[2025] IEHC 29

THE HIGH COURT

[2023/328 MCA]

BETWEEN:

LEONARDO DE OLIVEIRA LIMA

APPELLANT

AND

THE RESIDENTIAL TENANCIES BOARD

RESPONDENT

AND

JERSIA LTD / LRC C10

TRADING AS LRC RE1, LRC GROUP, LRC MANAGEMENT

NOTICE PARTY

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 23rd day of January, 2025

INTRODUCTION

1. This judgment is given in an appeal on a point of law pursuant to section 123(3) of the Residential Tenancies Act 2004 (*the 2004 Act*). The appeal is taken against a Determination Order of a Tenancy Tribunal (*the Tribunal*) that issued on the 13 September 2023. The hearing

before the Tribunal took place on the 11 May 2023 and the 12 June 2023. The Determination Order together with the written report of the Tribunal were sent by email to the appellant on the 18 September 2023. This appeal was lodged on the 6 October 2023 and was grounded on an affidavit sworn by the appellant on the same date.

2. The appeal was not in a position to proceed on the initial hearing date as the appellant was unable to prove that the notice party, Jersia Ltd (*the landlord*), properly had been put on notice of the appeal. By the time that the matter was relisted the appellant was in a position to prove that the landlord had been put on notice of the appeal and did not intend to participate. Hence the issues in the appeal were argued only as between the appellant and the respondent, the Residential Tenancies Board (*the RTB*).

3. As will be explained in more detail below, the appeal as formulated and argued underwent substantial changes between the 6 October 2023 and the final hearing before this court. When the appeal was lodged originally the appellant was a litigant in person, and he only obtained legal representation at a relatively late stage in the proceedings. The case underwent some reformulation when a supplemental affidavit was filed by the appellant in March 2024 in response to the opposition papers filed by the Tribunal. The case underwent a further revision or reformulation when written legal submissions were filed for the hearing before this court and which set out four legal issues that the appellant wished to argue. Accordingly, in addition to the difficulties in seeking to identify precisely the points sought to be made on behalf of the appellant, there is a serious procedural issue arising from the manner in which the case was formulated.

BACKGROUND

4. At the relevant time, the appellant had been a tenant of an apartment at Thornleigh Row, Applewood Village in Swords, County Dublin since 2016. In March 2022, the appellant applied to the RTB for an adjudication of a dispute with the landlord. This appears to have been the third dispute lodged by the appellant regarding his tenancy. In this instance, the complaint related to the standard and maintenance of his dwelling together with issues around a rent review.

5. The adjudicator issued a report following a hearing in August 2022, by which stage the notice of rent review had been withdrawn and the focus of the adjudicator was on the question of the maintenance of the dwelling. The adjudicator found that the tenant had proved that the landlord was in breach of section 12(1)(b) of the 2004 Act and Regulation 4 of the Housing (Standards for Rented Houses) Regulations 2019, and that the tenant had suffered loss, expense and inconvenience as a result of that breach. The landlord was directed to pay €1,000 to the tenant in that regard. Both the landlord and tenant appealed the decision of the adjudicator to the RTB, who constituted a Tenancy Tribunal, and, thereafter, a hearing occurred.

THE TRIBUNAL DECISION

6. The Tribunal summarised the various submissions and evidence from the hearing in the report, which ran to just over 10 pages. The summary of the appellant's complaints show that they related primarily to the overall state of the complex where his apartment was situated. There were complaints about the gates to the premises and the state of the CCTV. There were complaints about vandalism and antisocial conduct on the complex, and that common areas

were not properly cleaned or lit. In addition, he complained that intercoms and heaters were damaged. The appellant also complained about the response of the landlord to requests for the repair or replacement of appliances in his apartment.

