

**THE HIGH COURT  
APPEAL FROM THE CIRCUIT COURT**

**2008 245 CA**

**SOUTH WESTERN CIRCUIT**

**COUNTY OF THE BOROUGH OF  
LIMERICK SITTING AT LIMERICK**

**BETWEEN**

**KEVIN MCCARTHY, JOHN BOLDING AND ANNE CAMBRIDGE**

**PLAINTIFFS**

**AND**

**BREDA LARKIN**

**DEFENDANT**

**Judgment of Ms. Justice Clark delivered on the 18th day of February, 2009.**

1. This is an appeal against a decision of the Honourable Judge O'Sullivan dated the 12th June, 2007 whereby the plaintiffs recovered possession of ALL THAT AND THOSE, the premises on the ground floor of No. 7 Cecil Street, Limerick, consisting of two rooms separated by a folding doorway and opening off the hallway of the said No. 7 Cecil Street, held under an indenture of lease made between Adelaide McCarthy and Clare Bolding of the one part, and Coleman Patrick O'Loughlin of the other part, for a term of forty nine years from the 1st July, 1955 and expiring on the 30th June, 2004 at the annual rent of £70 and ALL THAT AND THOSE portion of the premises consisting of the yard steps area, two coal cellars and the rest of the entire premises also at 7, Cecil Street held under an indenture of lease between the same parties and for the same period for the annual rent of £40. Both leases were subject to a covenant to repair on the part of the tenant.
2. The plaintiffs are the successors in title of Adelaide McCarthy and Clare Bolding.
3. The defendant is the successor in title of Coleman Patrick O'Loughlin and has been in occupation of the premises for upwards of twenty nine years.
4. The two leases of the premises at 7, Cecil Street expired on the 30th June, 2004. The plaintiffs served two equity civil bills for over holding on the defendant on the 28th July, 2005 and on 30th August, 2005. The defendant served a notice of intention to claim relief and claimed a right to a new tenancy.
5. The plaintiffs seek recovery of the entire premises which comprise a Georgian style residence in a street of similar houses in the city of Limerick and made up of four storeys over a basement with a yard/garden at the back.
6. At the hearing the first plaintiff, Kevin McCarthy, recited the history of how he and his two sisters came to inherit the property which had been in the family for a considerable time and which was rented out due to the sudden early death of his parents when the children of the family were very young. They were then sent to be reared by relatives in England and in Dublin. He gave evidence of instructing his solicitor to obtain possession of the premises when the lease expired as there had been a history of non-payment of the very small rent which had with the passage of time come to represent a paltry sum by the standards of the twenty first century. He became aware that the premises was in a deplorable state of repair on receipt of a report from a quantity surveyor informing him that the cost of putting the house into a habitable state would cost between €200,000 and €300,000. Both leases were subject to full repairing covenants by the tenant. The house has a current value of between €300,000 and €350,000 but would be unlikely to be sold in its current state.
7. This evidence of the very poor state of the premises was confirmed by consultant engineer, a quantity surveyor and a property valuer. I am satisfied from the evidence and from numerous photographs which were presented to the Court that every part of the premises is in an appalling state of disrepair and that this condition extends from the yard and basement to the roof and in between. The house is in a dangerous, dilapidated and ruinous condition which is strongly suggestive of deliberate intervention.
8. The premises is not only dilapidated, but rubbish strewn, damp and reminiscent of a bomb shelter squat rather than an elegant house in Cecil Street. Sub-standard roof repairs carried out approximately 10 years ago are probably responsible for a great deal of the water damage and damp which the quantity surveyor and damp expert described in their evidence. These experts gave evidence that to merely return the house to a liveable state would cost in the region of €240,000 but to up-grade it to its previous style would cost in the region of €290,000. The entire building would have to be gutted to include a new roof, new wiring, new floors, staircases, ceilings and walls.

9. I heard evidence that the building cannot be rented in its current condition and that it has no commercial use potential. If the repairs were carried out and the house was returned to a habitable condition, the rent as a family home would be approximately €1,200 per month with rent renewals to reflect market conditions.

10. The defendant gave evidence that she has been living in the premises since 1969 when she first moved in to take care of her uncle who was the original tenant. She then married and raised her children there until her husband died in 1990. During that period the house was in good order with the defendant operating a small scale bed and breakfast business. It was obvious, that not long ago it had been habitable and inhabited and photographs which were presented by the defendant indicated well maintained family rooms. When the defendant remarried, she moved out of the house. Sadly, the marriage failed but the defendant had a son from the union. With money which she received in her family law settlement she attempted to carry out improvements.

11. It was the defendant's firm belief that she had a legal right to "buy out the ground rent" and that she would become the owner of the house for a very small sum. Her sons had commenced renovating and carrying out repairs to the house using their own skills and labour. They, with their mother, believed so strongly in their right to buy out the premises for seven times the rent that no contact was made with the landlord or his representatives and they were therefore alarmed to discover that the landlord was seeking possession.

12. It was accepted that 7, Cecil Street is not subject to ground rent legislation, it is not a building lease and that there is no statutory right in the tenants to buy out a freehold interest.

13. The firm belief that the defendant and her family could purchase the premises for a small sum of money may provide some clue to the ruinous state of the premises. As the defendant said in her evidence *"if I had a free title I could have borrowed money and my family would have helped me"*. The house is currently utterly unfit for human habitation and the defendant cannot afford the repairs nor can she afford to pay a market rent. There is no possibility that the defendant can pay any damages for breaches of covenant to repair and indeed no such notice was served on the defendant. The plaintiffs rely on good and sufficient reasons for refusing to renew the lease pursuant to the terms of the Landlord and Tenant (Amendment) Act 1980 and in particular, s. 17(1)(a)(v):-

"the tenancy terminated otherwise than by notice to quit and the landlord either refused for good and sufficient reason to renew it or would, if he had been asked to renew it, have had good and sufficient reason for refusing."

14. In the circumstances, I am satisfied that the plaintiffs have established such good and sufficient reasons in that the tenants have failed to keep the premises in good repair and are unable to do so. I confirm the findings of the learned Circuit Court and hold that the plaintiffs are entitled to recovery of possession of ALL THAT AND THOSE the entire premises at No. 7, Cecil Street in the City of Limerick in the terms of the Civil Bills bearing Record No. 2005/00543 and 2005/00542 together with the costs of these proceedings.