

**THE HIGH COURT****[2014 No. 177/MCA]****BETWEEN:****DEREK O'SHAUGHNESSY****APPELLANT****AND****PRIVATE RESIDENTIAL TENANCIES BOARD****RESPONDENT****JUDGMENT of Kearns P. delivered on 29th day of July, 2014**

By notice of motion dated 15th May 2014 the appellant seeks an Order setting aside and discharging the Determination Order of the Chairperson of the Private Residential Tenancies Board ('PRTB') made on 4th April 2014.

**BACKGROUND**

The appellant is a tenant of a property at 25a Pembroke Gardens, Ballsbridge, Dublin 4. He began residing at this property on 21st September 2004. Strand Trust Limited is the landlord of the property. A dispute arose between the landlord and tenant and on 12th June 2013 the appellant submitted an application for dispute resolution services to the respondent in which he alleged that the landlord had served an invalid notice of termination. The landlord also made an application for dispute resolution services on 25th June 2013 which asserted that the appellant was overholding; was in rent arrears; had caused damage to the premises; and had caused the landlord further loss of rental income as it was unable to rent out an adjoining property due to the actions of the appellant.

An adjudication hearing took place on 20th September 2013. The adjudicator heard a number of jurisdictional arguments and concluded that the landlord did not fall within the category of "an approved body" according to s.6 of the Housing (Miscellaneous Provisions) Act 1992. The adjudicator determined that the landlord had served a valid notice of termination; that the appellant was overholding; that the appellant failed to pay rent of €11,692.24; and had unlawfully changed the locks without the landlord's consent. The appellant appealed this decision on 8th November 2013 on the grounds that the adjudicator had erred in finding that the landlord was not excluded from the provisions of the Residential Tenancies Act 2004.

A hearing before the tenancy tribunal took place on 10th February 2014. Evidence was given on behalf of the respondent landlord that an organisation named 'Protestant Aid' is a registered charity founded in 1836, while the landlord, Strand Trust Limited, was formed in 1988 and is a separate registered charity which happens to be administered from the same building. Strand Trust Limited owns a number of properties and provides accommodation to people who require it urgently, but it always expects to receive some rent. It was submitted that accommodation at the property at 25a Pembroke Gardens was arranged for the appellant following an approach from a concerned person. At the tribunal hearing the appellant stated that he understood the company which employed him as a verger with select vestry of St. Anne's Church, Dawson Street to be 'one and the same' with Strand Trust Limited. It was submitted that the PRTB did not have jurisdiction to deal with the dispute as the 2004 Act does not apply to a dwelling let by an approved body for the purposes of s.6 of the 1992 Act.

The Tribunal, having heard submissions from both sides and considered documentary evidence, found that both parties intended for a landlord and tenant relationship to come into existence at the commencement of their relationship and that the dwelling was not let by a housing body approved for the purposes of s.6 of the 1992 Act. It was determined that the notice of termination was valid; that the appellant should vacate the premises within 7 days; and that the appellant pay rent arrears. A determination order issued to the parties on 22nd April 2014 which also notified the appellant of his right of appeal on a point of law pursuant to s.123(3) of the Residential Tenancies Act 2004.

**SUBMISSIONS**

The appellant maintains that the PRTB does not have jurisdiction to determine the tenancy under the 2004 Act as the landlord is an approved housing body under s.6 of the 1992 Act. It is submitted that 'Protestant Aid', a charity which does appear in the list of approved bodies, is one and the same as 'Strand Trust Limited'. Both entities share the same premises, use the same telephone line, and have a number of shared directors. The memorandum and articles of association of the landlord have been exhibited to highlight the degree of overlap between the two entities. It is submitted that the Chairman erred in law in deciding that the landlord was subject to the jurisdiction of the PRTB and in deciding without reasons and or evidence that the landlord was not an 'approved body' within the meaning of s.6 of the 1992 Act. An affidavit of Mr. John Gerard Cullen, solicitor for the appellant, states that a representative of Strand Trust Limited stated at the adjudication hearing that the landlord was an 'approved housing body'.

It was submitted on behalf of the respondent that the appeal of the decision of the tenancy tribunal was not made within the statutory 21 day period from the date of issue of the determination order. However, as the appellant was only one day out of time the respondent waived its reliance on this point during the proceedings. Counsel for the respondent submits that 'Protestant Aid' is an approved body under s.6 of the 1992 Act and is listed as such in the Register of Approved Housing Bodies which was provided to the Court. However, Strand Trust Limited is not an approved body and the respondent submits that it cannot be considered as such until it has complied with the relevant procedure for obtaining approved status. It is therefore submitted that the Chairman did not err in his decision and that the determination order is valid.

**DECISION**

The primary matter for this Court to determine is whether or not Strand Trust Limited is an approved body within the meaning of s.6 of the 1992 Act.

I have carefully considered the submissions of both parties and the relevant statutory framework and am satisfied that Strand Trust Limited and Protestant Aid are two distinct entities. While Protestant Aid is an approved housing body which appears as such in the Register of Approved Housing Bodies, Strand Trust Limited does not have such approved status. That the two bodies are administered

from the same building, share a telephone line, perform similar and overlapping functions and have a number of shared directors does not make them 'one and the same' as submitted by the appellant. Strand Trust limited has not sought to obtain approved status under s.6 of the 1992 Act and the Court cannot circumvent the necessary procedural requirements for obtaining such approval. Any indication made to the adjudicator by a representative of Strand Trust Limited that it is an 'approved body', as asserted by the solicitor for the appellant, was clearly made in error - Strand Trust Limited is not an approved body and is not listed in the Register as such. The adjudicator was under no obligation to give further reasons for holding that Strand Trust Limited is not an approved housing body and the tribunal report provides comprehensive reasons for its findings.

For the reasons outlined above I am satisfied that the respondent did not err in its findings and therefore dismiss the appeal.