7. Significantly for the matters argued by the appellant before this court, when the dispute was before the Tribunal there was no apparent issue around the contention that there was an owners' management company (*OMC*) for the apartment complex. Part of the appellant's case as reported by the Tribunal was that the landlord was obliged to put pressure on the OMC to provide services. According to the report, on occasion the tenant was told by the landlord to report his complaint to "Green Door", which was described in the report as the agent of the OMC. The other witnesses called by the appellant effectively gave similar evidence about the state of the complex and particularly issues around the gates to the complex and intercoms, and consequent antisocial activities and vandalism to the complex. One of the witnesses complained about the responses from Green Door. Neither the appellant nor the witnesses that he called were cross examined by the landlord.

8. The landlord's evidence was that it had acquired 48 units in the development from NAMA in 2020 and at that point the complex was in a poor state. The landlord stated that it had invested €500,000 in the development and there was a service charge paid to the management company. The landlord contended that efforts had been made to improve matters but that it was not responsible for mitigating general antisocial behaviour in the area. The landlord complained that the appellant effectively was engaged in an attempt to extort the landlord and was overly confrontational. The landlord's witness stated that Green Door was the OMC. The witness stated that the landlord did not control the OMC and that that company was responsible for the common areas. Critically, the appellant did not take issue with the

proposition that there was an OMC in place, and the landlord's witnesses were not cross examined.

9. In considering the issues, the Tribunal found that the appellant's claim for damages could not be upheld. The Tribunal expressed the view that there were two elements to the appellant's claim about repairs and maintenance. The first related to the common areas and the second to the state of his particular apartment. In relation to the complaints about repairs to the appellant's apartment, the Tribunal found on the evidence that any repairs that the landlord was required to address were carried out within a reasonable period of time.

10. In relation to the issues relating to the areas outside the actual apartment, the Tribunal found that unless the tenancy agreement provided otherwise (which was not the case here) the landlord's obligation to repair "the dwelling" in section 12(1)(b) of the 2004 Act does not extend to common areas, but rather to areas appurtenant to the residential unit in respect of which the tenant has exclusive occupation. This was based on its interpretation of the definition of "dwelling" found in section 4 of the 2004 Act.

11. With regard to the complaints about the gates to the development, the entrance doors to the building and garage, access by third parties to the car park, the state of the CCTV system, and other issues around common areas, the Tribunal found that these were matters for the OMC. The Tribunal noted that while Green Door was identified as the OMC it believed that Green Door probably was the agent for the company rather than the company itself. That observation seems to have been based on the Tribunal members' own awareness of the Dublin rental market. The Tribunal considered that the evidence did not establish that the landlord and the OMC were one and the same entity. That being so, the Tribunal was satisfied that the landlord in evidence

had established that it had complied with section 12(1)(h) of the 2004 Act by forwarding complaints about the common areas to the OMC.

12. In the premises, the Tribunal did not uphold the appellant's claim. As noted above, the determination of the Tribunal was notified to the parties by email on the 18 September 2023 and the appellant commenced his appeal before this court by the issue of an originating notice of motion on the 6 October 2023.

GENERAL PRINCIPLES APPLICABLE TO AN APPEAL ON A POINT OF LAW

13. Before engaging with the issues raised by this appeal, it is necessary to set out briefly the well-established principles that regulate a statutory appeal pursuant to section 123(3) of the 2004 Act. Those principles have been set out in a number of judgments of the High Court.

14. In *Fitzgibbon v. Law Society* [2015] 1 IR 516 the Supreme Court explained the relevant principles by reference to the judgment of McKechnie J in *Deely v Information Commissioner* [2001] 3 IR 439:

> "*The applicable principles were helpfully summarised … as follows:-*
>
> *'There is no doubt but that when a court is considering only a point of law, whether by way of a restricted appeal or via a case stated, the distinction in my view being irrelevant, it is, in accordance with established principles, confined as to its remit, in the manner following:-*
>
> *(a) it cannot set aside findings of primary fact unless there is no evidence to support such findings;*

(b) it ought not to set aside inferences drawn from such facts unless such inferences were ones which no reasonable decision making body could draw;

(c) it can however, reverse such inferences, if the same were based on the interpretation of documents and should do so if incorrect; and finally;

(d) *if the conclusion reached by such bodies shows that they have taken an erroneous view of the law, then that also is a ground for setting aside the resulting decision …*"

