THE HIGH COURT

[2017 No. 103 MCA]

BETWEEN

AMY HYLAND

APPELLANT

AND

RESIDENTIAL TENANCIES BOARD

RESPONDENT

AND

LUKE CHARLTON AND MICHAEL COTTER

NOTICE PARTIES

JUDGMENT of Mr. Justice Noonan delivered on the 6th day of October, 2017

1. This is an appeal on a point of law brought pursuant to s. 123 (3) of the Residential Tenancies Act, 2004 ("the 2004 Act") against a determination of the Tenancy Tribunal of the respondent (the RTB) made on the 17th February, 2017.

Background Facts

2. The notice parties are bank appointed receivers over a number of properties owned by Denis Scriven, the appellant's stepfather. These properties include a dwelling at 31 Carrigmore Crescent, Saggart, Citywest, Dublin 24. The appellant became the tenant of that property pursuant to an arrangement with Mr. Scriven. The notice parties were appointed by deed on the 4th June, 2014. They subsequently registered the tenancy with the RTB.

3. When they did so, they were not in a position to ascertain the commencement date of the tenancy because neither the appellant nor Mr. Scriven were prepared to cooperate with them. By letter of the 5th June, 2014, the second notice party wrote to the appellant as the occupant of 31 Carrigmore Crescent advising her of the appointment of the receivers and asking her to provide details of the basis upon which she occupied the property. She responded in the following terms by letter of the 24th June, 2014:

> "Re: my home at 31 Carrigmore Crescent.
>
> My landlord is Ger Scriven. My rental agreement is with Ger Scriven.
>
> I have been told to call the guards should you or anyone working with you come to my home! Please contact Ger Scriven for anything to do with this property.
>
> Amy (the occupant)."

4. By letter of the 7th July, 2014, from the notice parties' solicitors to the appellant, they called upon her to pay the rent due to the notice parties as being the only persons legally entitled to receive it. In the intervening two years or so, no rent was paid by the appellant to the notice parties and accordingly by letter of the 17th June, 2016, the solicitors for the notice parties called upon the appellant to vacate the premises within 21 days.

5. The appellant failed to do so and accordingly the notice parties served a Notice of Termination on the 17th August, 2016. An application for adjudication in respect of the appellant's overholding was made to the RTB and came on for hearing before an adjudicator on the 9th November, 2016. The appellant did not appear at the hearing and the notice parties were represented by their solicitor. The adjudicator determined that the appellant should vacate the premises within 28 days and pay a sum of €7,540 by way of arrears of rent in instalments. The appellant appealed the adjudicator's determination to the Tenancy Tribunal before which a hearing took place on the 23rd of January, 2017.

6. On that occasion the notice parties' solicitor again attended and the appellant attended and was represented by a Mr. Seery, an engineer. It would appear that Mr. Seery on behalf of the appellant made two points to the Tribunal. The first was that the appellant is a "child" of the landlord, Mr. Scriven within the meaning of s. 3 (2) (h) of the 2004 Act and accordingly the provisions of the Act did not apply.

7. The second point made by Mr. Seery was that Mr. Scriven's wife, Ms. Samantha Hyland was the appellant's mother and was effectively a joint landlord of the property by virtue of her marriage to Mr. Scriven and the fact that the appellant had paid rent both to her and Mr. Scriven on a periodic basis. It would appear that the appellant stated in evidence that she had taken up occupancy of the premises in mid 2015 and had previously been in occupation in 2014 having left for alternative accommodation before returning. The appellant confirmed that she had written the letter of the 24th June, 2014 acknowledging that Ger Scriven was her landlord.

8. The third point made by Mr. Seery was that the registration of the tenancy by the notice parties was invalid and therefore the Tribunal had no jurisdiction in the matter.

Findings of the Tribunal

9. The Tribunal found that the 2004 Act did apply to the case because the appellant was not a "child" of the landlord within the meaning of s. 3 (2) (h). It gave its reasons for so finding.

10. Secondly, it found that submissions regarding the registration of the tenancy were not within the remit of the Tribunal as this was a matter between the RTB and the party lodging the dispute. The Tribunal found as a fact that Mr. Scriven was, and at all times remained, the appellant's landlord and in that regard noted the content of her letter of the 24th June, 2014. The Tribunal rejected the appellant's submission that her mother was also her landlord. It noted that in subsequent correspondence between the appellant and the notice parties and their solicitors, it had never been alleged by her that her mother was a joint landlord of the property and that her assertions to the contrary were therefore not credible. Furthermore, neither the appellant nor Mr. Scriven gave evidence in support of the proposition that her mother was a joint landlord.

