

Aviva Investors Ground Rent GP Ltd and another (Respondents) v Williams and others (Appellants)

Case ID: 2021/0059

Case summary

Issue

To what extent is a term in a residential lease which allows the landlord to revise the tenant's share of the service charges invalidated by section 27A(6) of the Landlord and Tenant Act 1985?

If the effect is that any discretion to re-apportion the service charge is transferred from the landlord to the First-tier Tribunal does section 27A(6) enable the tenant as well as the landlord to invoke the Tribunal's jurisdiction?

Facts

This appeal concerns several flats in Southsea, which form part of a mixed-use commercial and residential block. The Appellants are the individual leaseholders of 38 flats in the building. The Respondent are the Appellants' landlords and own the freehold of the block and wider estate. Each lease provides that the tenant is to pay a service charge comprised of a share of three types of cost of maintaining the building and wider estate - insurance, building services and estate services costs. The share of each type of costs is set at a fixed percentage or 'such part as the Landlord may otherwise reasonably determine' (the "Reapportionment Provisions")

For some years, the Respondent has been demanding service charges in different proportions from those percentages stated in the leases, in reliance on the Reapportionment Provisions. The Appellants challenged that practice. They argued that section 27A(6) of the Landlord and Tenant Act 1985 meant that the Reapportionment Provisions are void. The First-tier Tribunal ("FTT") rejected the leaseholders' argument that the Reapportionment Provisions were rendered void. It considered that the landlords' re-apportionments were reasonable and so should be enforced.

On appeal by the leaseholders the Upper Tribunal reversed the FTT's decision and held that section 27A(6) rendered the Reapportionment Provisions void. Therefore, neither the landlord nor the FTT had the power to vary the percentages set out in the leases unless the leaseholders agreed.

The Court of Appeal allowed the landlords' appeal on the basis that the effect of Section 27A(6) was to transfer the power to vary the percentages from the landlord to the FTT. It therefore restored the decision of the FTT which had considered the re-apportionment reasonable and so should be enforced. The leaseholders now appeal to the Supreme Court.

Judgment appealed

[\[2021\] EWCA Civ 21](#)

Parties

Appellant(s)

Philip John Williams and others

Respondent(s)

Aviva Investors Ground Rent GP Ltd, Aviva Investors Ground Rent Holdco Ltd

Intervener

The Property Institute

Appeal

Justices

Lord Reed, Lord Briggs, Lord Kitchin, Lord Sales, Lord Richards

Hearing start date

8 December 2022

Hearing finish date

8 December 2022

Watch hearing

8 Dec 2022 [Morning session](#) [Afternoon session](#)

Judgment details

Judgment date

8 February 2023

Neutral citation

[2023] UKSC 6

- [Judgment \(PDF\)](#)
- [Press summary \(HTML version\)](#)
- [Judgment on The National Archives \(HTML version\)](#)
- [Judgment on BAILII \(HTML version\)](#)