15. In the context of an appeal on a point of law pursuant to section 123(3) of the 2004 Act, Barrett J. set out the principles in the following way at paragraph 13 in his judgment in *Marwaha v. Residential Tenancies Board* [2016] IEHC 308:

"*What principles can be drawn from the foregoing as to the court's role in the within appeal? Four key principles can perhaps be drawn from the above-considered case-law:*

(1) the court is being asked to consider whether the Tenancy Tribunal erred as a matter of law (a) in its determination, and/or (b) its process of determination;

(2) the court may not interfere with first instance findings of fact unless it finds that there is no evidence to support them;

(3) as to mixed questions of fact and law, the court (a) may reverse the Tenancy Tribunal on its interpretation of documents; (b) can set aside the Tenancy Tribunal determination on grounds of misdirection in law or mistake in reasoning, if the conclusions reached by the Tenancy Tribunal

on the primary facts before it could not reasonably be drawn; (c) must set aside the Tenancy Tribunal determination, if its conclusions show that it was wrong in some view of the law adopted by it.

(4) *even if there is no mistake in law or misinterpretation of documents on the part of the Tenancy Tribunal, the court can nonetheless set aside the Tribunal's determination where inferences drawn by the Tribunal from primary facts could not reasonably have been drawn*."

16. Hence, as Simons J noted in *Ashe v Residential Tenancies Board* [2023] IEHC 627, quoting *Fitzgibbon*:

"*In one sense it may be said that two types of points of law can legitimately be raised in an appeal which is limited to points of law alone. First, there may be an error of law in the determination of the first instance body. Second, it may be the case that the way in which the first instance body has reached its conclusions on the facts involves an error which itself amounts to an error in law. There may have been no evidence to support a finding or inferences may have been drawn on the facts which no reasonable decisionmaker could have drawn. It follows that a higher degree of deference, so far as the facts are concerned, is paid by the appellate body to the decision of the first instance body in an appeal on a point of law only, as opposed to an appeal against error. In the latter case the court is entitled to form its own view on the proper inferences to be drawn (although not on primary facts).*"

17. In *Ashe,* Simons J. emphasised the point of law that an appellant seeks to agitate must "*arise from the determination under appeal*". Accordingly, as was explained at paragraphs 7 and 8 of that judgment:

> *"The High Court is not hearing the matter de novo but rather is considering the legality of the decision of the Tenancy Tribunal. The High Court should normally decline to decide a point of law which had neither been argued before, nor decided by, the Tenancy Tribunal. See, by analogy, Governors & Guardians of the Hospital for the Relief of Poor Lying-in Women, Dublin v. Information Commissioner [2011] IESC 26, [2013] 1 I.R. 1 (at paragraph 90 of the reported judgment). See also the judgment of the High Court (Noonan J.) in Hyland v. Residential Tenancies Board [2017] IEHC 557 (at paragraphs 25 to 27).*
>
> *8. This limitation on the High Court's appellate jurisdiction assumes an especial importance in the present case in circumstances where a number of the objections sought to be advanced by the Tenant are not ones which were pursued at first instance before the Tenancy Tribunal. In particular, the suggestion that the Landlords' intention in seeking to terminate the tenancy was informed by reasons other than the stated reason, i.e. to allow the dwelling to be occupied by their daughter, was not raised before the Tenancy Tribunal. It is impermissible to attempt to raise a factual issue, for the first time, in the context of an appeal on a point of law*."

THE POINTS OF LAW ASSERTED BY THE APPELLANT

18. One difficulty in this appeal related to the manner in which the points of law were framed in the originating notice of motion and how they evolved subsequently. Two main

issues were raised by the respondent in that regard. First that the originating notice of motion did not comply with Order 84C of the RSC; and, second, that the later reformulations of the points brought about a situation in which the respondent was required to address points that were not raised when the appeal issued with the consequence that the appellant was litigating an appeal on points of law that were first raised well outside the time period of 21 days permitted by the rules.

