

BETWEEN

CHRISTOPHER SCIBERRAS

APPELLANT

AND

THE PRIVATE RESIDENTIAL TENANCIES BOARD

RESPONDENT

AND

BY ORDER OF THE HIGH COURT

CHARLES DUNNE AND PETER DUNNE

NOTICE PARTIES

**JUDGMENT of Mr. Justice McDermott delivered on the 21st day of May, 2015**

This appeal is brought pursuant to s. 123(3) of the Residential Tenancies Act 2004, from a Determination Order made by the respondent on 4th April, 2014, following a hearing which took place before the Tenancy Tribunal on 12th March, 2014.

1. On 25th June, 2013, the appellant submitted an application to the Private Residential Tenancies Board, Dispute Resolution Service in respect of his tenancy of a room at 31 Reuben Avenue, Dublin 8, which commenced on 28th May, 2011. The case was taken against the landlords, Charles Dunne and Peter Dunne.

2. In the application the applicant states that he was paying a rent of €250 per month, plus €15 for utilities and that the landlords sought a new rent of €285 plus €15 utilities. He claimed that the landlord was seeking gas payments which were contrary to the terms of the letting agreement and a rental increase without justification. Furthermore, he complained that the landlord had refused to accept the rent and had issued a termination notice stating he would not accept rent unless the increased amount was proffered. He also complained that the landlord had a duty of care to maintain the premises in a healthy condition.

3. On 15th June, 2013, a document purporting to be a Notice to Quit was given to the appellant by Mr. Charles Dunne, requiring the appellant to remove himself from the premises by 31st July, 2103. He was also informed in the notice that any objection as to its validity and the right of the landlord to serve it must be made to the Private Residential Tenancies Board under Part 6 of the Private Residential Tenancies Act 2004, within 20 days of its receipt. The terms and conditions of the lease indicated that it was a monthly tenancy and that utility bills (including refuse charges) were to be shared with all other persons in the house. The landlord sought payment of the monies due in respect of the gas supply to the house on 9th March, 2013.

4. An adjudicator, Ms. Suzy Quirke, appointed under s. 93(3) of the Residential Tenancies Act 2004, heard the appellant's application on 18th September, 2013.

5. The adjudicator made a finding that in accordance with the tenancy agreement of 28th May, 2011, the appellant paid a rent of €250 per month and a deposit of €250. This rent was supplemented by €15 per month as part cover of gas bills and an increase in rent had been requested to €285 per month. A notice of termination was served by the landlord on 15th June, 2013. The property was a three bed-roomed house which had been let out to four tenants, one occupying what was a living room of the house and each of the other tenants having their own room, but sharing kitchen and bathroom facilities.

6. The adjudicator found that it was not reasonable for the landlord to expect tenants who previously assumed the gas bill to be covered by the rent to be subject to a further demand of a balancing charge. She also found that the landlord was entitled to demand a reasonable increase in the rent and since this could not be agreed, suggested that the best option might be for the relationship to terminate. It was noted that the appellant's claim concerning the standard of maintenance was mainly grounded upon the behaviour of the other three occupants of the house, but primarily their smoking in the common and private areas. It was noted that though the landlord could not prevent other tenants from smoking in their own private space, he was obliged to ensure that there were smoke free areas elsewhere. The adjudicator found that the notice of termination was invalid. The claim that the rent sought was more than the market rate, was not upheld nor was the submission that the landlord was in breach of his general obligations.

**The Appeal**

7. The appellant appealed the adjudicator's determination on the grounds that the notice of termination of tenancy was invalid, the rent increase sought was unreasonable and more than the market rate, the landlord was in breach of a fixed term lease, and that the landlord was in breach of his general obligations.

8. A hearing of the appeal before the Tribunal was heard on 12th March, 2014. The entire Private Residential Tenancies Board file was submitted to the Tribunal. In addition, the appellant and the landlord submitted printouts of rents for comparable residential dwellings from various companies' websites. A determination was made by the Tribunal and notified to the Board on 18th March, 2014. It made a Determination Order that:-

"1. A rent for the dwelling should be set at €285 per month with effect from 1st April, 2014, until and unless lawfully varied by the respondent landlord.

2. The respondent landlord shall pay the appellant tenant the sum of €80 within seven days of the date of the issue of this Determination Order being damages of €300 for the consequences suffered by the Appellant Tenant as a result of the failure of the respondent landlord to fulfil his obligations less arrears for gas utility bills of €180 (€15 x 12) plus a refuse collection charge of €40 in respect of the tenancy of the dwelling at 31 Reuben Avenue, Dublin 8."

It was accepted at the hearing by both parties that a notice of termination served on the tenant on 15th June, 2013, was invalid.

The determination sets out the submissions of both parties, the findings and reasons upon which they were based.

