

THE HIGH COURT

[PRT 10/16]

IN THE MATTER OF THE RESIDENTIAL TENANCIES ACT 2004, AS AMENDED, NOTICE OF MOTION FOR RELIEF UNDER SECTION 124 OF THE RESIDENTIAL TENANCIES ACT 2004, AS AMENDED

AND IN THE MATTER OF AN APPEAL FROM THE CIRCUIT COURT, EASTERN CIRCUIT, COUNTY OF KILDARE

BETWEEN

MICHAEL MCATEER

APPLICANT

AND

ROBERT DOCZI AND ALL PERSONS CONCERNED WITH AND RESIDING AT 18 RUANBEG PLACE, RUANBEG MANOR, COUNTY KILDARE

RESPONDENT

AND

SEAMUS FINUCANE AND JOHN QUINN

NOTICE PARTIES

RULING of Mr. Justice Barr delivered on the 7th day of December, 2016

1. The applicant in this matter is the receiver, who was appointed by Bank of Ireland over a number of properties which had originally been owned by the notice parties. The respondents in this case, and in a number of similar cases before the court, are tenants of the various properties in respect of which the applicant has been appointed as receiver.

2. In this appeal, the respondents are contesting an Order which was made on 10th May, 2016, by Griffin J. enforcing a Determination Order which had been made by the Residential Tenancies Board against the respondents pursuant to the Residential Tenancies Act 2004. The respondents were ordered to vacate the rented property at 18 Ruanbeg Place, Ruanbeg Manor, Co. Kildare, within fourteen days of that date.

Background to the Proceedings

3. The background to these proceedings can be briefly summarised in the following manner. The receiver was appointed approximately three and a half years ago over the properties which are currently in the possession of the respondents, who were originally tenants to the notice parties.

4. On 28th July, 2014, the receiver served a Notice of Termination on the respondents in respect of each of the properties. No application was made by any of the tenants to refer the Notice of Termination to the Residential Tenancies Board.

5. When the occupants of the various dwellings failed to comply with the terms of the Notice of Termination, it was necessary for the applicant to bring a complaint to the Residential Tenancies Board, which was done by complaint form dated 20th August, 2015.

6. The complaint was determined by an Adjudicator appointed by the Residential Tenancies Board on 18th September, 2015. There was no appearance by the respondents, or any party on behalf of the tenants, at the hearing of the adjudication.

7. However, the respondent filed an appeal to the decision of the adjudicator and the matter came on for hearing before the Tribunal of the Residential Tenancies Board on 8th December, 2015. Once again, there was no appearance by the respondent at the hearing before the Tribunal, which, issued its decision on 21st December, 2015. The Determination Order provided as follows:-

"1. The notice of termination served on 28th July, 2014, by the applicant on the respondent tenant in respect of the tenancy of the dwelling at 18 Ruanbeg Place, Ruanbeg Manor, Co. Kildare is valid.

2. The respondent tenant and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within fourteen days of the date of issue of this Order."

8. It appears that in breach of the terms of the said Determination Order, the respondent and the persons residing in the dwelling, failed, to comply with the terms of the said Order and in particular, failed to deliver up possession of the rented properties to the applicant.

9. Under the terms of the Residential Tenancies Act 2004, the Determination Order is final and conclusive, unless the tenants bring an appeal to the High Court on a point of law. No such appeal was brought by the tenants.

10. When the tenants did not give up possession of the various properties, the applicant issued an originating notice of motion dated 7th March, 2016, seeking to enforce the Determination Order. That application was grounded upon an affidavit sworn by the applicant on 4th March, 2016.

11. It is alleged by the applicant that the matter came on for hearing before Griffin J. on 10th May, 2016. There was no appearance by any of the tenants at that hearing. The Order of the court records that, having heard counsel for the applicant, the learned Circuit Court Judge made an order pursuant to s. 124 of the Residential Tenancies Act 2004 (as amended) that the determination order of the Private Residential Tenancies Board (Case Reference TR1015-001401/DR085-2366, dated 21st December, 2015) be enforced. It was further ordered that the respondent and all persons residing in No. 18 Ruanbeg Place, Ruanbeg Manor, Co. Kildare, vacate and give up possession of the said dwelling within fourteen days. The applicant was also given an order in respect of his costs.

12. On 16th May, 2016, the respondents appealed the Order of the Circuit Court. The applicant was surprised that the respondent was in a position to lodge such an appeal, as the applicant did not have a copy of the Circuit Court Order at that time, which implied that the respondents must have been in court at the original Circuit Court hearing.

13. Accordingly, this Circuit Court appeal has been brought by the tenants against the Circuit Court Order made by Griffin J. on 10th

May, 2016.

The Respondents' Application

14. At the hearing of the appeal, a gentleman by the name of Colin Fasie, stated that he was one of the tenants in No. 18 Ruanbeg Place, Ruanbeg Manor, Co. Kildare. He stated that he had authority to speak on behalf of all the tenants in each of the properties. As he did not have any legal representation, he was allowed the assistance of a McKenzie Friend. Mr. Fasie submitted a document which was headed "Notes for High Court".

15. In essence, Mr. Fasie, on behalf of all the tenants, was seeking an adjournment of the hearing of the Circuit Appeal. The basis for seeking such an adjournment was that he and the other tenants were firmly of the belief that the matter had not been dealt with in open court in the Circuit Court on 10th May, 2016. He was seeking an adjournment of the matter, so that he could take up a copy of the Digital Audio Recording [hereinafter; the D.A.R.] of the proceedings in the Circuit Court that day.

