THE HIGH COURT

2017 No. 152 MCA

BETWEEN:

MARY DUNIYVA

APPELLANT

– AND –

RESIDENTIAL TENANCIES BOARD

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 12th October, 2017.

I. Background

1. On 12th April, 2017, the Residential Tenancies Board issued a determination order to the effect that, *inter alia*, a notice of termination served on Ms Duniyva by her landlords on 3rd November, 2016, is valid. On 10th May, 2017, Ms Duniyva notified the Residential Tenancies Board that she intended to appeal the determination of 12th April to the High Court. Such an appeal may be brought under s.123(3) of the Residential Tenancies Act 2004 which provides that "*Any of the parties* [to proceedings before a Tenancy Tribunal] *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.*"

2. Critically, an appeal under s.123(3) is "*on a point of law*". As a result, the ambit of such an appeal is considerably constrained. The level of constraint presenting was detailed by the High Court in its relatively recent decision in *Marwaha v. Residential Tenancies Board* [2016] IEHC 308, para.13 (another s.123(3) appeal), and need not be recited again here. The court would, however, note that it is its unfailing experience with all persons who bring s.123 appeals that what they seek is a re-hearing of their initial application; indeed Ms Duniyva, like all such appellants with whom this Court has treated, has sought to argue her appeal in part as though it is a re-hearing. If such a re-hearing is what appellants seek, and what courts, to a greater or lesser extent, find themselves called upon to hear, even if it is not what they substantively do, then it might perhaps be contended that that is what should be allowed at law. However, that contention and its resolution do not fall to this Court to raise or reach.

3. In her grounding affidavit, Ms Duniyva mentions four grounds of appeal, viz. that (1) the Tenancy Tribunal mis-applied s.34(4) of the Act of 2004, (2) the Tenancy Tribunal failed to show regard for the right to peaceful and exclusive occupation of 'her' rented dwelling, as recognised by s.12(1)(a) of the Act of 2004, (3) the Tenancy Tribunal's hearing and determination "*were one-sided and biased in favour of the landlord, failing to apply the principles of natural and constitutional justice*"; and (4) the Tenancy Tribunal breached fair procedures by not allowing Ms Duniyva properly to cross-examine witnesses. In her oral submissions, Ms Duniyva also suggested that her time for appeal had been curtailed, and that she has a constitutional right to accommodation/housing which somehow operates to her advantage. The issue concerning the right of appeal is an irrelevance as Ms Duniyva has proceeded in a timely manner with her appeal. The court turns to examine each of the other points below.

II. Section 34(4) of the Act of 2004

4. Section 33 of the Act of 2004 provides that "*A Part 4 tenancy* [and Ms Duniyva's tenancy is such] *may not be terminated by the landlord save in accordance with section 34.*" Section 34(1) provides, *inter alia*, that "*A Part 4 tenancy may be terminated by the landlord–(a) on one or more of the grounds specified in the Table to this section…*". Paragraph 4 of that Table, as amended by the Residential Tenancies (Amendment) Act 2015, s.28(d), (as commenced by the Residential Tenancies (Amendment) Act 2015 (Commencement of Certain Provisions) (No 3) Order 2016 (S.I. No. 216 of 2016)), offers as a ground for termination that: "*The landlord requires the dwelling or the property containing the dwelling for his or her own occupation or for occupation by a member of his or her family and the notice of termination (the 'notice') contains or is accompanied by a statutory declaration* [specifying certain detail]". Pursuant to s.35(4) of the Act of 2004, inter alia, a grandchild of a landlord is a family member for the purposes of para.4 of the Table to s.34.