9. The Tribunal found that the tenant was in breach of his obligations to pay utility bills and other charges as they fell due and accrued a debt of €220 to the respondent landlord in respect of those bills and charges. It noted that there was a clear conflict of evidence as to whether or not the tenants were responsible for the payment of gas bills. Paragraph 3 of the lease which was handed to each tenant stated clearly that utility bills must be shared by all persons in the house. It was the evidence of the respondent landlord that the other tenants paid the bill in amounts of €15 per month, topped up by any arrears when the final bill was issued. It was the evidence of the appellant tenant that he did not pay the €15 for the first year of the tenancy. Having heard all of the evidence, the Tribunal determined that the appellant was also responsible for the amount of €15 per month from the date he moved in. In addition, he was also required to pay the refuse levy of €14 as requested by the respondent landlord. The Tribunal also cited s. 16(2) of the Residential Tenancies Act 2004, which required tenants to pay any charges in accordance with the lease or tenancy agreement.

10. The Tribunal concluded that the landlord was in breach of his obligations to ensure the peaceful occupation of the dwelling which caused the tenant inconvenience and distress for which the appellant was awarded €300 in damages. It accepted that when he moved into the premises none of the tenants smoked. It was reasonable for him to assume that there was an implied term in his contract with the respondent landlord that the dwelling, or at least its common areas, would be smoke free in the future. The Tribunal was not satisfied on the evidence that smoking in one room permeated the whole dwelling, including the appellant's room and determined that there was no basis upon which to make an award of damages on that ground. It noted that there was conflicting evidence as to the condition of the house, and the appellant's peaceful enjoyment of his tenancy because of the activities of other tenants. Section 15 of the Act provided that the landlord owed to each person who could be potentially affected a duty to enforce the obligations of the tenant under the tenancy. There was a conflict as to the number and nature of the complaints made by the appellant to the landlord in this regard, but the Tribunal concluded that the landlord could have done more to ensure his peaceful enjoyment of the tenancy by enforcing the obligations of other tenants residing there.

11. The appellant's complaint that the increased rent demanded was more than the market rate was partially upheld. The Tribunal found that the market rate up to the date of the Tribunal was €250 per month, but was €285 per month thereafter. It noted that conflicting evidence had been given by both parties concerning this issue. Section 24 of the Act defined a market rent as "that which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling in each case on the basis of vacant possession being given, and having regard to (a) the other terms of the tenancy and (b), the letting values of a dwelling of similar size, type and character to the dwelling and situated in a comparable area to that in which it is situated". The Tribunal noted that on 15th May, 2013, the landlord gave written notice to the tenant of a rent increase which was to come into effect from 1st June which was invalid because it did not comply with s. 22 of the Act, which required 28 days notice from the date upon which the new rent was to have effect.

12. The appellant complained to the Tribunal that the landlord made untrue statements constituting false and misleading evidence before the adjudicator. The Tribunal was satisfied that these statements reflected a conflict of evidence reasonably explained by the respondent landlords' intention to charge different rents for different rooms, and different assertions that the dwelling was from time to time a two, three or four bed-roomed house. Therefore, the Tribunal found no reason to recommend that the Board take any action in respect of prosecution under s. 113 of the 2004 Act for the making of a false and misleading statement in a material respect, knowing it to be false and misleading to the adjudicator, the Tribunal or the Board.

13. The Determination Order was made by the Private Residential Tenancies Board on 4th April, 2014.

#### **Notice of Motion dated 24th April 2014**

14. The appellant seeks to appeal the order pursuant to s.123(3) of the Act which provides that:-

"Any of the parties 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."

15. The determination of the High Court on this appeal in relation to the point of law is final and conclusive. Under s.123(5) the Court may direct the Board to cancel the Determination Order concerned or to vary it in such manner as the Court specifies. The Board entered an appearance on the 16th May 2014 and the landlords were added as notice parties pursuant to an order of the Deputy Master made 24th June 2014. The same order directed the respondent to deliver copies of all documents upon which the respondent relied in arriving at its decision, to the applicant. The appeal motion was grounded on the affidavit of the appellant sworn the 21st July 2014. The replying affidavit sworn by Mr. Tim Ryan, Chairperson of the Tribunal which heard the case, was sworn on the 22nd August, 2014 and exhibited the full transcript of the hearing. A "statement of claim in response..." and a replying affidavit was sworn on the 10th September, 2014. The appellant appeared in person.

#### **The Grounds of Appeal**

16. An appellant must under s.123(3) identify the point or points of law upon which an appeal is taken to the High Court from the Determination Order. On an application to strike out this appeal before the Deputy Master, the applicant was directed to furnish written points of law in relation to this appeal within two weeks of the date of receipt of the documentation. The appellant was representing himself and I recognise the difficulties which he had in formulating a point of law. However, I am not satisfied that any ground of appeal based on a point of law has been submitted to the Court in writing or in oral argument upon which the Court could set aside the Determination Order or vary it in any respect.

