

**APPROVED**



**AN ARD-CHÚIRT  
THE HIGH COURT**

**[2025] IEHC 84**

**Record No. 2024/375 MCA**

**BETWEEN/**

**ANTHONY BYRNE**

**APPELLANT**

**AND**

**THE RESIDENTIAL TENANCIES BOARD**

**RESPONDENT**

**AND**

**DEREK STACEY**

**NOTICE PARTY**

**JUDGMENT of Mr. Justice Conleth Bradley delivered on the 4<sup>th</sup> day of February 2025**

## INTRODUCTION

### *Preliminary*

1. By notice of motion dated 22<sup>nd</sup> July 2024, Mr. Byrne (“the appellant”) appealed the determination order made by the respondent (“the RTB”), dated 9<sup>th</sup> July 2024 on the following grounds:

- (1) The determination failed, on a point of law, to recognise an agreement between the appellant and landlord (notice party) as being a legal agreement;
- (2) The determination reflected that inconsistency and a failure to recognise the aforesaid agreement;
- (3) A Part 4 tenancy existed, and no notice of termination had been issued within the first six months of the tenancy.

2. The tenancy, the subject of this appeal related to part of a dwelling located at Kennycourt, Dunlavin, County Wicklow which commenced on or about 20<sup>th</sup> April 2022 at a rent of €1,100.00 per month. The tenancy was a one-bedroom apartment attached to the main residence.

### *Chronology*

3. A Notice of Termination was served on 24<sup>th</sup> November 2022, with a termination date of 3<sup>rd</sup> January 2023.

4. On 29<sup>th</sup> September 2022, the appellant made an application to the RTB pursuant to section 78 of the Residential Tenancies Act 2004, as amended (“the 2004 Act”) and the matter was referred to an adjudication which took place on 29<sup>th</sup> March 2023 and which determined *inter alia* that the appellant was to – vacate and give up possession of the dwelling and pay to the landlord the sum of €1,221.00, both within 28 days of the date of issue of the Determination Order, pay to the landlord any outstanding rent due from 29<sup>th</sup> March being the date of the adjudication hearing at the rate of €36.16 per day until the dwelling was vacated, the landlord was directed to refund the security deposit of €1,100.00 to the appellant on gaining vacant possession (less any amounts properly withheld in accordance with the 2004 Act).
  
5. The appellant appealed to the RTB, which convened a Tribunal hearing on 20<sup>th</sup> March 2024.
  
6. The Tribunal prepared a Report (Tribunal Reference No: TR0623-006320/Case Ref No: 0922-80171) signed by the Chairperson on behalf of the Tribunal, which *inter alia* addressed the details of the parties, the background to the appeal, the documents submitted prior to and at the hearing, the procedure of the appeal, the submissions of the parties (including the evidence of the appellant, cross-examination of the appellant, evidence of the landlord, cross-examination of the landlord on behalf of the appellant, closing submissions of the appellant and closing submissions of the landlord), matters agreed to between the parties, four findings with associated reasons and a determination which was notified to the RTB on 19<sup>th</sup> June 2024.

7. The Determination Order (Ref: TR0623-006320/DR0922-80171) was made by the RTB on 3<sup>rd</sup> July 2024.

***Notice of Termination***

8. As mentioned, the Notice of Termination of tenancy was initially served on the appellant on 24<sup>th</sup> November 2022 with a termination date of 3<sup>rd</sup> January 2023.

9. The reasons given in the Notice of Termination was that the appellant had not remedied breaches following warning notices served on him on 3<sup>rd</sup> October 2022 and 17<sup>th</sup> October 2022.

