

THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 414 J.R.]

BETWEEN

ADITYA SHARMA

APPLICANT

AND

RESIDENTIAL TENANCIES BOARD

RESPONDENT

AND

KEVIN DISKIN

NOTICE PARTY

EX TEMPORE JUDGMENT delivered by Mr. Justice Noonan on the 13th June, 2018

1. The applicant is the tenant of 67 Vanessa Lawns, Celbridge. The notice party Mr. Diskin is the landlord of that premises. It is the applicant's family home I think and it is not in dispute that the applicant has accumulated arrears of rent the amount of which has been determined in the proceedings the subject matter of this application. No rent has been paid by Mr. Sharma for some considerable time.

2. Arising out of that the notice party landlord served a notice of termination of the tenancy and when that was not responded to by Mr. Sharma, the notice party then applied on the 31st March, 2017 for dispute resolution under the terms of the Residential Tenancies Act of 2014.

3. On the 27th April, 2017 a hearing took place before an adjudicator appointed to deal with this case and it further continued on the 17th May, 2017 when the hearing came to a conclusion and throughout both parties were present at the hearing before the adjudicator and the adjudicator made a determination in favour of the landlord which obviously Mr. Sharma was dissatisfied about. He makes certain complaints about the hearing before the adjudicator which I am not concerned with in these proceedings because Mr. Sharma is not challenging that determination by way of judicial review.

4. Following the issuing of the adjudicator's determination Mr. Sharma appealed to the Tribunal by an appeal on the 16th June, 2017 and on the 10th July, 2017 the Tribunal fixed the hearing of Mr. Sharma's appeal for the 4th August, 2017. That did not suit Mr. Sharma for various reasons and he applied for an adjournment. He said he wanted an eight week adjournment but the Tribunal gave him a four week adjournment to the 7th September, 2017. Again shortly before that hearing proceeded Mr. Sharma on the 29th August, 2017 sought a further adjournment of the matter for various reasons. The Tribunal refused that application but Mr. Sharma was advised that he could be represented at the hearing which was scheduled to take place in September as I have said or alternatively he could send in a statement in writing which the Tribunal would consider before coming to its determination. It is important to note that at that particular time Mr. Sharma had a solicitor acting for him who was copied with this correspondence and was clearly aware of the matter which was scheduled to proceed on the 7th September, 2017.

5. On that date the matter did proceed. The appeal was heard in the absence of Mr. Sharma. He did not appear at the hearing nor did he instruct a solicitor to appear on his behalf nor did he send in a written statement as he had been invited to do. Arising out of that hearing the Tribunal upheld the adjudicator's finding and that became an order of the Board which was made on the 13th October, 2017 and the upshot of that order in effect was to direct Mr. Sharma to vacate the premises and to pay the arrears of rent and ongoing arrears as they accumulated.

6. Now from that order that was made on the 13th October, 2017 as I say, Mr. Sharma brought no appeal which he would have been entitled to do on a point of law. There is an appeal to the High Court from determinations of the Board but none was brought. Despite that fact he now complains that he was taken by surprise by all of those events occurring in his absence and that has been a source of dissatisfaction to him but as I say he did not either bring an appeal on a point of law nor did he seek to judicially review the order of the Board that had been made in his absence on the 13th October, 2017.

7. Suffice it to say that Mr. Sharma did not comply with the order. He neither paid the arrears nor did he vacate the premises and accordingly the Board moved to enforce the order by the institution of proceedings pursuant to s. 124 of the Residential Tenancies Act of 2014. Those proceedings were instituted by way of an originating notice of motion on the 22nd March, 2018 when Mr. Sharma was served with all of the papers in relation to the enforcement application which was brought before the Circuit Court. Mr. Sharma was aware at that stage that the matter would be listed for hearing before the Circuit Court on the 1st May, 2018 some five weeks later and it was in fact listed on that date. It is important to note that the enforcement procedure provided for in the Act of 2014 is not an appeal from an order of the board nor is it a *de novo* hearing of the matter. In fact, it is simply an enforcement mechanism by which the Circuit Court is very limited in what it can do in terms of the grounds that are available to the court for refusing an enforcement order but as I say it is most emphatically not a *de novo* hearing of the matter on the merits.

