APPROVED [2023] IEHC 605

THE HIGH COURT

[2022 No. 154 MCA]

BETWEEN

EDLIRA VODO

APPELLANT

AND

THE RESIDENTIAL TENANCIES BOARD

RESPONDENT

JUDGMENT of Mr. Justice Barry O'Donnell delivered on the 7th day of November 2023.

INTRODUCTION

1. This judgment concerns an appeal brought pursuant to section 123(3) of the Residential Tenancies Act 2004, as amended ("the 2004 Act"). The appellant, who is a litigant in person, commenced the appeal by way of a notice of motion dated the 13 June 2022. The matter under appeal is a determination of the respondent that was delivered on the 25 May 2022. For the purposes of this judgment, the body that made the determination will be referred to as "the Tribunal". The appellant was a tenant in a premises in Phibsborough in Dublin 7. The original landlord in respect of the premises was a Mr. White. The landlord that was involved in the various processes before the Tribunal was a company, Monopod Limited, and I will refer to that company as "Monopod". In the various procedures before the respondent Board, Monopod

was legally represented, and their primary witness was a Ms. Keane. It appears from the papers that Ms. Keane is a shareholder and director of Monopod.

2. For reasons explained below, Monopod was not a party to the appeal and did not participate in the hearing before this court. Throughout the hearing, the appellant was in attendance in court, but requested that her daughter present the arguments made on her behalf. There was no objection to this course of action and the appellant's daughter presented the arguments that her mother wished to make in a coherent and helpful manner.

3. The primary dispute underpinning the appeal is the question of whether the Tribunal was entitled to proceed on the basis that Monopod was the proper landlord of the premises. That dispute was agitated by the appellant in circumstances where she asserted (a) that the transfer of title in relation to the premises from Mr. White to Monopod was tainted by fraud, and (b) by entertaining the dispute the Tribunal impermissibly resolved a title dispute and breached section 110 of the 2004 Act. The court has concluded that the appeal must be refused, and that, among other matters, the appellant has misunderstood section 110 of the 2004 Act.

PRELIMINARY ISSUES

4. When this matter opened before the court, there were three preliminary issues. First, the appellant sought an adjournment. Second, there was a question concerning the participation of Monopod. Third, the Tribunal contended that the notice of motion that commenced the appeal was defective to the extent that the appeal should be refused.

5. The adjournment was sought on the basis that the current landlord was in discussions with a local authority with a view to selling the property. The view of the appellant was that if the property was sold, there was a prospect of an amicable resolution with the new landlord and, as such, there was a prospect that court time and further difficulties could be avoided by allowing that matter to work itself out. Prior to the application for an adjournment being moved

at the hearing of the appeal, the parties informed me that an adjournment had also been sought when the matter was called over the previous week. At that point, the judge managing the list directed that the matter should proceed. In the intervening period an affidavit was sworn by the appellant's daughter, and also by a solicitor in the firm of solicitors acting for the respondent Board.

6. The affidavit sworn by the appellant's daughter exhibited a series of emails passing between the appellant and her daughter on the one hand, and Ms. Keane, a director of Monopod on the other. The email correspondence shared with the court certainly suggests that there was some process of negotiation with a view to the local authority purchasing the property. However, there was a definite lack of clarity as to (a) whether the purchase would occur, and (b) whether that purchase would lead to any change in the position of the new landlord regarding the state of affairs that obtained to date. In the circumstances, and particularly where the proceedings had been in being for some time and the respondent wished the matter to proceed, the court did not see a basis for adjourning the proceedings. It can be observed that the adjournment application was premised on some acknowledgment that Monopod was in a position to transfer title to the local authority and as such contradicts the underlying argument of the appellant that Monopod did not have proper title to the premises.

7. The second issue related to the potential involvement of the landlord in this appeal. This was a matter raised by the Tribunal in its papers. Monopod had not been joined as a notice party, despite the fact that the role of the landlord was the subject of extensive commentary on the part of the appellant. In that regard, at the call-over of the proceedings on the previous week, the court had directed that Monopod be given liberty to apply to be joined to these proceedings. There was a further direction that the solicitors for the respondent inform Monopod of the direction and that it should be put on notice that the matter was listed for hearing. In that respect, the affidavit sworn on behalf of the respondent set out that Monopod

was informed of the various matters in accordance with the directions of the court, and an email was exhibited from the landlord confirming receipt of the email correspondence. On the morning of the hearing, there was no attendance on behalf of Monopod, but it was confirmed to me that Monopod had contacted the respondent's solicitor and informed them that it did not intend attending at the hearing. The court was satisfied that even though the appellant ought to have joined Monopod as a party at the commencement of the proceedings it was possible to hear and determine the appeal on the basis that Monopod had been on notice of the appeal (albeit at an unacceptably late stage) and had chosen not to participate.

