson report identified visible damage to the electrical riser panels on the 6th floor and multiple breaks in floor slabs within riser panels [163]. The work carried out is referred to briefly in the Landers report [255].

Decision and Reasons

48. On the available evidence which was not contradicted by the Tenant we consider that the anticipated cost of these works is recoverable from the Tenant on the basis that the work was required in order to identify whether or not repair of individual items was required. As such, it is recoverable under clause 4(2) and 4(3) of his lease. Alternatively, they are recoverable under paragraph 7(6) of the Third Schedule as costs of maintenance and management of the Building.
49. We determine that the Tenant is liable to contribute towards these estimated costs in the full amount demanded from him by the Council.

Remove and make good all work disturbed - estimated charge: £536.00

50. This item refers to making good any paintwork or plaster damaged during works and redecorating as required. The Tenant made no substantive challenge to these costs.

Decision and Reasons

51. We determine that the Tenant is liable to contribute towards these estimated costs in the full amount demanded from him by the Council either under clauses 4(2) and 4(3) or, alternatively, as costs of maintenance and management of the Building under paragraph 7(6) of the Third Schedule.

Additional fire proofing works - estimated charge: £3,000.00

52. This sum was included as a *provisional* sum in the event that the need for additional works became apparent prior to or during the course of the works [193]

Decision and Reasons

53. We are being asked to determine whether or not it was appropriate for the Council to seek to recover these costs by way of an interim demand. We are satisfied that it was prudent for the Council to include some flexibility in its budget. As such, we determine that the Tenant is liable to pay the full amount demanded from him by the Council either under clauses 4(2) and 4(3) of the lease or, alternatively, as costs of maintenance and management of the Building under paragraph 7(6) of the Third Schedule.
54. However, the Landers report indicates that the work that was actually carried out under this item related to cladding timber panels beneath the kitchen windows on the communal balcony walkway. We have no evidence before us that these panels were defective. As such, it is unclear as to whether or not the costs actually incurred relate to improvements or repairs.
55. If they are improvements then on the available evidence it is *possible* that such costs may not be recoverable from tenants. However, that is a question that can be addressed once the actual costs are finalised and is not a matter that we need to address given that we are dealing with an interim demand.

Clear existing drying rooms and secure doors - estimated charge: £750.00

56. Mr Bannon's evidence was that these rooms originally contained communal laundry facilities but are no longer used for that purpose. Instead, tenants have used it to dump goods. This is confirmed in the Townsend & Thompson report [157] in which it is stated that the areas contained a lot of combustible material. It was recommended that the areas be cleared and the missing access door replaced and locked shut.
57. The Tenant stated that these areas had not yet been cleared. Mr Bannon's response was that if this is correct that the work would be done prior to the final costs of these works being determined or else they would not be charged to the tenants.

Decision and Reasons

58. We are satisfied that the cost of this item is recoverable either under clauses 4(2) and 4(3) (as far as repair/replacement of the door is concerned or in respect of any other required repairs). The costs of clearing the areas are costs of maintenance and management of the Building and recoverable under paragraph 7(6) of the Third Schedule. We consider that the costs demanded are payable by the Tenant in full.

Asbestos testing - estimated charge (including removal: £3,000)

59. Mr Bannon confirmed that although testing took place, no asbestos removal was, in fact, necessary. As a result, the Council was content to limit the sum demanded under this item to the costs of testing in the total sum of £300.

Decision and Reasons

60. We consider that the cost of obtaining the report are recoverable as costs of maintenance and management of the Building and therefore recoverable under paragraph 7(6) of the Third Schedule.
61. Given the Council's concession we consider the sum that it is reasonable for the Tenant to pay to be his appropriate proportion of £300.

2011/12 Service Charges

62. The Tenant clarified that he was not challenging the costs incurred for this service charge year save that he wanted the Council to explain the reason for the considerable variance between the estimated figures that accompanied the interim service charge demand and the final figures.
63. Mr Dudhia provided an explanation in respect of the five items the Tenant was querying, namely, care and upkeep; communal TV; lifts; un-itemised repairs and estate lighting/electricity.
64. He explained that the costs for care and upkeep increased because of the actual hours worked by the relevant contractors and the actual overheads incurred. The increase relating to television costs concerned the un-anticipated need to adjust the communal aerial to allow for the switchover from analogue to digital television. The increased lifts costs reflected the fact that the cost of repairs was higher than anticipated. The variance in the costs of estate lighting/electricity was due the actual costs simply being higher than anticipated.
65. As for un-itemised repairs, details of the actual costs incurred were set out in a schedule included in the bundle [79-83]. These totalled £13,336.01 of which the Tenant's apportioned share was £496.99. However, Counsel for the Council confirmed that the Respondent was willing to reduce the sum of £496.99 by £89.97 as it was conceded that four items of work set out in the schedule all dated 11.06.11 related to the costs of internal repairs to the kitchen of an individual flat following a fire and as such were not recoverable from the Tenant.

Decision and Reasons

66. The Tenant did not challenge his liability to pay the sums demanded. As for the amount that it is reasonable for him to pay towards these items we determine that the full amounts set out in the 2011/12 service charge account statement [68] are reasonable and payable in full save in respect of the costs of un-itemised repairs which needs to be reduced to reflect the costs involved in the kitchen fire.
67. We determine the amount that it is reasonable for the Tenant to pay towards un-itemised repairs is £366.41 (£496.99 - £89.97 = £407.12 less 10% for the Council's administration costs).

Section 20C Application

68. The Applicant seeks an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Respondent incurred in connection with these proceedings should be regarded as relevant

costs in determining the amount of service charge payable by the Applicant. The Council indicated that it had no intention to do so and in light of that concession, we consider it just and equitable to make an order under s.20C limiting the costs in full.

Reimbursement of Fees

69. The Applicant sought an order that he be reimbursed for the fees he had to pay in respect of this Application.
70. We do not consider it appropriate to do so. On the evidence before us we consider that the Applicant could have done more to seek to resolve the matters he disputed without the need to have recourse to these proceedings.

Amran Vance

Judge of the First Tier Tribunal

Dated 11.09.13

Annex 1

Major Works – Sums Payable by the Tenant

Item	Initial Sum Demanded £	Sum Allowed £	Notes
Renew existing entrance doors to flats	9540.00	19080.00	Sum allowed for 24 doors
Intake cupboard door	990.00	0.00	No sum sought by council
Door and screen between staircase and corridor	23700.00	23700.00	
Upgrade 13 existing entrance doors to flats	17875.00	0.00	No sum sought by council
Refuse Hoppers	1561.00	312.20	
Main riser panels and ducts	528.00	528.00	
Fire Safety Signage	64.00	64.00	No challenge by tenant
Fire Proofing & sealing	2272.50	2272.50	No challenge by tenant
Remove and make good all work disturbed	536.00	536.00	
Additional fire proofing works	3000.00	3000.00	
Clear existing drying rooms and secure doors	750.00	750.00	
Asbestos testing and removal	3000.00	300.00	No costs of removal sought
Additional requirements re door closers & secure locks	4500.00	0.00	No sum sought by council
Additional works to upgrading existing doorsets	3250.00	0.00	No sum sought by council
Works to communal area screens	4500.00	0.00	No sum sought by council
Total	76066.50	50542.70	

Annex 2
Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of “service charge” and “relevant costs”

- (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 – Limitation of service charges: reasonableness

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the 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 – Liability to pay service charges: jurisdiction

- (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.