THE HIGH COURT

(A) RECORD NO: 2016/100/MCA

(B) RECORD NO. 2016/173MCA

(C) RECORD NO. 2016/225MCA

BETWEEN:

PIOTR/PETER NOWAK AND AGNIESZKA NOWAK

APPELLANTS

AND

RESIDENTIAL TENANCIES BOARD

RESPONDENT

JUDGMENT of Mr Justice Max Barrett delivered on 21st February, 2017.

I. Overview

1. These proceedings concern a trio of appeals brought pursuant to s.123 of the Residential Tenancies Act 2004, as amended, against a determination of a Tenancy Tribunal: (A) on 12th February, 2016 (which appears to be the determination order to which the notice of motion makes reference when it refers to a determination issued on 19th February, 2016) ('Appeal A'); (B) on 22nd April, 2016 (which appears to be the determination order to which the notice of motion makes reference when it refers to a notice of motion communicated on 25th April, 2016) ('Appeal B'); and (C) on 21st June, 2016 ('Appeal C'). For the reasons identified hereafter, the court must respectfully conclude that all of these appeals are without merit.

II. Applicable Law

2. The court recently considered the law and recent case-law governing s.123 appeals in *Marwaha v. Residential Tenancies Board* [2016] IEHC 308 and does not consider that further elaboration or recitation of the law is required herein, beyond noting again the relatively constrained role that the court has consistently been held to enjoy in s.123 appeals in judgments from *Canty v. Private Residential Tenancies Board* [2007] IEHC 243 through to, inter alia, *Doyle v. The Private Residential Tenancies Board* [2015] IEHC 724.

III. Common Failings

3. Before proceeding to consider Appeal A, Appeal B and Appeal C, the court notes a couple of common failings to each appeal brought:

– first, the Nowaks ought to have joined the landlords to the within appeals as the landlords' interests are directly affected by same. This failure to join seems to be a consistent failure by tenants in the within form of appeals and results in the absurd situation that landlords regularly attend at the appeals, without technically being a party to same, even though their interests are directly affected by what the court may decide. There are only so many times that this point can respectfully be made before a consequence must follow for would-be appellants who do not join landlords, as they should, to appeals such as that now presenting.

– second, contrary to O.84C, r.2(3) of the Rules of the Superior Courts (1986), as amended, the notices of motion commencing the within appeal do not "state concisely the point of law on which the appeal is made". The court is mindful in this regard that, as with the Nowaks, people bringing the within form of appeal often do so in person. In truth, the odds seem immediately stacked against tenant-appellants in this regard because they are invariably opposed in court, itself an alien and challenging forum, by counsel skilled in the law; in fact, so unevenly matched do the respective parties seem generally to be (though Mr Nowak put in a notably good 'innings') that the court must admit to some doubt whether the present system of appeal to the High Court is especially effective or efficient as an avenue of appeal, at least so far as tenants generally are concerned: when the unarmed meet the well-armed, the general outcome of battle seems likely to follow a certain course. But that is for another day; for now, mindful that the appellants are lay-litigants, the court is satisfied to overlook any deficiencies in the form of the notices of motion.

IV. Appeal A

(i) Background.

4. The Nowaks entered into a tenancy agreement with the landlords around 1st August, 2009. The original rent was €1.1k per month; in August, 2012, at the Nowaks' request it was reduced to €1k per month. A summary chronology of the events leading up to the making of the determination order against which appeal is brought is set out hereafter:

19th September, 2014. The Nowaks submit an application for dispute resolution services pursuant to s.76 of the Residential Tenancies Act (RTA). (This application contested the validity of a rent increase from €1k to €1.25k per month, effective 1st October, 2014).

12th November, 2014. The Nowaks submit a second application for dispute resolution services. (This application alleged that the landlords failed to attend to various matters arising at the premises in a timely manner. It was also alleged that the Nowaks had been penalised by the management company and that the landlords had failed adequately to maintain the premises).

28th November, 2014. Adjudication hearing takes place.

12th February, 2015. Adjudicator's report served on parties under cover letter dated 12th February. The letter advised, inter alia, that if the determination was not appealed within the statutory timeframe, the Board would, pursuant to s.121 of the RTA make an order reflecting same. Both landlord and Nowaks appeal.

29th October, 2015. Tenancy Tribunal appeal hearing proceeds.

[Some objection seems to be taken by the Nowaks to the identity of the person who chaired this hearing, it appears because she had heard a previous dispute involving Mr Peter Nowak. The court sees no basis for, or merit to, this objection. There is not a hint of any bias presenting. The fact that the same individual would participate in two hearings involving the Nowaks appears to the court to be testament to the sheer number of Tenancy Tribunal hearings that have involved the Nowaks, not to any deficiency in or concerning those hearings.]

12th February, 2016. Determination order that is the subject of Appeal A issues.

(ii) Objections and observations.

5. The Nowaks object to: (1) the market rent settled upon by the Tenancy Tribunal; (2) the fact that the Tribunal decided that they should be reimbursed for the purchase of one mattress, not two; (3) the (alleged) fact that the management company engaged in some form of victimisation of the Nowaks; (4) an alleged ultra vires determination by the Tenancy Tribunal as to the non-payment of rent.

