

THE HIGH COURT

[2017 No. 238 MCA]

BETWEEN

JOHN DOMINIK HALBHERR

APPELLANT

AND
RESIDENTIAL TENANCIES BOARD AND STEPHEN MCCANN

RESPONDENTS

JUDGMENT of Mr. Justice Meenan delivered on the 12th day of February, 2018

Background

1. In these proceedings the appellant, appearing in person, seeks to appeal a determination order made by the respondent ("the Board") on 14th July, 2017. The notice of motion grounding the appeal is dated 14th August, 2017 and is supported by an affidavit of the appellant sworn 8th August, 2017. This matter comes before the Court by way of a preliminary issue to determine if the appeal has been brought within the time allowed by the provisions of the Residential Tenancies Act 2004 (the Act of 2004).

Relevant Dates

- (i) The decision of the Board is dated 14th July, 2017.
- (ii) The determination of the Board was issued to the appellant by letter dated 18th July, 2017.
- (iii) An affidavit on behalf of the appellant was filed in the Central Office on 8th August, 2017.
- (iv) A notice of motion grounding the appeal was filed in the Central Office on 14th August, 2017. (It was not made clear how and in what circumstances the affidavit was filed in advance of the notice of motion).

The Submission of the Residential Tenancies Board

2. Ms. Una Cassidy, B.L., on behalf of the Board, relies on the provisions of s. 123 of the Act of 2004. Section 123 provides:-

"2. A determination order embodying the terms of a determination of the Tribunal shall, on the expiry of the relevant period, become binding on the parties concerned unless, before that expiry, an appeal in relation to the determination is made under *subsection (3)*.

...

8. In this section "relevant period" means the period of 21 days beginning on the date that the determination order concerned is issued to the parties."

3. Counsel for the Board submits that the 21 days began on 18th July, 2017, the date that the Board's determination was issued to the appellant.

4. In answer to an argument that, in circumstances where the determination of the Board was posted, time did not begin to run until the determination had been delivered, reliance was placed on s. 25 of the Interpretation Act 2005 which provides:-

"25. Where an enactment authorises or requires a document to be served by post, by using the word "serve", "give", "deliver", "send" or any other word or expression, the service of the document may be effected by properly addressing, prepaying (where required) and posting a letter containing the document, and in that case the service of the document is deemed, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

5. As a determination is "issued" rather than "served" or "given", or expressions to that effect, it must follow, in accordance with s. 123(8) of the Act of 2004, that time started to run on 18th July, 2017 and ended 7th August, 2017.

6. The Act of 2004 contains no provision whereby a court could extend the time for the purposes of appealing a determination.

7. The second named respondent, Mr. Stephen McCann, supported the application of the Board.

8. The appellant submits that although the determination may have issued on 18th July, 2017, he did not have notice until some days after. Therefore, he maintains that the 21 days did not begin to run until he received the determination.

Conclusion

9. I accept the submissions made on behalf of the Board. It is clear that s. 123(8) of the Act of 2004 refers to the date that the determination "issued", there is no reference to a determination having been "served", or the use of some other term, as would bring s. 25 of the Interpretation Act 2005 into play.

10. In dealing with the time of 21 days, both the first and the last date are included. This would mean that the time for appeal expired on 7th August, 2017. In accordance with O. 84C of the Rules of the Superior Courts, this appeal commenced by way of an originating notice of motion. This is dated 14th, August, 2017 and is clearly out of time. Even allowing the commencement date of the appeal as being the date the affidavit was filed in the Central Office, 8th August, 2017, the appeal is still out of time.

11. It follows from the above that the appeal was not brought within the time provided for by the Act of 2004 and there is no provision in the said Act for extending time. Therefore, I will dismiss the appeal.