5. Ms Duniyva points to the fact that the ground for termination is that the landlord "requires the dwelling…" (emphasis added), and suggests that termination of the tenancy must be essential or important rather than just desirable. The court notes that in the Oxford Online Dictionary, when it comes to: (1) the verb "*require*", the principal definition provided is "*need for a particular purpose*"; and (2) the verb "*need*", the principal definition provided is "*require (something) because it is essential or very important rather than just desirable*".[1] Having regard to the just-stated definitions, the court considers that the use of the third-person singular form of the verb 'to require' in para.4 of the Table to s.34 has the result that a landlord must 'need' the dwelling in issue, which has the effect that termination of the tenancy must be essential or very important to him (or her), rather than just desirable. That need has a subjective and an objective dimension, in the sense that a Tenancy Tribunal would need to look to whether a landlord subjectively requires a dwelling (here the statutory declaration, it seems to the court, would typically be determinative) and also to whether that perceived requirement is a *bona fide* requirement and not (i) a requirement that a landlord purports to exist but which does not in truth exist, or (ii) a requirement that is advanced to achieve an unlawful objective, e.g., the perpetration of unlawful discrimination contrary to the Equal Status Acts.

> [1] When it comes to the verb 'to need', Ms Duniyva in her submissions placed some emphasis on the meaning attributed by Geoghegan J., in *Equality Authority v. Portmarnock Golf Club & ors* [2009] IESC 73, to the noun "*needs*" in s.9(1)(a) of the Equal Status Act 2000. With respect, the court does not see that the meaning afforded by the Supreme Court to a particular noun in a statute that is of no relevance to the within application has any bearing on the meaning to be given by this Court to an unrelated verb ('to need') which appears in the principal definition of yet another verb ('to require') that is employed in an entirely different statute (the Act of 2004).

6. Here, the landlords want Ms Duniyva's tenancy of her rented dwelling terminated in order that a grandson of theirs who is in college and desirous of independence from his parents, can live closer to where he studies, and does not have to be taking two long bus-rides to and from college each day, or (worse still) be cycling to or from college on dark mornings, and still darker evenings.

7. The court is not required in the within appeal to determine whether there is in the statutory declaration furnished by the landlords, and/or the broader facts presenting, sufficient to justify the requirements of the Act of 2004, as touched upon above. This being an

appeal under s.123(3) of the Act of 2004, the court is concerned solely with points of law. Turning to this aspect of matters, is it the case that the Tenancy Tribunal could not, acting in accordance with law, have concluded that the landlords to Ms Duniyva required the dwelling and were *bona fide* in seeking to terminate the tenancy on the grounds specified? In this regard, the court notes the averment by the chairperson of the relevant Tenancy Tribunal that "[*T*]*he Tribunal took into account the evidence and materials before it, namely, the Statutory Declaration sworn by the Landlord and the direct evidence of the Landlord's grandson to the effect that he required the dwelling for his own occupation*". Moreover, in the reasons for its decision, the Tenancy Tribunal stated, *inter alia*, in its Report, para. 7, that "*The Tribunal is satisfied that the dwelling was required for the Landlord's grandson….The Tribunal is also satisfied that the intention is a bona fide intention and that the Landlord does hold the required intention*". Clearly, no unlawfulness presents in the landlords' *bona fide* requirement of the dwelling currently rented by Ms Dunivya. So the Tenancy Tribunal addressed in effect the subjective and objective dimensions of the matter presenting before them and arrived at a perfectly valid finding that was reached in accordance with law. There is no misapplication of s.34(4) of the Act of 2004 in that.

III. Peaceful and Exclusive Occupation

8. Ms Duniyva contends that the Tenancy Tribunal failed to show regard for that right to peaceful and exclusive occupation of her rented dwelling which is the logical corollary of the obligation on landlords, under s.12(1)(a) of the Act of 2004, to allow "*the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling*". This aspect of matters did not receive much of an airing at the oral hearing of the within appeal. However, what the court understands Ms Duniyva to contend in this regard is that service by her landlords of the notice of termination interfered with the right aforesaid. With respect, the court does not see how this could be so: there are six grounds on which a landlord may, under s.34, lawfully terminate a Part 4 tenancy. As the landlords in the within matter have been found to have relied properly on one of the six grounds, it simply cannot follow as a matter of logic or law that service of notice of termination on one of those six grounds could or does interfere with Ms Duniyva's right to peaceful and exclusive occupation of her rented dwelling.