6. As to (1)–(3), these are not points of law and it is points of law with which this Court is concerned in an appeal under s.123. As to (4), the Tribunal made no determination as to the finding of rent, though it does note in the body of its report that it has been confirmed to it by the parties that payment of rent has ceased. It is not ultra vires for a tribunal to note a fact that has been confirmed to it by parties. But even if it had been, the court does not see that any prejudice would arise for the Nowaks if the Tenancy Tribunal acting ultra vires (and the court reiterates that the Tribunal did not so act) found to be a truth what the parties in any event agreed was the truth. De minimis non curat lex ('The law does not concern itself with trifles'); neither does it afford relief for incidental error (if error there be) of no consequence.

(iii) Some Common Conclusions Regarding Appeal A, Appeal B and Appeal C.

7. In his affidavit evidence, Mr Nowak purports to identify a number of points of law which he asks the court to consider. In truth, however, what he does is seek to engage in a 'Q&A' session on residential tenancy law (a) without tying in the points raised to the impugned decision of the Tenancy Tribunal and/or (b) in a manner that seeks through sleight of contention to impugn the substantive conclusions reached by the Tenancy Tribunal on the evidence before it. None of these points fall properly to be addressed within the parameters of the within appeal.

8. It appears to the court from the evidence before it that the Tenancy Tribunal afforded the parties an opportunity to present their respective cases, to engage in cross-examination and to make final submissions. In doing so the court does not see that the Tribunal departed in any respect from the principles of natural and constitutional justice, the provisions of the RTA or the provisions of the ECHR. Nor does the court see any other legal deficiency of any nature to present.

V. Appeal B
(i) Background.

9. Appeal B concerns the same tenancy arrangement as Appeal A. A summary chronology of the events leading up to the making of the determination order against which appeal is brought is set out hereafter:

3rd November, 2015 The Nowaks submit an application for dispute resolution services in the context of a rent arrears and over-holding dispute.

23rd November, 2015. Adjudication hearing takes place. The Nowaks do not attend.

8th December, 2015. Adjudicator's report served on parties under cover letter dated 8th December. The letter advised, inter alia, that if the determination was not appealed within the statutory timeframe, the Board would, pursuant to s.121 of the RTA make an order reflecting same. The Nowaks appeal.

7th March, 2016. Tenancy Tribunal appeal hearing proceeds.

22nd April, 2016. Determination order that is the subject of Appeal B issues.

(ii) Objections and observations.

10. The Nowaks maintain that: (i) the level of rent arrears fixed by the Tenancy Tribunal were based on "non-existing and non-agreed terms of the tenancy"; (ii) certain damages awarded were erroneous on the basis that there was "no reasonable or coherent basis" for awarding same; (iii) costs were awarded without any reasonable basis; (iv) the Tribunal was biased and prejudiced.

11. As to (i) and (ii), these are objections to the conclusions reached by the Tribunal on the evidence before it and do not involve any point of law. As to (iii), the costs were awarded against the Nowaks pursuant to s.5(4) of the RTA; the court sees no basis in the evidence on which to interfere with this award of costs. As to (iv), bias appears to be alleged on two grounds. First, a Tenancy Tribunal member appears to have recognised from the papers before him that Ms Nowak is Mr Nowak's sister. The court must admit that it is entirely mystified as to how the Tribunal member's recognition of this acknowledged fact could constitute bias. Second, one of the Tribunal members appears to have sat on a previous Tribunal that heard complaints involving the Nowaks. That this should be so does not *per se* support a finding of bias. The fact that the same individual would participate in two hearings involving the Nowaks appears to the court to be but testament to the sheer number of hearings that have involved the Nowaks, not to any deficiency in those hearings or indeed in the RTB's appeal system generally.

12. The same further conclusions fall to be reached in the context of Appeal B as were reached in respect of Appeal A under the heading "(iii) *Some Common Conclusions Regarding Appeal A, Appeal B and Appeal C.*"

VI. Appeal C
(i) Background.

13. Appeal C concerns the same tenancy arrangement as Appeal A. A summary chronology of the events leading up to the making of the determination order against which appeal is brought is set out hereafter:

25th February, 2016 The Nowaks submit an application for dispute resolution services.

29th February, 2016 The landlords submit an application for dispute resolution services.

22nd March, 2016. Adjudication hearing takes place. The Nowaks do not attend.

23rd March, 2016. Adjudicator's Report served on parties under cover letter dated 23rd March. The letter advised, inter alia, that if

the determination was not appealed within the statutory timeframe, the Board would, pursuant to s.121 of the RTA make an order reflecting same. The Nowaks appeal.

1st June, 2016. Tenancy Tribunal appeal hearing proceeds.

21st June, 2016. Determination order that is the subject of Appeal C issues.

(ii) Objections and observations.

14. The Nowaks object to the Tribunal's requiring them to pay rent arrears in circumstances where, they claim, there is no "binding agreement (written or oral) relating to the rent payment". This is an objection to the conclusion reached by the Tribunal on the evidence before it and does not involve any point of law. The same further conclusions fall to be reached in the context of Appeal C as were reached in respect of Appeal A under the heading "(iii) *Some Common Conclusions Regarding Appeal A, Appeal B and Appeal C*."

VII. Conclusion

15. For the reasons stated above, the court is coerced as a matter of law to conclude that each of Appeal A, Appeal B and Appeal C must fail. No relief falls therefore to be ordered in favour of either appellant. The Nowaks ought now to pay all amounts outstanding to the landlords.