

Supreme Court decision: reapportionment of service charge



Following the decision in the *Aviva Investors Ground Rent GP Ltd and another -v- Williams and others* [2023] case, landlords of residential and mixed-use properties where the leases contain a provision enabling the landlord to reapportion the service charge have felt huge relief.

Key takeaways

This decision means that:

- A landlord may exercise any right it may have under a lease to determine what a “fair and reasonable” proportion is in the context of a service charge. However, the landlord’s decision may still be the subject of a challenge before the FTT.
- The decision reached by the Supreme Court shouldn’t be seen as an unqualified right for landlords to reapportion service charges to suit their own agendas, but it does, to a certain extent, afford them a degree of freedom to make reasonable managerial decisions.
- Landlords should make these managerial decisions with the knowledge that a tenant may opt to refer the matter to the FTT if it feels that the reapportionments are unreasonable or contrary to the provisions of the lease. As such, landlords are advised to be ready to justify any reapportionment.
- Clauses in leases that state that a landlord’s decision is final and binding will still be void under Section 27A(6).



Aviva Investors Ground Rent GP Ltd and another -v- Williams and others [2023]

In this case, each lease provided that the residential leaseholder was to pay a fixed percentage of the landlord's building and estate maintenance costs "*or such part as the landlord may otherwise reasonably determine*".

The landlord decided to reapportion the service charges by varying the percentages specified in the leases. A number of the leaseholders took issue with this and brought a claim against the landlord in the First-tier Tribunal (**FTT**). They claimed that the reapportionments were unreasonable and void as a result of section 27A(6) of the Landlord and Tenant Act 1985 (**Section 27A(6)**).

The case was eventually appealed all the way to the Supreme Court. The Supreme Court approved the original decision reached by the FTT in that the reapportionment provisions in the leases were valid.

In reaching its decision, the Supreme Court considered that the purpose of Section 27A(6) is to prevent the parties to a lease from undermining the jurisdiction of the FTT by contracting to resolve a dispute of this nature by a different means, as opposed to referring the matter to the FTT.

In this case, the reapportionment provisions did not oust the jurisdiction of the FTT. This is because the FTT was still able to review whether the adjustments determined by the landlord were reasonable. Accordingly, the reapportionment provision was not void and the landlord's reapportionment was reasonable.

How we can help

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