IV. Bias and Breach of Principles of Natural and Constitutional Justice

9. Ms Duniyva contends that the Tenancy Tribunal's hearing and determination "*were one-sided and biased in favour of the landlord, failing to apply the principles of natural and constitutional justice*", and that she was not allowed properly to cross-examine witnesses. In point of fact, over a 2½ hour period, Ms Duniyva was given a full opportunity to present such evidence as she thought appropriate, to cross-examine all of the landlords' witnesses, including the landlords' teenage grandson, and to make all appropriate submissions. There is no bias or breach of the principles of natural and constitutional justice presenting. Nor does it follow from the fact that the Tenancy Tribunal reached conclusions adverse to Ms Duniyva that it was possessed of some bias against her or necessarily acting (in point of fact it did not act) in breach of the principles of natural or constitutional justice. Nor the court notes, given that Ms Duniyva has, with respect, a certain tendency to loquacity, is it the case that a tribunal must continue unendingly with a hearing when all that a party is doing is repeating the same points and/or has patently iterated the points which that party has come to the hearing to make. What is required as a matter of administrative law is fair procedure (which need not be perfect procedure), including a fair hearing (which need not be a perfect or endless hearing). Ms Duniyva's allegations of bias on the part of, and breach of the principles of natural and constitutional justice by, the Tenancy Tribunal, are respectfully rejected by the court.

V. A Constitutional Right to Accommodation/Housing?

10. Neither in her notice of motion nor in her accompanying affidavit does Ms Dunivya make mention of a constitutional right to accommodation/housing as acting to frustrate the operation of the Act of 2004, as amended. This was a point that arose in submission only and with very little amplification as to what in fact was being contended for. All this being so, the court would confine itself to the observations that (i) there is no express constitutional right to universal provision of housing by the State; and (ii) that is not to say that some qualified, un-enumerated (and as yet unrecognised) constitutional right to accommodation/housing might not at some future point be found by a court to exist as a matter of Irish law, perhaps by reference to the insights to be gleaned from the burgeoning case-law of, and elaboration of principle by, the European Court of Human Rights concerning minimum State obligations in the area of housing rights (see, *inter alia, Moldovan v. Romania* (2007) 44 EHRR 16, *Marzari v. Italy* (1999) 28 EHRR CD175, *Botta v. Italy* (1998) 26 EHRR 241, and *Guerra v. Italy* (1998) 26 EHRR 357). However, it falls to this Court to decide the within case, not to predict the outcome of some possible future case; and when it comes to this case, there is no 'free-wheeling' or qualified constitutional right to accommodation/housing that can be deployed by Ms Dunivya or the court, certainly not without its having been pleaded or the subject of substantive argument, in order to upset the lawful finding of a Tenancy Tribunal reached pursuant to a statute that enjoys the presumption of constitutionality.

VI. Conclusion

11. Ms Duniyva, an elderly lady who has suffered recently from ill-health, has the sincere sympathy of the court that she now faces lawful eviction from the dwelling that she rents. In her closing submissions, Ms Duniyva effectively asked the court to ignore the law and its 'technicalities' (as she perceives them) and to do justice (as she considers it to lie). But none of us is above the law; and that includes the judge on the bench. The courts may bring equitable precepts to bear upon the problems that present before them; but the courts are bound by law, and rightly so. Ms Duniyva's landlords require their premises for occupation by a member of their family; and our elected lawmakers, sensible men and women of the world, have determined in the Act of 2004, as amended, that such affords a good basis on which to evict a sitting tenant. It would be gravely presumptuous of an unelected court and profoundly unjust to Ms Duniyva's landlords, if the court were now to yield to Ms Duniyva's supplications and deny to those landlords, on a judicial whim, an entitlement that they enjoy under a comprehensive statutory régime devised by our elected lawmakers.

12. For all of the reasons identified above, the court is coerced as a matter of law into respectfully declining all of the reliefs that Ms Duniyva has sought in the within appeal.