10. The Notice of Termination set out the following alleged breaches of tenancy by the appellant:

*“(1) Failing to pay the rent and any other lawful charges payable to the landlord under the tenancy. The amount of rent and/or charges outstanding are*

*19.09.2022:- €190.20*

*19.10.2022:- €190.20*

*19.11.2022:- €190.20*

*Total arrears:- €570.60*

*(2) Other breach of the term of the lease are set out in the Warning Notice dated 03.10.22 which are:-*

*(a) Playing music in the apartment at approximately 10:15pm on Tuesday, the 6<sup>th</sup> day of September 2022 so loudly that my neighbouring house which is attached to the one-bed apartment vibrated. The tenant is*

*thereby in breach of his covenant in 3.15 in paragraph (1) of the House Rules of the Residential Tenancy Agreement.*

- (b) On or about the 27<sup>th</sup> day of April 2022, heating the apartment to a temperature which was so excessive that set off the heat/smoke alarm.*
- (c) On Saturday, the 27<sup>th</sup> day of August 2022, heating the apartment unnecessarily or excessively when the inside temperature of my neighbouring house was 25 degrees Celsius and the outside temperature exceeded 18 degree[s] Celsius.*
- (d) Likewise, unnecessary or excessive heating of the apartment on Sunday, the 28<sup>th</sup> day of August 2022.*
- (e) Likewise, unnecessary or excessive heating of the apartment on Monday, the 5<sup>th</sup> day of September 2022 when my neighbouring house was unheated and was at a temperature of 23 degrees Celsius.*

*(b) to (e) are breaches by the tenant of his covenant in paragraph 3.15 of the residential tenancy agreement.”*

***The Report of the RTB***

11. The Tribunal hearing took place on 20<sup>th</sup> March 2024. The transcript of the hearing, exhibited in this appeal, is approximately 69 pages (including index).

12. The Tribunal Report at paragraph 7 commenced its findings and reasons, as follows:

***“Finding No. 1:***

*The Tribunal finds that the rent in respect of the tenancy is €1,100 per month.*

***Reason:***

*It was common case between the parties that the overall amount of rent that was agreed as part of the tenancy agreement to be paid by Appellant Tenant to the Respondent Landlord every month was €1,100. It was then clarified that this was a split between €850 for the rental of the property and €250 per month for a number of included services.*

*It was Appellant Tenant's own evidence that he did not change the amount of rent he was paying until he started to experience noise emanating from works being carried out by the Respondent Landlord and then decided to review the lease. He stated that he reduced the rent because he was not using certain of the services.*

*In cross-examination, the Appellant Tenant confirmed that there was no express agreement between him and the Respondent Landlord that there would be any reduction in the service charge to reflect the fact that the Appellant Tenant did not need to use the broadband or TV.*

*It was the Appellant Tenant's own evidence that there was no express agreement between him and the Respondent Landlord as to reduce service charges, although it was his firm view that there should have been.*

*The Tribunal determines that there were no grounds for the Appellant Tenant to unilaterally reduce the rent or withhold the agreed rent.*

*The Tribunal is satisfied that the rent agreed at the commencement of the tenancy was €1,100 and that incorporated any charges for certain services.*

*It is entirely legitimate for service charges or the cost of service charges to be included in the overall rent and in that regard, the Tribunal notes that the definition of rent 'at section 1 of the Landlord and Tenant Amendment (Ireland) Act 1860 (otherwise known as Deasy's Act) provides that "The word "rent" shall include any sum or return in the nature of any rent, payable or given by way of compensation for the holding of any land."*

***Finding [No.] 2:***

*The Appellant Tenant failed in his duty pursuant to section 16(a)(i) of the Act to pay rent as it fell due and is in arrears of rent of €3,613.80 up to 20<sup>th</sup> March 2024.*

***Reason:***

*As the Tribunal found that the rent was €1,100 per month and that the Appellant Tenant was paying €909.80 in September 2022 and that he*

*was not entitled to reduce the rent or withhold rent, the Tribunal is satisfied that the Appellant Tenant did not comply with his obligations in paying the rent and that rent arrears in the amount of €3,613.80 have accrued up to 20<sup>th</sup> March 2024 which equates to 19 months of underpaying rent by €190.20 per month. The Tribunal determines that this amount, less the deduction applied below for the award of damages to the Appellant Tenant for the Respondent Landlord's breach of obligation is to be paid within a period of 28 days. The Appellant Tenant remains responsible for any rent due after 20<sup>th</sup> March 2024 up to the date of vacating the dwelling.*