16. The essence of his application was set out in the following paragraph in his written document which was submitted to the court:-

"I say Your Honour that we appealed these matters because we assumed that the Applicant was correct, but we always had a difficulty insofar as we were in Court and did not hear the cases called, but only after seeking specialist advice and after closer inspection of the documentation, did the shortfalls and procedural errors, which the Applicants themselves admit to unfolded to, the degree they did. I am one hundred percent sure that the Orders were not made on the day, as the judge left unexpectedly on that day and the DAR will reflect this."

17. Mr. Fasie has brought a motion in the Circuit Court, seeking to have the D.A.R. for 10th May, 2016, made available to him. It is not exactly clear from the papers that have been submitted to the court, when that motion will be heard. It had not been heard by the time that this appeal came before the court.

18. Among the papers submitted to the court was the documentation which had been lodged in the Circuit Court in support of the tenants' application for access to the D.A.R. One of those documents was an affidavit sworn by a Mr. Thomas Morrin, on 28th August, 2016. In that affidavit, Mr. Morrin described himself as a businessman and farmer of Priestfield, Donore, Naas, Co. Kildare. It appeared that Mr. Morrin was present in Naas Circuit Court for the purpose of assisting a friend of his, Mr. Patrick Gleeson, who had a matter listed before the court that day. Mr. Morrin stated that he was in court before the registrar came into court and before the judge took to the Bench. He said that while he was primarily there to support Mr. Gleeson, he was also aware of the present application which was coming before the court that day. He stated his intention was to listen and relay the facts of the hearing of that matter back to his lifelong friend, Mr. John Quinn, the notice party in the present proceedings.

19. In his affidavit, Mr. Morrin averred to the following in relation to the proceedings before the Circuit Court that day:-

"6. I can firmly state that I sat in court all morning until lunch break and the cases as listed above in this matter were not called, or heard before the court in the morning. I can further state that I went back to court that afternoon before the Judge was due to sit. I state I waited for a length of time, with several other people in the court but some time thereafter, the registrar addressed the court to say that the Judge had left the building and no further cases would be heard that day. We would be advised as to when they would be rescheduled to."

7. I say it is my sincere belief and opinion that these cases did not come before the court on 10th May, 2016."

20. While Mr. Fasie did not explicitly refer to the affidavit sworn by Mr. Morrin, the court is of the opinion that as the affidavit had been put before it; the court must take account of that affidavit in reaching its ruling on this application.

Conclusions

21. The assertion made by Mr. Fasie on behalf of the respondents and the averments contained in Mr. Morrin's affidavit, raise a very serious allegation before the court. In effect, the tenants are alleging that the Circuit Court Order dated 10th May, 2016, upon which the applicants rely, was fraudulently or improperly obtained. They allege that, contrary to what is said in that Order, the matter was not, in fact, raised in open court before the Circuit Court Judge that day. The inference being that the order was obtained by stealth or fraud by the applicants, who somehow managed to obtain it otherwise than by an application in open court on 10th May, 2016.

22. The Constitution provides that, save for certain exceptions which are specifically provided for by law, or due to a situation of extreme emergency, where an application can be made to a judge in his house, justice must be administered in public. This means that all applications to the court must be made in open court, to which members of the public and journalists have a right of access. Accordingly, Mr. Fasie's allegation, which is supported by the affidavit sworn by Mr. Morrin, effectively implies that the applicant and indeed the Circuit Court Judge, acted in a way that was totally improper and unconstitutional.

23. If I were to refuse the tenants' application for an adjournment, I would effectively have to ignore or discount Mr. Morrin's affidavit. At the hearing, counsel on behalf of the applicant submitted that the tenants' application for an adjournment was yet a further delaying tactic to put off the day when they would have to leave the properties. That assertion has considerable force.

24. However, I feel that as the allegation made by Mr. Fasie is so fundamental to the administration of justice, and where that allegation can be definitively resolved by production of the D.A.R. for the day in question, it is appropriate that the court should accede to a request for an adjournment and should make provision for the taking up of the D.A.R. in advance of the matter coming back before the High Court on Circuit in the next appeal sessions. I do this, not because of any perceived strength in the tenants' argument, but because this Court cannot allow such a serious allegation against both the applicant and the Circuit Court Judge, to go unanswered, when the matter can be so easily determined by production of the D.A.R.

25. Accordingly, I will adjourn the hearing of the appeal in this case and in the cases involving the other properties, being the proceedings concerning Nos. 19, 20 and 21 Ruanbeg Place, Ruanbeg Manor, Co. Kildare, and the proceedings involving the property at Lucknow, Dublin Road, Co. Kildare, to the next sessions of the hearings of Circuit Appeals for Co. Kildare.

26. I direct that either of the parties to these proceedings may take up a copy of the D.A.R., at their own expense.

27. I further direct that the parties are at liberty to file further affidavits in the matter. It occurs to me that as the applicant's case was that he was represented by solicitor and counsel at the hearing before the Circuit Court on 10th May, 2016, he may wish to file an affidavit from his solicitor and/or counsel, as to what transpired before the court that day.

28. Finally, I will direct that these cases are to be given priority in the next Circuit Appeals hearings in Naas.

29. I reserve the question of costs in each appeal to the judge who ultimately deals with the hearing of these appeals.