19. *Hyland v Residential Tenancies Board* [2017] IEHC 557 highlights an important procedural limitation that applies to this type of an appeal. In that judgment Noonan J. described the nature of the appeal process as follows:

> *"12. The within notice of motion, issued by the appellant as a litigant in person, merely states that the appellant appeals against the decision and finding of the Tribunal determination. Section 123 of the 2004 Act provides in relation to a determination order that:*
>
> *'(3) Any of the parties concerned 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.'*
>
> *13. Order 84C of the Rules of the Superior Courts in relation to statutory appeals such as the present one, provides at r. 2 (3):*
>
> *'(3) Where the relevant enactment provides only for appeal to the High Court on a point of law, the notice of motion shall state concisely the point of law on which the appeal is made.'*
>
> *14. Clearly therefore, the notice of motion in the present case entirely fails to comply with the requirements of O. 84C. In that regard, when the matter was before the court on the 5th April, 2017, I directed the appellant to identify the*

> *point of law which she sought to ventilate on the appeal. That direction appears not to have been complied with. In the normal way, this would cause the appeal to fail in limine. However, having regard to the fact that this point was not explicitly relied upon in argument by the RTB or the notice parties and given that the appellant lodged the appeal as a litigant in person but is now legally represented, I propose to consider the substantive issues raised."* [emphasis added]

20. Hence, a failure on the part of an appellant to comply with the mandatory requirement to state concisely the point of law on which the appeal is made is liable to lead to the appeal being struck out *in limine*. In this appeal, the respondent strongly argued that this ought to be the outcome having regard to the manner in which the appeal was formulated. The respondent went further and made the not unreasonable point that, even if some accommodation was made to take account of the fact that the appellant was not legally represented when the appeal was made originally, the manner in which the appeal was reformulated in March 2023 and again when the case came on for hearing was not merely a procedural failure. The argument was that this course of action did not involve articulating with more clarity points that were already present in the notice of motion but involved the introduction of entirely new points of law. In effect, the respondent claimed that the appellant sought to introduce additional points of law well outside the permitted time period and without seeking permission to do so. In response, the appellant argued that the points of law that eventually were sought to be argued could be related back to points identified in the originating notice of motion.

21. To deal with those arguments it is necessary to trace the manner in which the points came to be formulated. In his written submissions and in the oral submissions at the hearing of the appeal the appellant stated that four questions arose, which can be summarised as follows:

a. Whether the respondent erred in law in concluding that the landlord's obligation to maintain and repair did not extend to the common parts of an apartment complex of the type where the appellant's apartment is found.

b. Whether the landlord is under a duty to maintain the common areas of the apartment complex in an appropriate manner where (a) the dwelling is one of many units in a development all of which are owned by a single entity and (b) where there is no evidence of the existence of an "Owners Management Company" as defined in section 1 of the Multi Unit Developments Act 2011.

c. Whether the respondent was put on enquiry and erred in law in failing to make enquiry as the status of the entity that it treated as the "owner management company".

d. Whether the determination was supported by adequate reasons.

22. This formulation amounted to a change from the points raised at the outset. In the originating notice of motion, the appellant purported to identify 14 points of law. Allowing for the fact that the appellant was not legally represented when the notice of motion was formulated, it has to be observed that there was a distinct lack of clarity in the pleading, and it is difficult to identify precisely the points that the appellant wished to make. The position was complicated by the grounding affidavit sworn by the appellant on the 6 October 2023, which amounted to something close to a full rehearsal of the issues that arose before the Tribunal, and

which gave every appearance of constituting an invitation to the court to embark on a full *de novo* rehearing of those matters. That, of course, as identified above, is not the proper function of the court in an appeal on a point of law.

23. In fairness to the appellant, it seems reasonably clear that he sought to make a point regarding the Tribunal's interpretation of section 12 of the 2004 Act and the proper understanding of the landlord's obligation to maintain and repair a dwelling. Hence, it seems to me that the appellant is entitled to have the court address the first issue identified in the written submissions.