17. The Court has endeavoured to identify any possible points of law raised in the papers submitted.

18. The appellant submits that the Tenancy Tribunal had no jurisdiction to determine that the rent should be raised to €285 per month because it had failed to discuss this issue with the parties at the hearing and no consent or authorisation had been given by any of the parties in the case to raise the issue of future rent. This is clearly incorrect. A transcript of the hearing indicates that a substantial period of time was devoted to consideration of a rental increase from €250 to €285 as proposed by the landlords. The appellant informed the Tribunal that he informed the landlords that he was happy to pay €250 but would challenge any attempt to increase the rent by referring the case to the PRTB. However, he indicated that he would comply with any order made if an increase in rent was awarded. Specifically, the appellant was asked by a member of the Tribunal to confirm that his appeal related to the market rent of the premises. He offered evidence in respect of the rental increase, contending that this was not in accordance with market rent. He also cross-examined one of the landlords in relation to the rental increase proposed. It is clear that the conclusion reached by the Tribunal on the level of rent to be paid, is based upon the relevant evidence adduced before it by both parties.

19. The appellant also submitted that the Tribunal had no jurisdiction to order that the rent be raised because it had been less than

12 months since the last rent review occurred on the 12th June, 2013. By letter of the 12th June, 2013 the landlords advised that they would increase the rent from June from €250 to €285. This notice was entirely inadequate and in contravention of s.22 of the Act which requires that a notice in writing be served by the landlord on the tenant stating the amount of the new rent and the date from which it is to take effect 28 days before that date. It was this very proposal which was the subject of the referral to the PRTB on the 25th June, 2013. The appellant submitted that the Determination Order was in breach of s.20(1) of the Act which stipulates that a review of rent may not occur more frequently than once in each period of 12 months. This is plainly not so. The appellant referred the matter under the 2004 Act and sought a dispute resolution because the landlord was seeking the rent increase. The same issue is the subject of the Determination Order. This ground of appeal has no merit.

20. The applicant alleges that the PRTB was clearly informed in the course of the hearing that the landlords had committed perjury and alleges that the landlords committed fraud, blackmail and extortion against him.

21. A wholly and unsustainable allegation was made that the Tribunal and/or Board engaged in some sort of cover up of what was characterised as alleged perjury, blackmail and extortion and were obstructing or attempting to pervert the course of justice because they failed to take any action against the landlords who were alleged to be in breach of s.113 of the Act. It provides that a person is guilty of an offence if:-

"(a) he or she makes a statement or supplies information to an Adjudicator, the Tribunal or the Board in connection with the performance by the Adjudicator, Tribunal or Board of his or her or its functions under this Part in relation to a dispute.

(b) that statement or information is false or misleading in a material respect, and

(c) the person knows that statement or information is so false or misleading".

22. The Tribunal found that there was no reason to recommend that the Board take any action under s.113 of the Act. It was satisfied that the matters raised by the appellant tenant as "untrue" statements by the landlord did not indicate that false or misleading evidence had been given to the Adjudicator. The Tribunal found that these statements reflected a conflict of evidence reasonably explained by the landlords. This conflict referred to charging different rents for different rooms, and a change in the configuration of the house and the number of bedrooms provided. Under s.9(3) the Board may institute and prosecute offences under the Act. It did not do so. The prosecution of an offence is a matter entirely in the Board's discretion, and is not amenable to review by this Court under the appeal process, which is confined to an appeal on a point of law in respect of a Determination Order. This issue has no relevance to the substance of that order. There is no evidence of *mala fides* on the part of the Tribunal or the Board. The allegations and the intemperate manner in which they are framed against the landlords, the Board and the Tribunal are entirely unsubstantiated and unwarranted.

23. The appellant also complained that the Tribunal ignored alleged offences committed under s.14 and s.74 of the 2004 Act. It was alleged that the landlords sought to penalise him by bringing the matter to the Tribunal contrary to s.14 and served an invalid notice of termination of tenancy pursuant to s.74. These issues are not the proper subject of this appeal and the initiation of a prosecution in respect of any alleged breaches of s.14 and s.74, are matters entirely for the Board and outside the scope of an appeal under s.123(3).

24. The appellant clearly has grievances in relation to the evidence given by one of the landlords to the Adjudicator and the Tribunal in respect of the number of rooms offered for rent in the house and whether increased rents had been charged in respect of one or more of those rooms and other issues. These matters were part of the overall evidence heard in the course of the Tribunal hearing. The resolution of issues of credibility was entirely a matter for the Tribunal. This is not a rehearing of the evidence on the merits of the case. The appellant succeeded in defeating the landlords' claim for increased rent from June 2013 but the Tribunal found that, in the interim, the market rent appropriate to the room had increased and that on the date of its determination the market rent was €285 per month. It also made an award of damages but granted a set-off in relation to amounts owing by the appellant. The determination of any of these issues was a matter for the Tribunal and does not give rise to any point of law under s.123(3).

25. The appellant makes a number of allegations of discrimination against him by the Tribunal which are wholly unsubstantiated and unwarranted.

26. The appellant submits that the Tribunal had no jurisdiction to consider a review of the rent since the notice to increase the rent was served in March 2013 and was invalid. This is without merit since the appellant referred this matter and sought adjudication in respect of a review of rent under s.78 of the Act.

27. I am satisfied, having considered all of the documents submitted in the course of this appeal and the extensive submissions made by the parties, that no stateable point of law has been advanced and that this appeal should be dismissed.