

THE HIGH COURT

[2023] IEHC 81

[Record No. 2022/38/MCA]

BETWEEN

SILESHID ABEYNEH

APPELLANT

AND

RESIDENTIAL TENANCIES BOARD

RESPONDENT

JUDGMENT of Ms Justice Bolger delivered on the 16th day of February, 2023

Background

1. The appellant entered a tenancy agreement with their landlord on 27 July 2013. He was served with a notice of termination on 21 August 2015 on the grounds that the landlord wished to sell the property. The property was vacated on 16 September 2016. The appellant challenged his eviction and, by determination of 9 December 2015, the notice of termination was deemed valid. In a decision separate to the one under appeal here, it was determined that the appellant owed arrears of rent in the amount of €830 to the landlord. That determination was the subject of an enforcement order by the Circuit Court and was not the subject of this appeal before this Court.
2. The application the subject of this appeal was made to the RTB on 21 October 2019 in which the appellant sought to challenge his eviction as the landlord did not sell the property and the appellant claimed the landlord never intended to do so. The appellant also sought the return of his security deposit of €500. An adjudication hearing took place on 10 January 2020 and the adjudicator found that the landlord should pay the appellant €3,000 in respect of a breach of s. 56(3)(a) of the Residential Tenancies Act 2004 for damages for unjustly depriving the appellant of possession of the premises. Both parties appealed that and a Tenancy Tribunal hearing took place on 6 October 2021. The Tribunal determined that the landlord was not in breach of s. 56 and that the landlord was entitled to retain the security deposit. The RTB made a determination order on 22 December 2021 and issued an order on 17 January 2022, as required by s. 123 of the Act.
3. By notice of motion dated 7 February 2022 and stamped and filed on 8 February 2022, the appellant sought to appeal that determination. No grounds of appeal are set out in the notice of motion. The appellant filed an affidavit in which he took issue with the Tribunal's findings and was highly critical of how he said he had been treated by the RTB.

The Tribunal's findings

4. The determination sets out, *inter alia*, the submissions of the parties and its findings along with its reasons for those findings. The Tribunal made three findings as follows:-
 - (1) That it could not address the validity of the notice of termination of 21 August 2015 because it had been deemed valid in a separate application and that it had no jurisdiction to revisit the validity of the notice of termination;

- (2) The landlord was not in breach of s. 56 and the appellant had not been unjustly deprived of possession of the dwelling because the notice of termination had been deemed valid and enforceable in a previous application and it was, therefore, not open to the Tribunal to revisit the issue. The Tribunal went on to say, for the avoidance of doubt, that it was satisfied, based on the evidence, that the landlord did have a *bona fide* intention within three months of the termination of the tenancy to sell the property, although it subsequently transpired that he did not sell it as his circumstances altered. In relation to the appellant's submissions that the landlord's reasons for terminating the tenancy were false and fabricated, the Tribunal highlighted that the notice of termination had already been deemed valid but also said there was insufficient evidence adduced by the appellant to support abuse of the procedures as set out at s. 34 of the Act.
- (3) The landlord was entitled to retain the security deposit of €500 because a previous Tribunal hearing and decision had determined rent arrears in the amount of €830 and it was not disputed that those arrears had not been paid. The landlord was, therefore, entitled to retain the deposit to cover the rent arrears.

The appellant's grounds of appeal

5. The appellant's notice of motion identifies his wish to appeal against the determination of the RTB of 22 December 2021, briefly sets out the Tribunal's findings and stated that the application would be grounded on his affidavit of 7 February 2022. The notice of motion does not identify any point of law as is required by O. 84C of the Rules of the Superior Courts. The appellant's affidavit set out his views that the Tribunal's determination was inaccurate. He criticised the Tribunal for not taking the same view as the adjudicator and sought to rely on the previous determinations made in support of his case that he had been badly and unlawfully treated by the RTB. He disputed that any arrears for waste disposal existed and the landlord's documentation viz-a-viz his claimed intention to sell the property, and contended that the landlord's real reason for his eviction was because he had secured a report from the County Council requiring repairs to be made to the property. The appellant claimed he was entitled to revisit the RTB's previous determination as the issues were not properly examined.
6. In relation to the RTB's preliminary objection that the appeal was out of time, having been filed outside of the statutory time period of 21 days, the appellant gave an account of his attendance at the Central Office on Monday, 7 February, when he said he was unable to file his motion because the office would not allow him to pay by bank card and, by the time he returned with cash, the office had closed early. He returned the next day and said he was informed by a court official that it was not his fault that the motion was being issued a day late and that the official changed the date of the motion from 8 February to 7 February. The motion was date stamped as having been filed on 8 February 2022.