***Finding No. 3:***

*The Tribunal finds that the tenancy held by the Appellant Tenant is a Part 4 tenancy and that the Notice of Termination served by or on behalf of the Respondent Landlord on the Appellant Tenant on 24<sup>th</sup> November 2022 [in] respect of the tenancy is valid, and the Appellant Tenant and all persons residing in the above dwelling, shall vacate the above dwelling within 28 days of the date of issue of this order.*

***Reason:***

*The Notice of Termination, a copy of which was presented to the Tribunal, complied with the requirements of Parts 4 and 5 of the Act and in particular complies with Sections 34 and 62. It was clear the*



*Warning Letter and the Notice was served on Residential Tenancies Board, in compliance with the Act.*

*It is noted that the Warning Notice and the subsequent Notice of Termination also sought to rely on breach of the Appellant Tenant's obligations in respect of allegations that music was played too loudly on one day in September 2022 and on a number of occasions it was alleged that the Appellant Tenant had placed the heating too high.*

*For completeness, the Tribunal does not accept that the Respondent Landlord was entitled to terminate the tenancy on those particular grounds and it was noted that these particular grounds were not strongly pursued by the Respondent Landlord at the tribunal hearing.*

*Pursuant to Section 16(a) of the 2004 Act, the Appellant Tenant was obliged to pay the rent and any charges due in respect of a tenancy and that [he] [sic.] the statutory obligations to pay rent when it became due and accordingly, the [Applicant] [sic.] Landlord was entitled to terminate the tenancy.*

***Finding No. 4:***

*The Tribunal finds that the Respondent Landlord was in breach of its obligations pursuant to section 12(1)(a) of the 2004 Act (as amended) requiring it to allow the tenant of the dwelling to enjoy peaceful occupation of the dwelling.*

***Reason:***

*It was not in dispute between the parties that the Respondent Landlord was carrying out works and renovations to the property over time. The Respondent Landlord was candid in his evidence and accepted that a lot of his workmen could come on an ad hoc basis and when they were free in the evening. He also accepted that works were carried out during the long summer evenings and that this probably did cause a disturbance to the Appellant Tenant. Given these facts and the Appellant Tenant's evidence that the continuous works in the evenings disturbed his peaceful occupation, the Tribunal is satisfied that there was a breach of the Respondent Landlord's obligations in this particular context. The Tribunal finds that, in all the circumstances, the appropriate compensation in this regard is the sum of €500."*

***Determination Order dated 3<sup>rd</sup> July 2024***

13. The Report of the Tribunal then sets out its determination. It is also reflected in a Determination Order made by the RTB on 3<sup>rd</sup> July 2024 and signed by a Higher Executive Officer who was duly authorised to sign on behalf of the Director of the RTB.
  
14. The Determination Order is in relation to reference number TR0623-006320/DR0922-80171 and states as follows:

*“In the matter of Anthony Byrne [Appellant Tenant] and Derek Stacey [Respondent Landlord], the Residential Tenancies Board, in accordance with section 121 of the Residential Tenancies Act 2004, determines that:-*

*(1)The Notice of Termination with a date of service of 24<sup>th</sup> November 2022, served by the Respondent Landlord on the Appellant Tenant, in respect of the tenancy of the dwelling at Kennycourt, Dunlavin, County Wicklow, W91 W2P8 is valid.*

*(2)The Appellant Tenant and any other persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 28 days of the date of issue of this Determination Order.*

*(3)The Appellant Tenant failed in his obligations pursuant to section 16(a)(i) of the Act to pay a rent as it fell due and is in arrears of rent of €3,613.80 up to 20<sup>th</sup> March 2024.*

