



THE HIGH COURT

[2022 No.213 MCA]

[2024] IEHC 478

In the matter of Section 123(3) of the Residential Tenancies Acts 2004 – 2021

BETWEEN

SAMAH BDEER ELHINDY and ABDEL BDEER

APPLICANTS

AND

RESIDENTIAL TENANCIES BOARD

RESPONDENTS

Ex Tempore JUDGMENT of Ms. Justice Gearty delivered on the 2nd day of July, 2024

1. Introduction

1.1 These Appellants have appealed a determination of the Respondent Board (the “RTB”). The only appeal available is an appeal on a point of law under the Residential Tenancies Act of 2004 (the “RTA”).

1.2 As was the case in *Hyland v. the Residential Tenancies Board* [2017] IEHC 557, the notice of motion fails to comply with the requirements of Order 84C of the Rules of the Superior Courts. The Appellants have not identified, in the Notice of Motion, the point of law which they sought to ventilate on the appeal.

1.3 In the normal way, as Noonan J. held in *Hyland*, this would cause the appeal to fail *in limine*. However, the first Appellant lodged the appeal as a litigant in person and handed in submissions today, so I considered the issues he raised.

1.4 Notice of termination was served in May 2021, the tenants alleged that this was invalid and sought assistance under s.76 of the Residential Tenancies Acts 2004 - 2021. In June of 2021, the landlord also sought dispute resolution, alleging that the tenants had not paid rent and had damaged the property.

1.5 On 25th November, 2021 there was a hearing and a determination of an adjudicator that the notice was invalid and was in breach of tenants' rights, she also upheld the landlord's claim in relation to the unpaid rent and awarded a sum of €13,760.40, less the award made to the tenants for the breaches identified, which was a sum of €2,000. This was appealed by the Applicants to the RTB.

1.6 On 14th July 2022, the hearing took place before the Tenancy Tribunal of the RTB and a determination issued on 27th July. A determination order was sent to the parties. The arrears now stood at an amount of €19,222.14. It was accepted as a fact by all parties that this rent was not paid. The Tribunal also found that the landlord was in breach of his obligations under the lease by attempting to retake possession of the property twice and made an award of €3,100 to be set off against the rent arrears.

1.7 This is an appeal against that decision.

2. Issues must be Raised at the First Instance Hearing

2.1 The Appellant submits that the landlord failed to register one of the tenants and that the Tribunal did not consider this. But this issue was never raised before the Tribunal and requires findings of fact. That being so, as in *Hyland*, it cannot possibly be the basis for an appeal on a point of law. I cannot change the law – s.123 of the RTA provides

for a specific type of appeal in this case: not a full rehearing but an analysis of the application of the law. By definition, if a point was not raised, the law cannot have been wrongly applied. I am being asked to decide the matter at first instance.

2.2 The second Appellant submitted, in respect of this first issue, that at paragraph 5 of his affidavit, he had pleaded that the Tribunal failed to address the fact that the first named Appellant was not registered. This was also raised at the oral hearing in an written submission given to the Court as the case was first called. The Chair of the RTB has sworn an affidavit to the effect that the point was not raised. I find as a fact that this was not raised in the RTB hearing by the Tribunal. The issue of registration was in the case files and was in the adjudicator's report but was not raised in the Tribunal which was a full re-hearing. This Court cannot hear an appellant on that issue where Tribunal did not have a chance to address it. Each party was entitled to raise issues for the decision-maker, it is not for the decision-maker to select arguments.

2.3 The Applicant highlighted, at page 23 of the documents he filed, the phrase in the Tribunal's determination that "there were three adults in the apartment" and he urged that this had to be read in context. He submits that in its wider context this means the issue was raised as only two notices were served. This is simply misconceived. There is no way of reading this to mean that he made an argument to the Tribunal that he clearly did not make. The phrase, "*There were three adults*", in itself, does not suggest that he is making a legal argument about one of them not being registered or served.

2.4 The second point deals with the compensation awarded. This again is not a point of law. It is a request to increase the compensation. The merits of the decision, whether right or wrong, mean or generous, are not points of law. The Supreme Court in

Fitzgibbon v. The Law Society [2015] 1 I.R. 516 approved an earlier formulation by McKechnie J. to this effect:

- 1) Was there no evidence to support the decision? That cannot be said here.
- 2) Were there inferences which no reasonable body could draw? That cannot be said here.
- 3) Were the interpretations incorrect? That cannot be said here.
- 4) And finally, was the tribunal wrong in law? None of these apply.

2.5 In *Marwaha v. Residential Tenancies Board* [2016] IEHC 308, Barrett J. described the restrictions on me very distinctly – I do not have free-wheeling authority to embark on a new hearing or critique of the Tribunal’s determination.

2.6 This Tribunal set out detailed reasons for its findings and, while the Appellants disagree with the results, they have not pointed to any legal principle which was violated or to any part of the determination which was made without evidential support. On the contrary, the findings were well supported and scrupulously fair.

2.7 The applicants handed me a 54-page document today. I read it before proceeding. Most of the matters averred to are factual. The only new material was 11 pages of submissions on the part of the Applicant which I read before the hearing commenced.

3. Costs

3.1 I made an order for costs in favour of the RTB. The Board was successful in defending the claim and there is no reason to depart from the usual rule as to costs.

3.2 The Applicants drew my attention to proceedings in Cavan District Court. While this might affect my view of the landlord, it does not affect my view of this Respondent and cannot affect the costs order. The application is refused.