24. With the benefit of legal advice, the appellant swore a supplemental affidavit on the 20 March 2023. In that affidavit the appellant explained that when he filed his appeal, he did so without a full understanding of what was required and that his affidavit contained certain flaws and omissions. He sought to clarify his position and stated the following at paragraph 13 of his supplemental affidavit:

> "*13. However I say that the main, but not only, points of law I am seeking to rely on relate to the treatment of my application on the basis that what is described in the Respondent's determination as "owner management company" being wrongly treated as if this was the same as "owners' management company". In this case the "block" of apartments in which my residence is situate comprises of 35 apartments which are owned in freehold by the Notice Party. In those circumstances I say that the concept of "owner management company", or indeed "owners' management company" had no relevance to the issues required to be adjudicated upon by the Respondent, and, in particular, that it was and is the responsibility of the "owner" to maintain the common areas of the building*

and its appurtenances rather than that of any "management company", and the statutory provision in that regard was misinterpreted by the Respondent."

25. It seems clear that there was a significant legal issue before the Tribunal regarding the extent of the landlord's obligation to maintain and repair the dwelling and the common areas (such as the gate, corridors, car park and outdoor areas). However, there was no issue as to the existence or status of the owners' management company and there does not appear to have been any dispute that the common areas had been transferred out of the landlord's ownership.

26. In addition, there was no suggestion in the originating notice of motion or grounding affidavit that this was a case in which the existence or status of the owners' management company was an issue. In those premises, it is not open to the appellant to seek to make an argument in an appeal of this nature that the Tribunal did not engage with a matter that was not the subject of any dispute or submission at the hearing before that body.

27. A further related submission was made at the hearing and in written submissions that the Tribunal report referred to an "owner management company" and not an "owners' management company", the term used in the Multi Unit Developments Act 2011.

28. I consider that this issue also was not in any sense adverted to in the originating notice of motion. Moreover, the fact that the Tribunal referred to an "*owner*" and not an "*owners*" management company does not in any sense alter the clear understanding from the report that the Tribunal was referring to the type of entity described in the 2011 Act and in respect of which there was no dispute that it held the common areas.

29. If the appellant wished to suggest that the legal obligations of the landlord were different as a result of there being no management company or no proper transfer of the common areas to such an entity, this clearly should have been raised before the Tribunal in the first instance. To raise issues around the existence or status of the OMC or whether that entity properly held the common areas in an appeal of this type clearly is impermissible for the reasons explained by Simons J. in *Ashe* in the portion from the judgment quoted earlier.

30. By way of summary at this point, the court has concluded that it can only deal with points of law (as that term is properly understood) that arise from the matters that were in dispute before the Tribunal and which the appellant sought to agitate within the period provided for in Order 84C. Here the court is satisfied that questions around the existence or status of the OMC or whether it held the common areas were neither disputed before the Tribunal or raised in the originating notice of motion.

31. The only point of law therefore that the court will proceed to consider is the first question raised by the appellant in his written submissions, and that question will have to be considered on the basis of the undisputed evidence before the Tribunal that there was an OMC and that the common areas were not held by the landlord.

THE TREATMENT OF THE LANDLORD'S OBLIGATIONS

32. In relation to this question, the appellant's written submissions were predicated on a factual premise: that there was no OMC and that the landlord owned both the apartment and the common areas. As already discussed, this is not a factual premise that can be relied upon in this appeal. The appellant appears to accept in his written submissions that where there is an

OMC then that entity should be responsible for the maintenance of the common areas of the development. The appellant made the further submission that in any event the Tribunal misinterpreted or misapplied the definition of dwelling in the 2004 Act insofar as it applied to the facts underpinning this appeal.

33. The respondent stood over the reasoning of the Tribunal. I should note that insofar as the RTB in its written submissions appears to have argued that the interpretation of the statutory provisions by the Tribunal was one reasonably open to it and therefore should be upheld, this is wrong in principle. The case law set out above, and the general jurisprudence on statutory interpretation, makes it entirely clear that the courts have the task of interpreting legislation. If a regulatory body or quasi-judicial body makes a decision on the basis of an interpretation of a statute that proves to have been incorrect, the fact that its interpretation may have been reasonably arguable cannot protect it from being overturned if the court concludes that the interpretation was incorrect.