8. The third preliminary issue related to the originating notice of motion. As correctly identified by the respondent, Order 84C rule 2 (3) of the Rules of the Superior Courts 1986, as inserted by SI 14 of 2007, requires that in an appeal to the High Court on a point of law (which this is), the notice of motion is required to "state concisely the point of law on which the appeal is made". This was not done by the appellant. Ordinarily, and particularly where an appellant is legally represented, this could be fatal to the progress of the appeal, see in that regard the comments of Noonan J. in *Hyland v. Residential Tenancies Board* [2017] IEHC 557 at para. 14. However, having regard to the fact that the appellant was not legally represented and the fact that to some extent the affidavit sworn by the appellant on 13 June 2022 grounding the appeal sets out the essence of her complaint, it would not be fair to determine the appeal on that point alone. Moreover, the substantive arguments of the respondent were clear and well-presented and accurately identified and responded to the arguments made by the appellant. In those circumstances it was clear that the respondent was not prejudiced in any substantive way by the appellant's default.

9. Accordingly, the court will decide the appeal on the basis of the underlying substantive points.

THE SUBSTANTIVE APPEAL

10. The appeal herein was brought pursuant to section 123 (3) of the Residential Tenancies Act 2004, as amended, and was commenced by way of a notice of motion dated the 13 June 2022. The determination of the Tribunal which is the subject of the appeal was delivered on the 25 May 2022. The gravamen of the arguments made by the appellant are set out in an initial short affidavit dated the 13 June 2022 and expanded upon in a more detailed affidavit dated the 14 September 2022. The primary focus of the Tribunal was on two substantive issues, (i) a claim in relation to rent, and (ii) a claim in relation to the termination of the tenancy, each of which had been the subject of an earlier adjudication process. However, it was clear that the focus of the appellant, both before the Tribunal and this court, was on the question of whether the landlord in fact held proper title to the property. Despite being afforded an opportunity to agitate any other arguments that may arise, specifically in respect of the rent and termination issues, it was clear that the appellant was insistent on making the title argument the full focus of the appeal before this court.

11. The argument therefore reduced itself to a contention on the part of the appellant that the property which was the subject matter of the tenancy agreement had been sold without any lawful authority by an alleged receiver and when that matter was raised before the Tribunal at the hearing, the Tribunal should have declined jurisdiction and fell into legal error by, as the appellant asserted, determining a title issue regarding the identity of the proper landlord and title owner of the property.

12. Before considering the evidence and legal argument in this appeal it may be helpful to begin by addressing the proper approach to be adopted to an appeal of this type.

13. The court does not consider it necessary to discuss in detail the extensive existing caselaw setting out the applicable principles which should guide a court on appeals of a point of law. Those principles have been reiterated by the court on a number of occasions. Recently,

Simons J. in *Fitzpatrick v. Residential Tenancies Board* [2023] IEHC 229 from para. 17 onwards sets out a very helpful summary of the principles, which I repeat here: -

> "18. The High Court's jurisdiction in an appeal on a point of law has been explained as follows by the Supreme Court in *Fitzgibbon v. Law Society* [2014] IESC 48, [2015] 1 I.R. 516 (at paragraphs 127 and 128 of the reported judgment):
>
> > "The applicable principles were helpfully summarised by McKechnie J. in *Deely v. Information Commissioner* [2001] 3 I.R. 439 at p. 452, which concerned an appeal under s. 42 of the Freedom of Information Act 1997, 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 …'

This passage was later cited in the Supreme Court judgments of both Fennelly and Kearns JJ. in *Sheedy v. Information Commissioner* [2005] IESC 35, [2005] 2 I.R. 272.

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)."

19. The principles in *Fitzgibbon* have been applied in the specific context of an appeal under Section 123 of the Residential Tenancies Act 2004 in a number of High Court judgments. In *Marwaha v. Residential Tenancies Board* [2016] IEHC 308, the High Court (Barrett J.) summarised the principles as follows (at paragraph 13):

"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."

20. Finally, 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. 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).

21. This limitation on the High Court's appellate jurisdiction assumes an especial importance in the present case in circumstances where the principal point of law sought

to be advanced by the appellant is not one which was pursued at first instance before the Tenancy Tribunal".