*(4)The Respondent Landlord was in breach of his obligations pursuant to section 12(1)(a) of the 2004 Act (as amended) requiring him to allow the Appellant Tenant to enjoy peaceful occupation of the dwelling. A sum of €500 is awarded to the [Applicant] Tenant[s] in this regard.*

*(5)The Appellant Tenant shall pay the sum of €3,113.80 to Respondent Landlord, within 28 days of the date of issue of this Determination Order (being the sum of the damages awarded at (3) above less the sum awarded (4) above).*

- (6) *The Appellant Tenant shall also pay any further rent outstanding from 20<sup>th</sup> March 2024, being the date of the Tribunal Hearing, at the rate of €1,100 per month or a proportionate part thereof at a rate of €36.16 per day, unless lawfully varied, and any other charges as provided for under the terms of the tenancy agreement for each month or part thereof, until such time as the above dwelling is vacated by the Appellant Tenant and any other persons residing therein.*
- (7) *The Respondent Landlord shall refund the security deposit of €1,100 to the Appellant Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.*

*This order was made by the Residential Tenancies Board on 3<sup>rd</sup> July 2024.”*

### **SCOPE OF THE STATUTORY APPEAL**

15. This is a statutory appeal pursuant to section 123(3) of the 2004 Act which provides that 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.*

16. In *Kelly v The RTB* [2024] IEHC 730, the principles which arise from the established case law and which apply to the scope of a statutory appeal brought pursuant to the 2004 Act ‘on a point of law’ were re-stated from paragraphs 23 to 26 as follows:

*“(23) The scope of this form of statutory appeal and the applicable principles have been discussed in a number of decisions of the Superior Courts, including, Deely v The Information Commissioner [2001] IEHC 91; [2001] 3 I.R. 439, Sheedy v Information Commissioner [2005] IESC 35; [2005] 2 I.R. 272, Fitzgibbon v Law Society [2014] IESC 48; [2015] 3 I.R.516, and specifically in the context of section 123 of the 2004 Act, in Doyle v PRTB [2015] IEHC 724, Marwaha v RTB [2016] IEHC 308, Hennessy v PRTB [2016] IEHC 174, Gunn & Gunn v Residential Tenancies Board & Anor [2020] IEHC 635, Stulpinaite v The RTB [2021] IEHC 178 and Web Summit Services v RTB [2023] IEHC 634.*

*(24) The following principles apply to the exercise of my statutory appellate jurisdiction in this appeal when considering whether the RTB erred as a matter of law: (a) in its determination; and/or (b) in its process of determination:*

*(i) I may not interfere with first instance findings of fact unless I find that there is no evidence to support them;*

*(ii) as to mixed questions of fact and law, I: (a) may reverse the RTB on its interpretation of documents; (b) can set aside the RTB*

*determination on grounds of misdirection in law or mistake in reasoning, if the conclusions reached by it on the primary facts before it could not reasonably be drawn; (c) must set aside the RTB determination, if its conclusions show that it was wrong in some view of the law adopted by it;*

*(iii) even if there is no mistake in law, or misinterpretation of documents on the part of the RTB, I can, nonetheless, set aside its determination where inferences drawn by the Tribunal from primary facts could not reasonably have been drawn.*

*(25) Accordingly, the parameters of the remit of my statutory appellate jurisdiction in this case are as follows:*

*(i) I cannot set aside findings of primary fact unless there is no evidence to support such findings;*

*(ii) I ought not set aside inferences drawn from such facts unless such inferences were ones which no reasonable decision-making body could draw;*

*(iii) I can and should, however, reverse such inferences, if the same were based on the interpretation of documents which was incorrect; and*

*(iv) if the conclusion reached by the RTB shows that it has taken an erroneous view of the law, then that is also a ground for setting aside the resulting decision.*

*(26) After his review of many of the aforementioned authorities, Ferriter J. inter alia observed in Web Summit Services v RTB [2023] IEHC 634 at paragraph 27 that “an appeal may not succeed unless, inter alia, there was no evidence to support a material finding of primary fact, or an inference or conclusion on the facts was one which no Tribunal could reasonably have reached”.*

## **DISCUSSION & DECISION**

17. The appellant has sworn two affidavits, the first on 24<sup>th</sup> July 2024 and a supplementary affidavit on 1<sup>st</sup> October 2024.