34. The Tribunal decision in this case turned on its interpretation of section 12 of the 2004 Act. As described above the Tribunal considered that having regard to the definition of the word "*dwelling*", the landlord in this case did not bear responsibility for the repair and maintenance of the areas outside of the immediate structure of the appellant's apartment.

35. The primary description of the obligation to repair is rooted in s. 12(1) of the 2004 Act, which in turn references other statutory provisions, including but not limited to the Housing (Miscellaneous Provisions) Act 1992 (*the 1992 Act*). The relevant provisions are set out below, and I have underlined the particular terms that bear emphasis:

"12.— (1) In addition to the obligations arising by or under any other enactment, a landlord of a dwelling shall—

(a) allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling,

(b) subject to subsection (2), carry out to—

(i) the structure of the dwelling all such repairs as are, from time to time, necessary and ensure that the structure complies with any standards for houses for the time being prescribed under section 18 of the Housing (Miscellaneous Provisions) Act 1992 , and

(ii) the interior of the dwelling all such repairs and replacement of fittings as are, from time to time, necessary so that that interior and those fittings are maintained in, at least, the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed, ..." [emphasis added]

36. Hence, the appellant in this case sought to argue – in respect of the areas outside the immediate apartment - that section 12 of the 2004 Act required the landlord to carry out repairs to the *structure of the dwelling* and ensure that it complied with standards for houses prescribed under section 18 of the 1992 Act. It must be emphasised that section 12(1)(b)(i) of the 2004 Act is concerned with repairs to the the *structure* of the dwelling. There was no argument in this appeal and there did not appear to be any issue before the Tribunal around the question of whether what the appellant wished to have the landlord repair constituted repairs to the

structure of the dwelling. Instead, the focus of the parties was on whether the common areas fell within the definition of "*dwelling*".

37. As noted by the Tribunal, the word "*dwelling*" is defined by s. 4(1) of the 2004 Act as:

> "*…a property let for rent or valuable consideration as a self-contained residential unit and includes any building or part of a building used as a dwelling and any out office, yard, garden or other land appurtenant to it or usually enjoyed with it…*" [emphasis added]

38. It can be noted that the Tribunal considered that the reference in section 4(1) of the 2004 Act to the "*yard, garden or other land appurtenant to it or usually enjoyed with it*" is a reference to areas to which the tenant has exclusive occupation, and does not refer to common areas of an apartment complex.

39. Before considering the definition of dwelling and whether the matters complained of by the appellant properly can be understood to relate to the state of repair of the structure of the dwelling it is necessary to consider whether the provisions of the 1992 Act have any application to this case.

40. S. 12(1)(b)(i) of the 2004 Act expressly refers to s. 18 of the 1992 Act. Under the 1992 Act, the Minister may make regulations concerning, *inter alia*, the standards for houses (including any common areas, works and services appurtenant thereto and enjoyed therewith).

41. The text of s. 18(1) is below:

> *"18.—(1) The Minister may make regulations prescribing standards for houses (including any common areas, works and services appurtenant thereto and enjoyed therewith) let for rent or other valuable consideration and it shall be the duty of the landlord of such a house to ensure that the house complies with the requirements of such regulations."* [emphasis added]

42. The 1992 Act defines "*house*" in a way that closely corresponds with the definition of "*dwelling*" in section 4 of the 2004 Act. In that regard, section 1(1) of the 1992 Act defines "*house*" as:

> "*any building or part of a building used or suitable for use as a dwelling and any out office, yard, garden or other land appurtenant thereto or usually enjoyed therewith*" [emphasis added]

43. The Minister made regulations as provided for in s. 18 of the 1992 Act, and the regulations in force at the time when these proceedings were commenced are the Housing (Standards for Rented Houses) Regulations 2019, S.I. No 317 of 2019. The scope of the regulations is defined by s. 3(1) of the regulations:

> *"3. (1) Subject to paragraph 2, these Regulations shall apply to every house let, or available for letting, for rent or other valuable consideration solely as a house unless ..* [the exclusions are not relevant to this appeal]"

44. Regulation 4(1) requires that: "*A house to which these Regulations apply… shall be maintained in a proper state of structural repair*", with "*proper state of structural repair*" defined by section 18(8) of the 1992 Act as:

> "[*f]or the purposes of subsection (7)(b) 'a proper state of structural repair' means sound, internally and externally, with roof, roofing tiles and slates, windows, floors, ceilings, walls, stairs doors, skirting boards, fascia, tiles on any floor, ceiling and wall, gutters, down pipes, fittings, furnishings, gardens and common areas maintained in good condition and repair and not defective due to dampness or otherwise.*" [emphasis added]

45. The term "*common areas*" is also defined and is found in section 18(9) of the 1992 Act as follows:

> "*[i]n this section and sections 18A and 18B—'common areas' means common areas, works and services that are appurtenant to houses and enjoyed therewith and that are in the ownership or under the control of the landlord".*

46. Hence for the purposes of the 2019 Regulations and by virtue of the definition in section 18(9) of the 1992 Act, "*common areas*" are areas within the ownership or control of the landlord. Accordingly, where the common areas of a house are *not* in the ownership of control of the landlord – which was the undisputed evidence before the Tribunal in this case - the duty of the landlord to maintain those common areas in a proper state of structural repair found in the 1992 Act and the 2019 Regulations does not arise. Accordingly for the purposes of this appeal it does not appear that the provisions of the 1992 Act regarding maintenance of the common areas are applicable.

47. The question accordingly is whether there is any other statutory requirement that could add to or inform the understanding of the landlord's obligations. This is because the section 12 obligations to maintain the structure of a dwelling in proper repair are in addition to any other statutory obligations. In that regard, the appellant sought to rely on the provisions of the Multi-Unit Developments Act 2011 as amended (the 2011 Act).

48. It can be noted that the 2011 Act, by its long title, is an Act, inter alia, to amend the law relating to the ownership and management of the common areas of multi-unit developments. It is clear that one of the objects of the 2011 Act is to regulate the allocation of responsibilities for the management of common areas in a multi-unit development as between the owners' management company and the developer, with a view in a general sense to ensure that there is a level of certainty about that allocation for the benefit of the owners of the residential units. In that regard, section 1 of the 2011 Act defines *"residential unit"* as meaning a unit in a multi-unit development which is—

> "*(a) designed for—*
>
> *(i) use and occupation as a house, apartment, flat or other dwelling, and*
>
> *(ii) has self-contained facilities;"*

49. That definition clearly includes the apartment of the appellant in this case. The 2011 Act defines "*common areas*" as meaning "*all those parts of a multi-unit development designated, or which it is intended to designate, as common areas and including where relevant all structural parts of a building and shall include in particular—*

> *(a) the external walls, foundations and roofs and internal load bearing walls;*

(b) the entrance halls, landings, lifts, lift shafts, staircases and passages;

(c) the access roads, footpaths, kerbs, paved, planted and landscaped areas, and boundary walls;

(d) architectural and water features;

(e) such other areas which are from time to time provided for common use and enjoyment by the owners of the units, their servants, agents, tenants and licensees;

(f) all ducts and conduits, other than such ducts and conduits within and serving only one unit in the development;

(g) cisterns, tanks, sewers, drains, pipes, wires, central heating boilers, other than such items within and serving only one unit in the development;"

50. Again, that definition clearly encompasses the areas of the development that were the subject of the appellant's complaints before the Tribunal.

51. Of course, a residential unit in a multi-unit development can be owner occupied or occupied by a tenant, and the 2011 Act is not directed expressly to the position of tenants. However, that interaction appears to be provided for by section 12(h) of the 2004 which imposes a duty on the landlord to pass a tenant's concerns regarding the performance of a management company's functions to that company. Section 12(h) provides:

"*(h) [a landlord of a dwelling shall] if the dwelling is one of a number of dwellings comprising an apartment complex –*

(i) forward to the management company, if any, of the complex any complaint notified in writing by the tenant to him or her concerning the performance by the company of its functions in relation to complex,

(ii) forward to the tenant any initial response by the management company to that complaint, and

(iii) *forward to the tenant any statement in writing of the kind referred to in section 187(2) made by the management company in relation to that complaint*."

