

BETWEEN:

MARY DUNIVYA

APPELLANT

– and –

PRIVATE RESIDENTIAL TENANCIES BOARD

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 1st February, 2016.**Part 1: Issue**

1. Must a notice of termination served on a 'Part 4 tenant' under s.34(b) of the Residential Tenancies Act 2004, as amended, state a reason for that termination?

Part 2: Facts

2. On 27th November, 2010, Ms Dunivya, the appellant tenant, entered into a tenancy agreement with Mr Gibson. On 27th May, 2011, this tenancy became what is known, by virtue of s.29 of the Act of 2004, as a 'Part 4 tenancy'. This was the first of a potentially unending series of rolling four-year tenancies that could arise under s.41 of the Act of 2004. Under s.28 of the Act of 2004, the standard four-year lifespan of this initial Part 4 tenancy was due to end on 26th November, 2014.

3. On 18th June, 2014, Mr Gibson served a notice of termination requiring Ms Dunivya to vacate her rented dwelling by 26th November, 2014 at the latest. Had this been a valid notice of termination, it would have had the effect of preventing a second four-year tenancy arising for Ms Dunivya. The sole deficiency contended to arise in this notice of termination was that it did not comply with the requirements of s.62(1)(e) of the Act of 2004 in that it did not state the reason for the termination.

4. On 17th July, 2014, Ms Dunivya made application to the Private Residential Tenancies Board contesting the validity of the notice of termination. The Board referred her complaint to an adjudication hearing. This hearing took place on 12th September, 2014. The landlord was in attendance but there was no appearance by Ms Dunivya. The adjudicator determined that the notice of termination served on Ms Dunivya accorded with the provisions of the Act of 2004. Ms Dunivya appealed the adjudicator's finding to what is known, pursuant to s.102 of the Act of 2004, as a Tenancy Tribunal.

5. The Tribunal conducted its hearing on 1st April, 2015. It was satisfied that the notice of termination complied fully with s.62 of the Act of 2004, with the exception of s.62(1)(e). However, the Tribunal was satisfied that a reason did not need to be given for termination as it came within the parameters of s.34(b) of the Act of 2004. Ms Dunivya has appealed against this last-mentioned finding. She claims that the Tenancy Tribunal erred in law by finding that a reason did not need to be given for the termination of her tenancy.

Part 3: Form of Appeal

6. Various contentions of fact were raised by Ms Dunivya during the hearing of the within appeal. She claimed that certain Brazilian tenants who lived downstairs from her rented dwelling were very loud and played football inside their rooms. She claimed that she was not provided with a rent book. She claimed that Mr Gibson encouraged other tenants to foment allegations of anti-social behaviour against her. She claimed too that the service of the notice of termination was the manifestation of a long-formed desire on the part of Mr Gibson to be rid of her. In making these various claims Ms Dunivya appears, with respect, to have mistaken the form of the within appeal. The Oireachtas, perhaps because it faced the difficult challenge of protecting tenants from unlawful action by landlords, and protecting landlords from unwarranted protraction in the vacation of premises, has, in s.123(3) of the Act of 2004, confined appeals to the High Court to appeals on points of law only. So the above-mentioned issues raised by Ms Dunivya are not a matter for this court in this appeal. However, the court cannot but note in passing that there are the proverbial two sides to every story and that there is evidence before the court to suggest that Ms Dunivya is a most challenging neighbour and tenant.

Part 4: Applicable Law

The Act of 2004

7. In terms of applicable law, the key provisions of the Act of 2004 are ss.34, 57 and 62. The relevant portions of each of these provisions are considered hereafter.

8. Section 34 identifies how a Part 4 tenancy may be terminated by a landlord. Section 34(a) identifies certain grounds on which this may be done. Section 34(b) is the relevant provision, so far as the within application is concerned. It has the effect that irrespective of whether any of the grounds referred to in s.34 (a) exist, a Part 4 tenancy may be terminated if, *inter alia*, "a notice of termination giving the required period of notice is served by the landlord in respect of the tenancy". The "required period of notice" under s.66 of the Act of 2004 is 112 days; Mr Gibson gave Ms Dunivya 166 days' notice, so he was more than covered in this regard.