THE EVIDENCE

14. In an affidavit sworn by the appellant on the 14 September 2022, the following matters are asserted: -

a. First, the initial landlord of the property, Mr. White, was a family friend of the appellant and had been their landlord for approximately thirteen years. The appellant had an understanding (the detail or basis of which was never explained in evidence) that if the property was ever to be sold the appellant would have first refusal.

b. According to the appellant, the property was sold without any lawful authority by an alleged receiver at a time when the original landlord was unwell and in hospital and therefore the landlord did not challenge the sale.

c. There were unusual features to the sale. In that regard, it is asserted that the property was advertised as a two bedroom duplex apartment when in fact it was a three bedroom semi – detached house and it was asserted that the property was sold at a considerable undervalue.

d. The appellant draws attention to the fact that at the hearing before the respondent Board Mr. White's interests were represented by Mr. Gilroy, acting as a form of McKenzie friend, who made the argument that because the original landlord was challenging the alleged ownership of another party to his property, this rendered the Board hearing as a title dispute, and by virtue of section 110

of the 2004 Act, as amended, the Tribunal could not make any decision until the original landlord's ownership and interest in the property was fully ventilated and determined in the High Court.

e. The argument was made that the alleged receiver was acting on a charge and had no right to transfer or sell the property as he did not have a power of sale.

15. All of the above matters were asserted by the appellant to lead to the conclusion that the decision of the Tribunal had decided the title issue raised by the original landlord through his representative and as such negates the original landlord's title to his property.

16. A number of ancillary matters were raised by the appellant in the course of argument and affidavit.

a. First, there was an assertion that the current landlord had not properly authorised the participation of Ms. Keane in the proceedings, and that without evidence of proper board approval from Monopod, the Tribunal Board had no jurisdiction to make any decision.

b. Secondly, there was an argument that the current landlord ought to have, but did not reveal, the source of funding for the purchase of the property.

17. On behalf of the Tribunal, a statement of opposition was filed on the 14 October 2022. The respondent raised a number of preliminary points, which have been dealt with above. The respondent made the following substantive points in relation to the overall appeal:-

a. First, the respondent noted that the Tribunal considered an appeal made by the appellant against a determination of an adjudicator in relation to a particular dwelling. The Tribunal determined that the notice of termination served by Monopod was valid, and further determined that, at that point, the appellant owed €5,763.27 in rent arrears to Monopod.

b. In relation to the claim that the Tribunal had no jurisdiction to determine the dispute between Monopod (as landlord) and the appellant (as tenant) on the basis of the position of Mr. White, the respondent pleaded that:-

(i) Monopod, in its capacity as landlord of the dwelling, had made an application to the Board for dispute resolution services on 28 June 2021.

(ii) The appellant attended the adjudication hearing and contended that Monopod in its capacity as landlord had served an invalid rent review notice and notice of termination.

(iii) The appellant had paid rent to Monopod from January 2020, and

(iv) The appellant had made an application to the Department of Social Protection for supplementary welfare allowance in which Monopod was identified as her landlord and the appellant was in receipt of rent allowance on that basis.

In those premises it was asserted that the Tribunal correctly determined pursuant to section 75 (3) of the 2004 Act that it had jurisdiction to determine the dispute as it was an "issue arising between the parties with regard to the compliance by either with his or her obligations as landlord or tenant under the tenancy".

c. In addition, the Board disputed that section 110 of the 2004 Act precluded the Tribunal from engaging with questions of title in the manner asserted by the appellant. In that regard, it denied that the Tribunal had misapplied and/or misinterpreted section 110 of the 2004 Act.

18. The substantive evidence adduced on behalf of the respondent was in the form of an affidavit of Michelle O'Gorman, dated the 13 October 2022 and the exhibits thereto. Ms. O'Gorman was the chairperson of the hearing of the Tribunal which took place on the 25 March

2022. As part of her affidavit evidence, and this aspect of the case does not appear to be disputed by the appellant, Ms. O'Gorman explained that by application form dated the 28 June 2021, Monopod Limited – which formerly was known as Keane Thompson Investments Limited – in its capacity as the landlord referred a complaint to the respondent for dispute resolution services in relation to the dwelling. At that point, Monopod asserted that the appellant was a tenant of the dwelling, having commenced occupation of the dwelling on the 5 March 2005 and that the rent payable in respect of the dwelling was €1,303.33 per month. The application submitted for dispute alleged, among other matters, that the appellant was overholding, having failed to vacate the dwelling following a service of a notice of termination on the 6 February 2020, and that the appellant had failed to pay rent in accordance with the tenancy agreement.