18. In summary, the appellant submits that the RTB erred in law in not recognising the existence of an implied agreement between him and the notice party landlord that any charges in relation to the provision of a television (“TV”) or broadband would be withdrawn and that he would not be charged for these services.

19. The appellant submits that the charges in relation to these two matters (the TV and broadband) should never have been part of the calculation of arrears as they were in relation to services which he contended he was not receiving and comprised “*the primary cause of the dispute*” in this case.

20. In his written submissions dated 2<sup>nd</sup> January 2025 (which were also reflected in his oral submissions) the appellant *inter alia* describes gravamen of his appeal as follows:

*“(6)... the reduction was entirely anticipated by the implied agreement entered into between both parties on 20<sup>th</sup> April 2022 as a consequence of the landlord’s action in removing the relevant equipment on that date. The landlord’s failure to reduce the sum due for services necessitated the unilateral reduction, by the Appellant, in the monthly payment”*

*“(11) As services were reduced by mutual express agreement and costs of said services by consequent implied agreement, the reduced figure ought to be in the amount of the calculated sum resulting from the review done on 14<sup>th</sup> September 2022. Such sum must therefore be regarded in relation to the terms of the implied agreement and the Landlord and Tenant (Ireland) Act, 1860, commonly known as Deasy’s Act. An interpretation of this Act is that all charges, including charges for services, may be deemed to be the total figure representing rent. Therefore, the charges, having been agreed by express and implied agreements, which are legally binding, ought to be the charges payable per month as rent”*

*“(14) The RTB failed to recognise that the tenancy agreement had been, at the time of its signing, effectively altered by the express and consequent implied agreements relating to the removal of the TV and Broadband from the apartment.”*



*“(15) If the question of payment of rent in relation to services had been referred to the RTB in September 2022, the decision would and should have been to order a reduction in the payment for those services made unavailable as a result of the express agreement between landlord and tenant regarding TV and Broadband, such agreement having been given effect to by the removal by the landlord of the said equipment. This action by the landlord is the basis of the implied agreement referred to. The resulting monthly payment would approximate [to] the present amount.”*

*“(16) In conclusion, on the balance of probabilities and beyond any reasonable doubt, there exists an express agreement and a consequent implied agreement between the landlord and tenant in relation to payment for services provided and to those withdrawn. There are, therefore, no arrears of rent and consequently, the Termination Notice is invalid”.*

21. In addition to the matters set out in the initiating Notice of Motion dated 22<sup>nd</sup> July 2024 and affidavit dated 24<sup>th</sup> July 2024, at paragraph 11 of his supplemental affidavit sworn on 1<sup>st</sup> October 2024, the appellant avers as follows:

*“(11) I would ask the Court to review the following points of law:*

*{A} The legally binding status of the agreement with the landlord regarding the discontinuance of certain services.*

*{B} The legal status of the demand by the landlord, confirmed by the RTB, that I must pay for services not being availed of by mutual agreement.*

*{C} The application of Deasy's Act in this matter".*

22. A Statement of Opposition was filed on behalf of the RTB on 5<sup>th</sup> November 2024 and grounded on the Affidavit of Claire Diggin, Deputy Director of the RTB, sworn on 4<sup>th</sup> November 2024.

23. In summary, the RTB opposes the appellant's appeal as being *inter alia* fundamentally misconceived in (a) seeking to reopen matters of fact that have already been determined by the Tribunal, (b) failing to identify the point or points of law in the manner prescribed by the provisions of section 123(3) of the 2004 Act and Order 84, r. 2(3) of the Rules of the Superior Courts 1986 ("RSC 1986") in seeking to appeal the Determination Order, (c) in addition to not constituting points of law, the attempt by the appellant to describe the matters at paragraph 11 of his supplemental affidavit sworn on 1<sup>st</sup> October 2024 (set out above) as constituting points of law are outside of the 21 day time period prescribed in section 123(8) of the 2004 Act in circumstances where the Determination Order in this case was issued to the parties on 9<sup>th</sup> July 2024 and required the appellant to appeal by the 30<sup>th</sup> July 2024 (which he did).