11. The Tribunal accordingly affirmed the determination of the adjudicator that the notice of termination was valid and that the appellant should vacate within 56 days of the date of issue of the order. The Tribunal also determined that arrears of €8,060 were due and provided for payment by instalments.

The Appeal to the High Court

12. The within notice of motion, issued by the appellant as a litigant in person, merely states that the appellant appeals against the decision and finding of the Tribunal determination. Section 123 of the 2004 Act provides in relation to a determination order that:

> "(3) Any of the parties concerned may appeal to the High Court, within the relevant period, from a determination of the Tribunal (as embodied in a determination order) on a point of law."

13. Order 84C of the Rules of the Superior Courts in relation to statutory appeals such as the present one, provides at r. 2 (3):

> "(3) Where the relevant enactment provides only for appeal to the High Court on a point of law, the notice of motion shall state concisely the point of law on which the appeal is made."

14. Clearly therefore, the notice of motion in the present case entirely fails to comply with the requirements of O. 84C. In that regard, when the matter was before the court on the 5th April, 2017, I directed the appellant to identify the point of law which she sought to ventilate on the appeal. That direction appears not to have been complied with. In the normal way, this would cause the appeal to fail in limine. However, having regard to the fact that this point was not explicitly relied upon in argument by the RTB or the notice parties and given that the appellant lodged the appeal as a litigant in person but is now legally represented, I propose to consider the substantive issues raised.

The Issues

15. It was agreed between the parties that three issues arise for consideration:

> 1. Is the appellant a "child" of the landlord within the meaning of the 2004 Act so that it does not apply? As noted above, the Tribunal concluded that the appellant was not a "child" and thus the Act did apply.
>
> 2. The Tribunal lacked jurisdiction to deal with the matter by virtue of the fact that the tenancy was not validly registered. The Tribunal held that this was not within its remit.
>
> 3. The Tribunal ought to have adjourned or stayed the proceedings pending the determination by the High Court of a claim by the appellant's mother to an interest in the property the subject matter of these proceedings.

Discussion

16. I propose to deal with each of these issues in turn.

Issue 1.
Section 3 of the 2004 Act insofar as relevant to this appeal provides as follows:

> "(1) Subject to subsection (2), this Act applies to every dwelling, the subject of a tenancy (including a tenancy created before the passing of this Act).
>
> (2) Subject to section 4 (2), this Act does not apply to any of the following dwellings—…
>
> (h) a dwelling within which the spouse, parent or child of the landlord resides and no lease or tenancy agreement in writing has been entered into by any person resident in the dwelling, …"

It is not suggested in the present case that a written lease or tenancy agreement was entered into. The only issue that arises therefore is the meaning to be attributed to the word "child" in the subsection. Section 4 (1) provides that:

> " 'child' includes a person who is no longer a minor and cognate words shall be construed accordingly;"

17. Therefore no explicit definition of the word "child" is to be found in the 2004 Act. Like any other piece of legislation, the 2004 Act must be interpreted in accordance with well settled canons of construction, the first and most basic of which is that words should be accorded their natural and ordinary meaning. The appellant has sought to argue that in the light of evolving concepts of family, the word "child" is ambiguous and unclear as to its meaning and in the light of those same concepts, it ought to be regarded as including a stepchild. I cannot accept that proposition. The word "child" in its natural and ordinary meaning can only refer to the biological offspring of a natural person. Such a person's son or daughter is a "child" of that person. Of course whether a person is the biological offspring of another is, with advances in medical science, perhaps a more complex question that it used to be. What is clear however is that a person who has no biological connection to another cannot be the latter's "child". A stepchild is thus not a "child".

18. If there were any doubt about this, and I believe there is none, it is removed by s. 39 of the Act itself. That section provides that a tenancy shall terminate on the death of the tenant save where certain conditions are satisfied. Those conditions include that stipulated in s. 39 (3) (a) (iii) that the dwelling was at the time of the death of the tenant occupied by:

> "(iii) a child, stepchild or foster child of the tenant, or a person adopted by the tenant under the Adoption Acts 1952 to 1998, being in each case aged 18 years or more…"

19. The subsection therefore clearly recognises that a child is something different from a stepchild or indeed a foster child or an adopted child. In a different context, s. 35 of the Act at subs. (4) defines a reference to a member of the landlord's family for the purposes of the Table at s. 4 of the Act as being a reference to any spouse, child, stepchild, foster child, grandchild, parent, grandparent, stepparent, parent-in-law, brother, sister, nephew or niece of the landlord or a person adopted by the landlord under the Adoption Acts, 1952 to 1998. Here again, a clear distinction is drawn between a child and a stepchild. Since the passing of the 2004 Act, separate reference to an adopted child is now no longer necessary by virtue of s. 18 of the Interpretation Act, 2005 which expressly provides that a reference to a child of a person in any enactment shall be construed as including a reference to an adopted child as defined.