RTB's submissions

7. The RTB raised a preliminary objection that the appeal was out of time and cited case law, including the obiter comments of the Court of Appeal in *Keon v. Gibbs*, adopted by

Noonan J. in *Noone v. RTB* [2017] IEHC 556, which found that this Court has no discretion to extend the 21 days allowed by s. 123 for making an appeal. Counsel for the RTB submitted that the appeal is made by the notice of motion and cited the decision of *MCK v. H.* (unreported, decision of the High Court, 12 April 2002) where Finnegan P. found that a motion is brought when it is filed in the Central Office pursuant to the Rules of the Superior Courts. Counsel said this motion was clearly filed on 8 February and whilst there may have been reasons for its late filing, there is no provision for an extension of time for the appeal regardless of the circumstances.

8. In relation to the remainder of the appeal, the RTB said that the appeal did not identify any error of law and that the appellant's entire appeal was premised on his disagreement with the Tribunal's findings, and that he was wrongly attempting to treat this Court as a court of appeal. Counsel relied on the decision of McKechnie J. on the nature of an appeal on a point of law in *Deely v. Information Commissioner* [2001] 3 IR 439, at p. 452, quoted with approval by the Supreme Court in *Sheedy v. Information Commissioner* [2005] 2 IR 272. The RTB submitted that each of the Tribunal's findings was made following a consideration of, and drawing proper inferences from, the evidence and a proper interpretation of the relevant statutory provisions.

Decision

Is the appeal out of time?

9. Section 123 requires an appeal to be made within 21 days of the date of the Determination Order. In this case, the appeal should have been brought on or before the 6 February 2022, which was a Sunday. The RTB accepted that this meant the appeal would have been in time as long as it was filed by Monday, 7 February 2022. The appeal was not filed until Tuesday, 8 February and the motion is stamped as having been filed on that date, even though it is dated, by hand, as 7 February.
10. The appeal is made on the date on which the Notice of Motion is filed. Here, that was clearly 8 February 2022. Even if the appellant's version of events is correct, that does not change the date on which the motion was filed, albeit that it might present a reason for its late filing. The caselaw confirm that s. 123 does not permit any exceptional circumstances or any other basis on which time can be extended. I follow the decision of Noonan J. in *Noone v. RTB* in which he approved of the *obiter* comments made by Hogan J. in *Keon v. Gibbs* [2017] IECA 195. Hogan J. found there was nothing in s. 123 indicating that the statutory time limit might be extended under any circumstances. He said the Oireachtas has not provided for a power to extend time and the issue must, therefore, arise as to whether there is such a power at all under any circumstances, no matter what good reasons for delay may be advanced by any putative appellant. Hogan J. did not accept that O. 84C independently conferred a power to extend time, it was expressed to be contingent on "any provision to the contrary in any relevant enactment". Section 123(3), in providing for a strict 21-day time limit not capable of extension, amounts to a "provision to the contrary" such as would negative the potential operation of O. 84C, r. 2(5)(b). Noonan J. concluded that the wording of s. 123(3) and (8) "is clear on

its face and an appeal must be brought within 21 days of the date that the determination order is issued”.

11. As this appeal was brought outside of time, and this Court has no jurisdiction to extend time, the appeal must fail.

Have points of law been identified?

12. In the event that I am wrong in relation to the appeal being out of time, I am also satisfied that this appeal does not identify any error of law. The appeal is predicated entirely on the appellant’s view that the Tribunal was wrong to have accepted the landlord’s evidence and documents in finding that the landlord had a bona fide intention to sell the property at the time of the appellant’s eviction. The appellant has not identified an absence of evidence to support the Tribunal’s findings and neither has he established to the court’s satisfaction that conclusions were drawn which no reasonable decision maker could have reached. The appellant did not seem to understand the function of a s. 123 appeal. His appeal was, in reality, one based on the merits of the Tribunal’s findings rather than on any identified error of law.
13. The Tribunal’s findings were made following a carefully considered analysis of the evidence given to it and a proper application of the relevant legal provisions. The hearing was conducted fairly and properly with all parties afforded the right to be heard and to cross-examine the other side. The Tribunal gave reasons for its finding.
14. For those reasons, I am of the view that this appeal should be refused, in the event that this court has any jurisdiction to determine it in circumstances where the Notice of Motion was filed one day outside of the statutory time period.

Indicative view on costs

15. As the appellant has failed in his appeal, it is my indicative view that, in accordance with s. 169 of the Legal Services Regulation Act 2015, costs should follow the event and the RTB are, therefore, entitled to their costs. I will list the matter for hearing before me at 10:30 a.m. on 2 March for the making of final orders including costs and the parties are free to make whatever submissions they wish to make, viz-a-viz final orders and costs on that date. If either of the parties intend to furnish written submissions, these should be furnished to the court two full days prior to the matter coming back before me.

Appellant: Litigant-in-person

Counsel for the Respondent: Paul Finnegan BL