8. At that hearing before the Circuit Court in Kildare on the 1st May, 2018 which is the subject matter of this application for leave to seek judicial review, the applicant was represented by both solicitor and counsel and Mr. Sharma says in his affidavit and it is not in dispute that on that occasion through his counsel he sought an adjournment of the proceedings to put in a replying affidavit. Now for what purpose he was proposing to swear a replying affidavit has not been explained by Mr. Sharma in this application nor has he offered any explanation as to why he was not ready to deal with the matter on the 1st May 2018 having had five weeks notice of the hearing before the Circuit Court.

9. Indeed, it is quite clear that Mr. Sharma was aware of the issues arising in the case for a much longer period than that. When the application for an adjournment was made to the learned Circuit Court judge he heard arguments it would appear on both sides and in opposing the application counsel for the Board indicated that there was significant prejudice being suffered by the landlord as a result

of any adjournment of the matter and having heard both sides' arguments on this point and the submissions of the parties the Circuit Court judge refused the application to adjourn and proceeded to make ultimately an order in favour of the Board for the enforcement of the award of the Board.

10. In this application for judicial review Mr. Sharma asserts that this decision was made unlawfully and ought to be quashed on the basis that he was not afforded fair procedures by the Circuit Court judge and despite the fact that that is his assertion he has put forward no basis in his statement of grounds or indeed in his affidavit which supports the contention that he was not afforded fair procedures and in particular the statement of grounds which Mr. Sharma has submitted to the court is very terse in its content. It says that "I was present in court and no fair opportunity was given to me to present my side" and "no opportunity was given to my counsel to file an affidavit or present my side in the court properly."

11. Essentially the complaint made by Mr. Sharma is that he had no opportunity to put in a replying affidavit before the Circuit Court made an order in this case. In my view that is patently and demonstrably incorrect. He had every opportunity of doing so before the 1st May, 2018 but chose not to put in an affidavit at that stage for reasons he has not explained in his affidavit or otherwise. It is quite clear that no party is entitled as of right to have their case adjourned. It is a matter that is solely within the discretion of the trial judge having heard both sides' submissions on the issue.

12. In this case there is no suggestion that both sides were not heard before the adjournment application was ruled upon by the learned Circuit judge and in my view that was a perfectly lawful decision made within jurisdiction by the judge and whether it was correct or not correct is entirely immaterial. The cases on judicial review are replete with statements to the effect that judicial review is not concerned with the merits of a decision or the correctness of a decision or whether it was right or wrong, it is merely concerned with whether or not the decision was made lawfully and within jurisdiction and in the present case there is nothing in my view that indicates that that was not the position.

13. As I have said Mr. Sharma's statement of grounds is very terse in not setting out really any basis it seems to me upon which the court could, even if it were persuaded that there was a basis for granting relief, grant such relief. The provisions of O. 84 are quite clear in what is stated in rule 20 sub-rule 3 and that states it shall not be sufficient for an applicant to give as any of his grounds for the purposes of paras. 2 or 3 of sub-rule 2, which is the statement of relief and the grounds for it, an assertion in general terms of the grounds concerned. The applicant should state precisely each ground giving particulars where appropriate and identifying in respect of each ground the facts or matters relied upon in supporting that ground and those matters it seems to me are entirely absent in the statement of grounds in this case which would on any view fail *in limine* on that basis alone. However I am not solely deciding the case on that basis and I am satisfied from what I have already indicated that the decision under challenge here was made perfectly lawfully and within jurisdiction.

14. Furthermore, I am satisfied that if Mr. Sharma was dissatisfied with the judgment of the learned Circuit Judge the correct remedy for him was to appeal to the High Court. He has an unfettered right of appeal from the Circuit Court to the High Court which in this case he chose not to exercise and to that extent I am satisfied he has not exhausted what is clearly an appropriate remedy that is available to him rather than seeking a judicial review from this court. Insofar as the applicant in the course of his affidavit alleges that he was not given an opportunity to address the court on the issue of costs I note from the respondent's affidavit sworn by the Board's solicitor that the respondent has confirmed that the Board is not pursuing the issue of costs in relation to the Circuit Court proceedings so this issue effectively therefore becomes moot.

15. So for all of these reasons I am satisfied that the applicant has demonstrated no arguable grounds upon which this court would be entitled to reach the conclusion that leave to grant judicial review should be given and for that reason I refuse the application.