I am therefore satisfied that on a literal interpretation of s. 3, the meaning of the expression "child" is clear and unambiguous and accordingly does not apply to the appellant.

Issue 2.
20. The appellant's second argument is that the Tribunal had no jurisdiction to deal with the matter on account of some alleged infirmity in the registration of the tenancy with the RTB. Although the appellant does not spell out clearly what this infirmity is, it seems to arise from para. 3 of her first affidavit in which she avers:

> "The receivers purported to register the property under a part 4 tenancy. I say that the receiver was incapable of doing so. Further I say even if he were capable (though this is not admitted), the application contains material inaccuracy that leaves any registration made on foot of same without validity. The material inaccuracies were fundamental to the registration pertained, inter alia, to the identity of the landlord which was incorrect, and the commencement date of the tenancy which was incorrect etc."

21. The appellant does not make clear what she means by the identity of the landlord being incorrect because it could either be that the identity of the landlord was Mr. Scriven, and not the notice parties, or alternatively that it was Mr. and Mrs. Scriven and not the notice parties. In either event the objection is misconceived. The receivers undoubtedly had a sufficient interest in the property to register the tenancy when they did, having being lawfully appointed in relation to it.

22. Furthermore, if the suggestion is that Mrs. Scriven was the joint landlord and she neither registered the tenancy nor is noted as a landlord, the Tribunal found as a fact on all the evidence which was before them that Mrs. Scriven was not a landlord of the property. This was clearly a finding of fact that was open on the evidence and cannot be challenged in an appeal on a point of law. In effect the appellant is arguing that the Tribunal reached the wrong conclusion on the evidence, clearly a matter which goes to the merits and is outside the scope of this appeal.

23. The point about the commencement date of the tenancy being inaccurate cannot in my view avail the appellant in circumstances where both she and her stepfather refuse to cooperate with the notice parties and provide this information.

24. Perhaps the most important point here however is that the jurisdiction of the Tribunal itself, to which the appellant appears to have submitted by her participation, was conferred by the RTB accepting the registration of the property in the first instance. If the RTB's decision to do so had been made outside of its jurisdiction, as the appellant now contends, then it seems to me that the appropriate way of challenging the registration was to seek judicial review of the decision to register. Having not done so, I do not think the appellant can now be heard to criticise the Tribunal for failing to come to the conclusion that it did not possess the requisite jurisdiction to hear the appeal from the adjudicator.

Issue 3.
25. The final point made in argument before this court for the first time was that the Tribunal ought to have adjourned or stayed the hearing pending the outcome of proceedings brought in the High Court by Mrs. Scriven claiming an interest in the property. It has to be said that those proceedings, initiated by Mrs. Scriven in 2013 as a litigant in person, appear to have been pursued with little enthusiasm by her. It took some four years for Mrs. Scriven to deliver a statement of claim which she finally did on the 27th February, 2017, and only then in response to a motion brought by the notice parties to have the proceedings struck out for want of prosecution. In my view the Tribunal was perfectly correct in proceeding to hear and determine the appeal as it was tasked to do. More importantly however, no application was ever made to the Tribunal for an adjournment or a stay pending the High Court proceedings. This issue was therefore never confronted by the Tribunal nor was it asked to make any determination in relation to such issue.

26. In that respect, I cannot see how this could form the basis for an appeal on a point of law to this court. A similar statutory provision under the Freedom of Information Act, 1997 was considered by me in *McKillen v. The Information Commissioner* [2016] IEHC 27. Section 42 of the 1997 Act provided for an appeal to the High Court on a point of law from a decision of the Information Commissioner in terms similar to s. 123 (3) of the 2004 Act. In McKillen, I noted (at para. 59):

> "A s. 42 appeal is not a de novo hearing where the appellant is at large to advance new arguments or evidence not put before the respondent. It is an appeal on a point of law which was considered and dealt with by the respondent…. As Smyth J. remarked [in *South Western Area Health Board v. Information Commissioner* [2005] 2 I.R. 547], it would be entirely unsatisfactory if appeals on pure points of law could be run on the basis of matters never raised before, let alone considered and decided by, the respondent. That would transform the appeal into something quite different from that envisaged by the Act."

27. I am therefore satisfied that not only is this point without merit but the appellant has no entitlement to raise it in this appeal.

Conclusion
28. For the reasons I have explained, I am satisfied that this appeal must fail and I will accordingly dismiss it.