



Press Summary

8 February 2023

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

[2023] UKSC 6

On appeal from: [2021] EWCA Civ 21

Justices: Lord Reed (President), Lord Briggs, Lord Kitchin, Lord Sales, Lord Richards

Background to the Appeal

This appeal concerns the validity of a provision in a lease which allows the landlord to revise the proportion of the overall costs of maintaining the wider estate that a leaseholder should pay by way of a service charge.

The dispute relates to long leases of residential flats in a block in Southsea, Hampshire. The leaseholders were required to pay service charges towards the overall costs incurred by the landlord in maintaining the building and wider estate. Each lease provided that the leaseholder was to pay a specific percentage of the overall costs *“or such part as the Landlord may otherwise reasonably determine”*.

The landlords (Aviva Investors Ground Rent GP Limited and Aviva Investors Ground Rent Holdco Limited) sought to re-apportion the service charges by varying from the percentages specified in the leases. A number of the leaseholders (the Appellants) objected to this and brought a claim in the First-tier Tribunal. They claimed that the re-apportionment was unreasonable and in any event void on account of section 27A(6) of the Landlord and Tenant Act 1985.

Section 27A of the Act allows for disputes relating to service charges in residential leases to be resolved by application to the First-tier Tribunal (in England or the Leasehold Valuation Tribunal in Wales). Section 27A(6) provides that an agreement by a residential tenant *“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 subject of an application [to the First-tier Tribunal under section 27A]”*. In essence this means that a clause in a lease which gives the landlord the right to determine issues relating to the service charges that ought to be

determined by the Tribunal will not be effective, but the exact scope of this provision was in dispute in this case.

The First-tier Tribunal rejected the leaseholders' complaints. It held that the provision of the leases giving the landlords the ability to vary the proportion of the service charge payable by each tenant was not void. It also determined that the re-apportionments were reasonable.

On the leaseholders' appeal the Upper Tribunal held that the re-apportionment provision was void on account of Section 27A(6). There was therefore no ability to vary the apportionment and so the leaseholders only had to pay the percentage of the costs originally fixed in their leases unless they agreed otherwise.

On the landlords' further appeal the Court of Appeal held that the re-apportionment provision was not wholly void. Instead the effect of section 27A(6) was to transfer the discretion to vary the service charge proportions from the Landlord to the First-tier Tribunal. It therefore allowed the appeal and restored the decision of the First-tier Tribunal.

The leaseholders appealed to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the leaseholders' appeal and, for reasons different to those given by the Court of Appeal, approves the decision of the First-tier Tribunal that the revised apportionment is valid. Lord Briggs gives the only judgment, with which the other members of the Court agree.

Reasons for the Judgment

The key issue for the Court was the true effect of Section 27A(6) of the Landlord and Tenant Act 1985. That Act provides various controls on a landlord's ability to determine the service charge payable by tenants. Section 27A gives the First-tier Tribunal jurisdiction to decide whether a service charge demanded by a landlord is or would be payable. It does not give any details about how the First-tier Tribunal is to decide what is payable. The natural inference is that it will make any determination based on the provisions of the lease and any applicable contractual or statutory restrictions, for example it can determine whether the costs claimed have been reasonably incurred as is required by the Act **[10]-[12]**. That would not include the First-tier Tribunal exercising for itself management decisions that are within the discretion of the landlord, such as deciding what works to carry out **[14]-[16]**.

The Court considers that section 27A(6) is plainly an anti-avoidance provision, which is designed to preserve the jurisdiction of the First-tier Tribunal **[13]**. It is not the purpose or effect of Section 27A(6) to enlarge the jurisdiction of the Tribunal or to deprive the landlord's managerial decisions of their ordinary contractual effect. Rather its purpose is to prevent the parties to a lease agreeing a different mechanism to determine a question that could otherwise be decided by the First-tier Tribunal. Therefore, a contractual provision will be void only to the extent it purports to oust the jurisdiction of the Tribunal, for example by making the landlord's (or some other person's) decision final and binding, or requiring the Tribunal to presume or ignore certain facts **[28]-[29]; [32]**.

The Court disapproves the Court of Appeal's interpretation of Section 27A(6) and the previous case law it was based on. That interpretation would have the effect that every

discretionary management decision which would affect the amount of a tenant's service charge, such as what works to carry out, would be transferred to the First-tier Tribunal. This would greatly extend the jurisdiction of the First-tier Tribunal. It is unlikely that an anti-avoidance provision would be intended to have that effect, and a natural reading of the provision does not require it. Moreover, it would also have undesirable consequences, in that a landlord would never safely be able to incur costs without first seeking a decision of the First-tier Tribunal as to whether those could be charged to its tenants. This could lead to a flood of applications that would overwhelm the tribunal system [19]-[24];[26];[30]-[32].

The Court also disagrees with the leaseholders' approach, which the Upper Tribunal adopted. That would have the effect of removing altogether the ability to vary the apportionment, even though re-apportionment was not offensive to the purpose of legislation. This would leave the apportionment fixed for the 125-year term of the lease, which is a commercially unattractive result that the parties had not intended [25].

In this case, the agreement that the landlords were entitled to adjust the proportions of the leaseholders' service charges did not remove the jurisdiction of the First-tier Tribunal. The Tribunal was still able to review whether the adjustments were reasonable, as was required by the leases. The Tribunal had determined that they were reasonable. Therefore section 27A(6) of the Landlord and Tenant Act 1985 was not engaged, and the re-apportionments were valid [33].

References in square brackets are to paragraphs in the judgment

NOTE:

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)