

Update - Service Charges in Residential Leases

Service charges are charges payable by a leaseholder to a landlord for services the landlord is obliged to provide under the terms of the lease. They will usually be an amount varying from year to year depending on the costs the landlord incurs. The charge usually covers the cost of services such as general maintenance and repairs, buildings insurance and, if these are provided, central heating, lifts, porters, and lighting and cleaning shared areas and so on. This area is frequently subject to litigation.

A leaseholder may, pursuant to Section 27A of the Landlord and Tenant Act 1985, apply to the First-Tier Tribunal for a determination whether a service charge or costs are payable, the amount which is payable, and to whom and when payment should be made. Often, leases provide for leaseholders to pay a fixed proportion of common costs *"or such part as the landlord may otherwise reasonably determine"*.

This has regularly raised the question as how far does Section 27A restrict a landlord from the re-allocation of originally agreed contribution proportions. How is it then decided what the revised apportionment should be?

The Court of Appeal has very recently provided clarification for landlords on the issue of re-apportionment of service charges in residential leases in the case of *Aviva Investors Ground Rent GP Ltd and another v Williams and others [2023] UKSC 6*

The facts were as follows :

- The case concerned several flats in a mixed residential / commercial development in Hampshire.
- The residential leases confirmed a fixed percentage of the service charge payable with the wording as above - *"or such part as the landlord may otherwise reasonably determine"*.
- The landlord had issued invoices and demanded payment of charges based on a different apportionment to the amount stated, instead relying on the wording above.

The leaseholders argued that the above wording was void under Section 27A which was originally upheld by the Upper-Tier Tribunal. The case made it to the Supreme Court who concluded unanimously that the landlord had two contractual rights in which it had to act reasonably:

1. To trigger the re-apportionment of the service charge; and
2. To decide what the new percentage or proportion should be.

Where permitted therefore, landlords may make changes to the apportionment of service charges (when justified in doing so) without the need to refer to the First-Tier Tribunal. The effect of the above will be welcomed by landlords and ultimately reduce the scope for disputes concerning service charges.

A full copy of the judgment can be found via this link :<https://www.bailii.org/ew/cases/EWCA/Civ/2021/27.html>

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