

## THE HIGH COURT

[2017 No. 274 MCA]

BETWEEN

MICHAEL HOEY

APPELLANT

AND

RESIDENTIAL TENANCIES BOARD

RESPONDENT

JIMMY MURPHY (IN HIS CAPACITY AS RECEIVER OVER CERTAIN ASSETS OF PAUL SCANNELL)

NOTICE PARTY

**JUDGMENT of Mr. Justice Noonan delivered on the 2nd day of April, 2019**

1. The appellant, Mr. Hoey, entered into a tenancy agreement of the dwelling known as 152 Crann Nua, Portarlinton, County Laois with the owner of the property, Paul Scannell on the 22nd April, 2010 for a period of one year. The notice party is the receiver of certain assets of Mr. Scannell which include the dwelling in question. The receiver, through his agents, served notice of termination on Mr. Hoey on the 14th October, 2016. Mr. Hoey challenged the notice of termination and brought the matter before an adjudicator who upheld the notice. Mr. Hoey appealed to the Tenancy Tribunal which affirmed the decision of the adjudicator. He brings this appeal on a point of law against the determination of the Tribunal.

2. Mr. Hoey's original one year tenancy was not terminated and consequently the provisions of s.28 of the Residential Tenancies Act, 2004 applied to it. This section provides that where a person has been in occupation of a dwelling for a continuous period of six months, the tenancy becomes protected so that it shall continue in being for a period of four years from the commencement of the tenancy. This is known as a part 4 tenancy. If a part 4 tenancy is not terminated, it is automatically renewed for a further period of four years and becomes known as a "further part 4 tenancy". The four year period has now been amended to six years but it is the four year period that is applicable in this case.

3. The notice of termination served by the receiver on the 14th October, 2016 stated:

"Your tenancy of the dwelling at '152E An Crann Nua, Edenderry Road, Portarlinton, County Laois' will terminate on April 4th, 2017 (the termination date). The reason for the determination on the tenancy is due to the fact that the landlord intends to sell the dwelling, for full consideration, within three months after the termination of the tenancy."

4. The notice period afforded by the notice of termination amounted to 172 days, the minimum statutory period being 168 days.

5. The notice of termination was accompanied by a statutory declaration of intention to sell as required by the 2004 Act.

6. At the hearing before the Tribunal, its determination records that Mr. Hoey was making the case that the notice of termination failed to take account of his part 4 rights as a sitting tenant. Further, he referred to the fact that he had received correspondence from the receiver's agent dated the 6th May, 2017 indicating that a decision had been made to sell the property with him as a sitting tenant. The Tribunal noted that Mr. Hoey was not disputing the validity of the notice of termination.

7. In the grounds contained in his notice of motion to this court, Mr. Hoey contends that the Tribunal erred in determining that his part 4 tenancy expired on the 21st April, 2014 and his further part 4 tenancy on the 21st April, 2018. Mr. Hoey claims that his part 4 tenancy commenced on the expiry of his original twelve months' tenancy thus on the 22nd April, 2015 and is not due to expire until the 21st April, 2019. Alternatively, he claims that his part 4 tenancy commenced six months from his original occupation and the expiry date thus is the 21st October in any relevant year.

8. This is a simple misconstruction by Mr. Hoey of s.28 which makes clear that the part 4 tenancy continued for a period of four years from the commencement of the tenancy and thus would have expired on the 21st April, 2014 with the further part 4 tenancy expiring on the 21st April, 2018. More fundamentally however, Mr. Hoey contends that the receiver was not entitled to terminate his tenancy prior to its natural expiry and thus that the notice of termination of the 14th October, 2016 would have to expire at the earliest on the expiry of his further part 4 tenancy on the 21st April, 2018. Since it did not do so, it is, he claims, invalid. I think this is a simple misconstruction by Mr. Hoey of the terms of s.34 of the Act. This section permits the landlord to terminate the tenancy early for specified reasons but in the absence of those reasons, the tenancy can only be terminated at the end of the period of the tenancy provided for by the Act. In this case the landlord terminated for one of the reasons specified in the table to s.34, no. 3 of which provides:

"The landlord intends, within 3 months after the termination of the tenancy under this section, to enter into an enforceable agreement for the transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling and the notice of termination is accompanied by a statutory declaration referred to in section 35."

9. Accordingly, in the present case, the notice clearly stipulated one of the relevant reasons which entitled the landlord to terminate the tenancy early before it had run its natural course, provided that the requisite notice was given. There is no dispute that such notice was in fact given, and it exceeded the minimum 168 day period.

10. The next point raised in Mr. Hoey's notice of motion is that the notice of termination is legally flawed because it fails to contain the words "and the notice of termination is accompanied by a statutory declaration referred to in s.35". This point was not raised by Mr. Hoey before the Tribunal as its own determination makes clear. On the contrary Mr. Hoey expressly accepted the validity of the notice. Accordingly, he is precluded from raising this on an appeal on a point of law which must be confined, as the authorities show, to points raised before and considered by the Tribunal. In any event the point is misconceived because there is no requirement in the statute that the notice of termination should contain such words, once the accompanying declaration is present.

11. Finally, Mr. Hoey claimed that he had obtained what he described as proprietary rights in the property in question by virtue of the receiver's letter of the 6th May, 2016 indicating the intention to sell the property with him as sitting tenant. In fact, in addition to

this letter of 6th May, Mr. Hoey relied upon his own response to that letter of the 11th May. This latter document was not before the Tribunal and thus cannot be considered by the court.

12. However, this is in any event a simple legal misconception by Mr. Hoey that he has somehow acquired rights in the property as a result of the landlord indicating an intention to sell it with him as a sitting tenant. There is no suggestion of Mr. Hoey having somehow relied upon this promise to his detriment such as might be said to give rise to some type of promissory or proprietary estoppel. The landlord's statement amounted to no more than an indication of an intention to act in a particular way but there was no legal reason why the landlord could not change his mind in that regard. Mr. Hoey claims that a valid and binding contract exists between him and the landlord because an offer was made which he accepted. Ignoring for the moment the fact that his alleged "acceptance" was not before the Tribunal, even if it was, for this to amount to a binding contractual agreement, it would have to be supported by valuable consideration, of which there is none. For these reasons therefore, I am satisfied that Mr. Hoey has not raised any point of law which would entitle me to interfere with the decision of the Tribunal and accordingly I dismiss this appeal.