

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2025] IEHC 25

Record No. 2024/64MCA

BETWEEN:

MAUREEN KELLY

APPELLANT

-AND-

THE RESIDENTIAL TENANCIES BOARD

RESPONDENT

-AND-

MIRACOVE HOLDINGS LIMITED

NOTICE PARTY

(No. 2)

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 22nd day of January 2025

INTRODUCTION

1. In the principal judgment, *Kelly v Residential Tenancies Board & Anor* [2024] IEHC 730, I refused the appellant’s statutory appeal. This application deals with the issue of costs.
2. The appellant, Maureen Kelly, was the tenant of a dwelling located at 52 Morehampton Road, Dublin 4 (“the property”). Ms. Kelly’s appeal was against the determination order made by the Residential Tenancies Board (“RTB”) on 10th January 2024 pursuant to the Residential Tenancies Act 2004 (as amended) concerning the property. Miracove Holdings Ltd were the landlord of the property and are the notice party in this application.
3. When the matter was mentioned before me yesterday, Neil Buckley SC, together with Noel McGrath BL, appeared for Maureen Kelly. Micheál O’Connell SC, together with Una Cassidy, appeared for the RTB. Kristian Douglas BL appeared for the notice party.
4. The question of costs is now addressed in section 169(1) of the Legal Services Regulation Act 2015 (“the 2015 Act”) and (a recasted) O.99, rr. 2 & 3 of the Rules of the Superior Courts 1986 (as amended and substituted) (“RSC 1986”).
5. The default position is that costs follow the event where a party has been entirely successful unless the court orders otherwise, having regard to the particular nature and circumstances of the case and the conduct of the proceedings by the parties (including

the matters set out at sections 169(1)(a) to (g) of the 2015 Act. (As per S.I. 584 of 2019, the operative provisions of the 2015 Act came into force on 7th October 2019 and the new provisions of O. 99 of the RSC 1986 took effect from 3rd December 2019).

6. It was agreed as between counsel for the appellant and counsel for the RTB that, arising from the principal judgment in this case, the order which followed was that provided for by the default position, *i.e.*, that the appeal stands refused and the RTB is entitled to its costs, including reserved costs, as against the appellant. I shall, therefore, make an order in those terms as between the appellant and the RTB.

THE ISSUE

7. There remains, however, an issue as between the notice party and the appellant on the question of the notice party's costs.
8. The notice party had not participated in these proceedings when this appeal was heard in September 2024. When the matter was mentioned before me yesterday, counsel for the notice party appeared and made a submission seeking his costs as against the appellant.
9. As Mr. Douglas BL indicated, the notice party's participation in this appeal had been limited to appearing at the 'for mentions' when the matter was listed in the Non-Jury List, from time to time, and an affidavit supporting the decision of the RTB was sworn on behalf of the Landlord by Carol Morrissey, a company director of Miracove

Holdings Limited, on 16th April 2024 and a further affidavit from Ms. Morrissey dated 21st May 2024 addressed matters raised in the affidavit sworn by Maureen Kelly on 7th May 2024.

10. Particular emphasis was placed on the application which was made on the notice party's behalf on 24th April 2024, when the matter was in the Non-Jury list, to have an expedited hearing (which took place in September 2024) and in this regard reference was made to the decision of the High Court (Baker J.) in *Doyle v The Private Residential Tenancies Board & Anor* [2016] IEHC 36 where at paragraph 19, Baker J. stated by reference to the judgment of the High Court (Finlay Geoghegan J.) in *Treasury Holdings & Ors v NAMA & Ors* [2012] IEHC 518, stated as follows:

“(19) Part of the reasoning of Finlay Geoghegan J. was that the notice party had itself applied to be joined in that case, but at para. 20 she asks, what I consider to be the central question, namely whether a notice party was a “necessary party”. I consider the question to be whether the notice party is a necessary party as a litigant, and accordingly the question is not merely one of whether a notice party had legitimate financial or economic interests to protect, as nearly all notice parties will be in that position, but whether it had interests to protect which were different from those of the Tribunal”.

11. Mr. Buckley SC opposed the application and he too relied on a number of passages from the judgment of Baker J. in *Doyle v The Private Residential Tenancies Board & Anor* [2016] IEHC 36, particularly at paragraphs 13, 14, 21, 26 and 31. In relation to the primary submission relied upon, on behalf of the notice party, Mr. Buckley SC

submits that there was no objection on behalf of the notice party to an early hearing date.

DISCUSSION & DECISION

12. For the following reasons, I am of the view that there should be no order as to costs as between the notice party and the appellant.