24. A replying Affidavit of Derek Stacey, the Notice Party landlord, was also sworn on 1<sup>st</sup> November 2014.

25. I have set out in full the findings, and the reasons for those findings, in the Report of the Tribunal signed by the Chairperson who chaired the tribunal hearing. These reasoned findings are detailed and address all of the matters raised by the appellant. The report is comprehensive, fair and balanced and makes findings both ‘for’ and ‘against’ the appellant and the notice party landlord.
26. At the hearing before me, whilst the appellant accepted that the fact of the implied agreement may not be a point of law as defined in section 123(3) of the 2004 Act, he nonetheless contended that an issue of law arose in relation to the computation of money for services that had not been provided. Notwithstanding that this is not a point of law as understood by the established case law, these matters were in fact addressed in the Tribunal Report.
27. In terms of the issues which the appellant seeks to raise in this appeal, the Tribunal’s reasoning *inter alia* included that it was the appellant’s “*own evidence that he did not change the amount of rent he was paying until he started to experience noise emanating from works being carried out by the Respondent Landlord and then decided to review the lease. He stated that he reduced the rent because he was not using certain of the services*” and that after cross-examination the appellant “*confirmed that there was no express agreement between him and the Respondent Landlord that there would be any reduction in the service charge to reflect the fact that the Appellant Tenant did not need to use the broadband or TV*” and that it was the appellant’s own evidence that “*there was no express agreement between him and the Respondent Landlord as to reduce service charges, although it was his firm view that there should have been.*”

28. Having heard and assessed the evidence, the Tribunal, for example, was in a position to determine that *“there were no grounds for the Appellant Tenant to unilaterally reduce the rent or withhold the agreed rent”* and the Tribunal was *“satisfied that the rent agreed at the commencement of the tenancy was €1,100 and that incorporated any charges for certain services.”*
29. The Tribunal further determined that it was *“entirely legitimate for service charges or the cost of service charges to be included in the overall rent”* and referred to the definition of rent at section 1 of the Landlord and Tenant Amendment (Ireland) Act 1860 (Deasy’s Act) as including *“any sum or return in the nature of any rent, payable or given by way of compensation for the holding of any land.”*
30. I have also set out the well-settled principles which govern the scope of this appeal. Rather than raising points of law as defined in the principles set out above, the appellant, in my view, is seeking to revisit factual matters which were determined in reasoned findings made by the Tribunal and upon which the Determination Order was based. This is impermissible.
31. In addition, the Tribunal had in fact addressed all of the matters subsequently raised again by the appellant both within and outside of the 21 day appeal period in section 123(8) of the 2004 Act. In *Fitzpatrick v RTB* [2023] IEHC 229, Simons J. observed at paragraph 20 of his judgment that *“it should be emphasised that the point of law must arise from the determination under appeal. 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”.*

## **CONCLUSION**

32. In this appeal, as set out in the Tribunal’s Report, there was evidence to support the Tribunal’s material findings of primary fact and the Tribunal’s reasoned findings, inferences and conclusions, which underpinned the Determination Order dated 3rd July 2024, were reasonably and lawfully reached.

33. Accordingly, this statutory appeal pursuant to section 123 of the 2004 Act against the Determination Order dated 3<sup>rd</sup> July 2024 is dismissed.

## **PROPOSED ORDER**

34. In the circumstances, I shall make an Order dismissing the appellant’s appeal. The Determination Order, therefore, remains in the terms made by the RTB on 3<sup>rd</sup> July 2024.

35. I shall put the matter in for mention before me at 10:30 on Thursday 13<sup>th</sup> February 2025 to address any ancillary or consequential matters arising, including the question of costs.