DISCUSSION

52. Returning then to the issue of the definition of *"dwelling",* the primary difficulty for the tenant is illustrated by the fact that the interpretation that he relies upon would mean that the Oireachtas intended that a landlord who does not own or control the common areas nonetheless is required to carry out repairs to parts of the common areas. This is not an absurd proposition per se, and in fact the 2011 Act permits the OMC to carry out certain types of works on parts of a development that are not within its ownership or control in limited circumstances specified in the Act. However, it would be an unusual if the statute provided for a duty to carry out repairs to property that the landlord did not own but did not at the same time provide for a legal means to discharge that duty or to regulate its discharge.

53. In those premises it seems to me that the proper interpretation of dwelling for the purposes of section 12(1)(b) of the 2004 Act must be that it is property that remains within the ownership of the landlord. This accords with the wording of section 4 of the 2004 Act, which commences the definition of "*dwelling*" by describing it as a "*property let for rent or valuable*

consideration …". If a landlord does not own the part of the property in respect of which it has been asked to carry out repairs, then it cannot have been "*let for rent or valuable consideration*" by the landlord and would not fall within the definition of a dwelling.

54. It can also be noted that the words "*appurtenant to*" in the definition of "*dwelling*" are common words in land law and are understood as meaning "*belonging to*" or "*necessary to the enjoyment of a thing*". Here, their use in the section 4 definition highlights the necessary link between the self-contained residential unit and the land belonging to that unit which forms part of the overall letting *by the landlord*. If an out office, yard, garden or land appurtenant to or usually enjoyed with the self-contained residential unit remains within the ownership of the landlord it makes perfect sense that the landlord would be obliged to carry repairs to those parts of the dwelling that can be treated as forming part of the overall structure of the dwelling.

55. In this appeal the evidence and issues before the Tribunal proceeded on the basis that the common areas were not in the ownership or control of the landlord, and the Tribunal was not asked to resolve an issue about the existence, status or holdings of the OMC. As such the court is satisfied that the Tribunal did not err in law in determining that it could not uphold the adjudication that the landlord breached its obligations under section 12(1)(b) of the 2004 Act.

56. In those circumstances it is not strictly necessary to address the question of whether the definition of "*dwelling*" in section 4 of the 2004 is restricted to parts of the dwelling that are within the *exclusive* possession of the tenant, save to note that what the legislation focuses on is a duty to carry out repairs to the structure of the dwelling, and that obligation in turn derives from the landlord's ongoing ownership of the dwelling or parts of the dwelling in question. There may be cases where some land appurtenant to a residential unit is shared between tenants

but remains in the ownership of the landlord, and whether that land comprises a dwelling for the purposes of section 12 of the 2004 Act would have to addressed in an appropriate case.

57. Finally, as mentioned above, the court does not consider that any issue arises in this appeal around the adequacy of the reasons given by the Tribunal. Insofar as the Tribunal did not discuss certain matters raised on this appeal, the court is satisfied that this is simply because they were not matters raised in the hearing before the Tribunal and were matters that the Tribunal therefore was not required to address. With regard to the matters that were before the Tribunal and that it was required to address the court is satisfied that the decision of the Tribunal was explained in a way that permitted the appellant and this court to understand what had been decided and why. In turn this permitted the appellant a fair opportunity to consider whether any appeal or other remedy should be pursued.

58. In all the circumstances and for the reasons explained the court will refuse the appeal. As this judgment is being delivered electronically, I will express the provisional view that the respondent RTB should be entitled to its costs as the appellant has not succeeded in whole or in part in the appeal. However, if the parties wish to argues for a different form of costs order I will list the matter for final orders and any argument as to costs before me at 10.30 am on Thursday, the 6 February 2025.