13. As mentioned, both counsel for the notice party and the appellant rely on the decision of Baker J. in *Doyle v The Private Residential Tenancies Board & Anor* [2016] IEHC 36 and this is authority which has been referred to by the High Court in recent cases dealing with the costs application of an notice party in a statutory appeal against a decision of the RTB.

14. In *Fitzpatrick v RTB* [2023] IEHC 285 at paragraphs 8 and 9, for example, Simons J. referred as follows to the decision of Baker J. in *Doyle v The PRTB* [2016] IEHC 36 which had in turn been followed by Bolger J. in *Carroll v RTB* [2022] IEHC 326:

“(8) It seems to me, therefore, that the approach that I should adopt is similar to that adopted by the High Court (Bolger J.) in Carroll v. Residential Tenancies Board [2022] IEHC 326, citing the earlier judgment of the High Court (Baker J.) in Doyle v. Residential Tenancies Board [2016] IEHC 36. In the latter case, Baker J. stated as follows (at paragraphs 13 to 15):

“[...] the costs of a notice party are not necessarily always to be treated as costs which “follow the event”, and the matter of costs will depend on the degree of participation of the notice party and whether that was justified. This is because a statutory appeal is not an inter partes action and the court is constrained in the approach that it may take to the appeal process in that it is confined to questions of legal construction, whether the approach of the statutory body was correct, whether it had sufficient evidence before it to come to the conclusion that it did, and the High Court may not on a statutory appeal on a point of law against a decision of the PRTB make any primary findings of fact.

This means, in practice, that the primary defender of the decision of the Tribunal is the PRTB, and a notice party does not have any central role in such an appeal. He or she might in that context have limited scope to make submissions, and while a notice party may be entitled to urge the court to take a particular approach, the argument of the notice party must, to a large extent, be constrained by the reasons and reasoning of the Tribunal in its primary decision and the basis for that decision.

As such, it seems to me, that a notice party will often at the hearing of a statutory appeal make arguments which were open to the PRTB to make, but which were either not canvassed at all by it, or were canvassed with a different emphasis. The question of the emphasis, or of approach is, in my view, a key to considering the role that a notice party takes in a statutory appeal.”

(9) Baker J. concluded that it was not appropriate to make a costs order in favour of the notice party (on the facts, a receiver) in circumstances where the interests which the notice party sought to protect coincided with those of the Residential Tenancies Board and therefore the Residential Tenancies Board was the legitimus contradictor.”

15. In the principal judgment, I determined that the following factors confirmed the RTB was entitled to conclude there was sufficient evidence that the notice party, when it served the Notice of Termination in June 2021, intended within 9 months after the termination of the tenancy (on 16th January 2022) under section 34 of the 2004 Act, to enter into an enforceable agreement for the transfer to another, for full consideration, of the whole of its interest in the property located at 52 Morehampton Road, Dublin 4: the Residential Tenancies (Amendment) Act 2019, the notice of termination, the statutory declaration, the option agreement (the specific performance and *lis pendens*), the fact that there was no sale after 9 months and the evidence of Carol Morrissey.

16. In relation to this last matter, at paragraph 76 of the principal judgment I held that
“[t]he evidence of Carol Morrissey and her reference that she could “follow the files” is not dispositive of the issue in this case either way, and is at best, neutral.”
17. In addition, as per the decision of Baker J. in *Doyle v The PRTB* [2016] IEHC 36 (as applied by Bolger J. and Simons J.), I consider that the RTB, as the appropriate *legitimus contradictor*, addressed all of the factual and legal matters listed above (in paragraph 15) and which are referred to in the principal judgment. Further, there is no suggestion that the appellant opposed an early hearing date which the notice party places emphasis on. I shall, therefore, make no order as to costs in relation to the application by the notice party as against the appellant.
18. The notice party adopted a limited approach to its participation in the processing and conduct of this appeal which in turn facilitated an expedited hearing on the day and accords with the suggested delineation of the roles of the various parties in this statutory appeal as set out in the applicable case law. Whilst such an approach is commendable, it does not provide a basis for it to recover costs (however so limited) as against the appellant.

PROPOSED ORDER

19. Accordingly, the order which I propose to make is as follows:
- (i) The appellant’s appeal against the determination order made by the Residential Tenancies Board on 10th January 2024 pursuant to the Residential Tenancies Act

2004 (as amended) concerning a dwelling located at 52 Morehampton Road, Dublin 4 is hereby refused;

- (ii) The Residential Tenancies Board is entitled to its costs, including reserved costs, if any, as against the appellant, to be adjudicated upon by the Office of the Legal Costs Adjudicators in default of agreement;
- (iii) I shall make no order as to the costs sought by the notice party as against the appellant.

CONLETH BRADLEY