9. Section 57 provides that the purpose of Part 5 of the Act, in which it sits:

"...is to specify the requirements for a valid termination by the landlord or tenant of a tenancy of a dwelling, whether the dwelling is –

(a)...or

(b) one to which both this Act and that Part [Part 4] applies (in which case those requirements are in addition to the requirements of that Part with regard to the termination of a Part 4 tenancy...)". [Emphasis added].

10. The underlined text has the effect that the Part 5 requirements of the Act of 2004 apply in addition to those of s.34(b).

11. Section 62(1) sits in Part 5. It requires that "A notice of termination to be valid shall... (e) if the duration of the tenancy is a period of more than 6 months, state (where the termination is by the landlord) the reason for the termination". There is nothing in the Act of 2004 to suggest that this requirement does not apply to the notice of termination that is required under s.34(b). Thus the court's answer to the question posed in the opening sentence of this judgment is that a notice of termination served on a 'Part 4 tenant' under s.34(b) of the Act of 2004 must state a reason for that termination.

12. Section 30 of the Act of 2015 has inserted a new s.64A into the Act of 2004. The new s.64A provides as follows:

"On the hearing of a complaint under Part 6 ["Dispute Resolution"] in respect of a notice of termination, an adjudicator or the Tribunal, as the case may be, may make a determination that a slip or omission which is contained in, or occurred during the service of, the notice of termination shall not of itself render the notice of termination invalid, if he or she or it, as the case may be, is satisfied that –

(a) the slip or omission concerned does not prejudice, in a material respect, the notice of termination, and

(b) the notice of termination is otherwise in compliance with the provisions of this Act."

13. Section 30 (and hence the new s.64A) commenced in effect on 8th January last by virtue of the Residential Tenancies (Amendment) Act 2015 (Commencement of Sections 30 and 42 and Part 4) Order 2016.

Part 5: Conclusion

14. The court notes that the within proceedings, though they concern an appeal from a Tenancy Tribunal, have issued against the Board as respondent. The court notes too that s.123(5) of the Act contemplates that among the directions that might be made by the court in the exercise of its inherent jurisdiction to supervise inferior tribunals, include a direction to the Board (not the Tenancy Tribunal) *"to cancel the determination order concerned or to vary it in such manner as the Court specifies..."*. Presumably this is because although a Tenancy Tribunal is required by s.103(6) of the Act of 2004 to *"be independent in the performance of its functions"* it is nonetheless established, and operates, under the auspices of the Board – though it might perhaps be contended that any direction that would follow an appeal ought more appropriately to issue to the relevant Tenancy Tribunal. In passing, given that the within appeal is in effect, though not form, a species of judicial review, the court considers that consistent with, albeit not required by, O.84, r.22(2) of the Rules of the Superior Courts (1986), as amended, Mr Gibson, as landlord, ought properly to have been joined as a notice-party to the within proceedings, being a party directly affected by same.

15. As a consequence of its finding as to the point of law raised on appeal, and mindful that the landlord was not joined to the within proceedings as a notice-party, the court will remit these proceedings to the Board for it to convene a Tenancy Tribunal to consider Ms Dunviya's complaint afresh in light both of the within judgment and any (if any) such further representations as Ms Dunivya or Mr Gibson may make. Should the Tenancy Tribunal so convened consider it proper to invoke s.64A of the Act of 2004 it may or may not wish to note this Court's view that (a) the omission of the reason for the termination from the notice of termination of 18th June, 2014, has not resulted in any prejudice of the type described in s.64A(a) of the Act of 2004, and (b) apart from the omission of the reason for termination, the notice of termination of 18th June, 2014, appears otherwise to be in compliance with the Act of 2004; indeed the contrary appears never to have been pleaded by Ms Dunivya.