

Summary of Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Company Ltd [2023]



A recent judgment in the Court of Appeal has clarified the extent of an important statutory right for shared ownership leaseholders.

The judgment in *Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Company Ltd [2023]* rejected an appeal by the landlord who argued that a group of 12 shared ownership leaseholders were excluded from the statutory right to manage.

This decision follows a line of previous litigation involving the Canary Gateway development. The leaseholders initially attempted to take hold of managing the flats in 2019 from the landlord, Avon Ground Rents. However the application was dismissed on other grounds despite the Upper Tribunal confirming the leaseholders had 'long leases' within the s76(2) Commonhold and Leasehold Reform Act 2002.

In new proceedings, the landlord argued that the Upper Tribunal's decision was wrong in the definition of a 'long lease'. The Court of Appeal then looked at whether the shared ownership leaseholders, who had not 'staircased' their leases to 100% (and therefore did not own the property in full), fell within the 'long lease' definition. The Canary Gateway development argued that the shared ownership leaseholders still had leases for a term of over 21 years under s.76(2)(a). However, Avon stated that those who did not hold 100% ownership of their leases failed to meet the requirement under s.76(2)(e) and would not qualify for the right to manage.

In the judgment, Lord Justice Newey reviewed four previous decisions of the Upper Tribunal and High Court on the definition of 'long leases' under s76(2) and the similar definition under s7(1) Leasehold Reform Housing and Urban Development act 1993.



He concluded that a shared ownership lease with a term of over 21 years will be defined as a 'long lease' whether or not the tenant has 100% interest. It was made clear that tenants who hold long shared ownership leases, regardless of the percentage of their ownership, still have an interest in the premises and how they are managed and therefore qualify for the right to manage.

This judgment is important not only for the residents of Canary Gateway but also the wider community of shared ownership leaseholders across the country. Leaseholders who have not staircased to 100% ownership were regarded as not have a statutory right to seek an extension of their lease on the basis that the definition of a long lease contains a specific reference to shared ownership leases "where the tenant's total share is 100%". Registered providers have, of course, been encouraged by Homes England to facilitate an extension wherever possible but the message given by this decision suggests that for the purposes of both right to manage, enfranchisement and lease extension, all long leaseholders, even if they hold less than 100% of the equity in their property, have the same legal rights ahead of the Government legislating to that effect.



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