19. An adjudication hearing took place on the 29 September 2021. The appellant at that point was represented by a firm of solicitors. In the consequent adjudication report, the adjudicator upheld the landlord's complaint in respect of the outstanding rent arrears but determined that the notice of termination was invalid. Significantly, at that point the appellant had not raised any issue in respect of the jurisdiction of the Board or the adjudicator to determine the dispute. By an appeal form, dated the 23 December 2021, the appellant appealed the finding of the adjudicator in accordance with section 100 of the 2004 Act. The grounds of appeal concerned the validity of the rent review conducted by the landlord. The Tribunal hearing proceeded on the 25 March 2022. In the period between the submission of the appeal form and the appeal hearing, the parties were furnished with various documents including tribunal case files, a guide to evidence and a guide to virtual hearings. In that regard, both parties submitted additional evidence for consideration by the Tribunal and that evidence was shared between the parties for consideration in advance of the hearing. By letter dated the 22 March 2022, the solicitors who had represented the appellant in the context of the initial

adjudication notified the Board that they were no longer representing the appellant and that she would be self-representing. As matters transpired, a Mr. Gilroy attended the hearing to represent the interests of Mr. White and the appellant. The appellant was in attendance and the landlord was represented by counsel and solicitor.

20. At the hearing, the representative of the former owner of the dwelling and the appellant made a number of submissions. First, it was contended that the Tribunal could not accept that Monopod was the proper landlord or valid landlord on the basis that there had been a fraudulent misrepresentation regarding the power of sale to sell the dwelling, and, as such, the entry in the Land Registry regarding ownership of the property was and should not be treated as conclusive. However, the Tribunal report recorded that a director of Monopod (Ms. Keane) gave evidence that Monopod was a trading company which had been set up for buying and selling property. The evidence was that the dwelling was purchased in or around the end of January 2020 and that a notice of termination was served on 6 February 2020 as it had always been the intention of the company to sell the dwelling "straight away". The witness gave evidence that rent was being received on a monthly basis and that the appellant had continued to pay €1,000 in rent each month.

21. The Tribunal made a finding that by virtue of section 75 (3) of the 2004 Act, it had jurisdiction to determine the dispute. It made this determination on the basis that the Tribunal could determine matters between the "parties" to a dispute, and because Mr. White was not a party to the dispute, the Tribunal had no jurisdiction to consider the matters raised on his behalf. Moreover, as a result of section 110 of the 2004 Act, the Tribunal found it could not engage in issues which called into question the title of the property concerned. Nevertheless, the Tribunal report noted the following matters: -

- The witness on behalf of Monopod gave evidence that the company was the owner of the dwelling.

- Mr. Gilroy on behalf of the appellant acknowledged that Monopod was registered as the owner of the dwelling with the Land Registry.
- On the 30 January 2020, the appellant tenant received correspondence from solicitors stating that the dwelling had been purchased by the entity now known as Monopod.
- The appellant started to pay rent to Monopod in January 2020 and had continued to do so up to the date of the Tribunal hearing.
- The appellant had requested Monopod to complete supplementary welfare application forms in its capacity as landlord.
- Monopod had completed the relevant forms and the appellant had received rent supplement on that basis from the Department of Employment Affairs and Social Protection.
- There was evidence from Ms. Keane that she was a director of Monopod, the 100% shareholder in the company, and that she had authority to act on behalf of the company.

22. Accordingly, as set out in the affidavit of Ms. O'Gorman and as is apparent from the report of the Tribunal, pursuant to section 5 of the 2004 Act the Tribunal found that Monopod was the entity, for the time being, entitled to receive the rent paid in respect of the dwelling, that the appellant had paid rent to Monopod, the appellant acquiesced in the payment of rent to Monopod, and that the documentation from the Department of Employment Affairs and Social Protection supported the contention that Monopod was the person, for the time being, entitled to receive the rent paid. The Tribunal report was furnished together with a determination order under cover of a letter dated the 25 May 2022 to the appellant.

23. In respect of the position of the appellant, the respondent took issue with the basis upon which the appellant was in a position to assert certain matters. Specifically, the respondent took

issue with the ability of the appellant to canvas matters relating to the sale and ownership of the dwelling.

24. The appellant swore a further affidavit on the 7 November 2022 responding to the affidavit of Ms. O'Gorman. Again, the appellant was focused on the question of whether Monopod was the proper owner of the property. In that regard, the appellant focused on the failure of Monopod to provide information as to the source of funding of the monies for the purchase of the property. The appellant focused on the fact that Mr White was not a party to the dispute and was not called as a witness at the hearing before the Tribunal, and the question of whether the witness on behalf of Monopod could provide evidence of Board approval of that company to attempt to evict the tenants. All of the above was said by the appellant to support the contention that the Tribunal should not have proceeded to form a determination in circumstances where there was what the appellant described as a legitimate dispute surrounding the proper ownership of the property.

DISCUSSION OF THE ISSUES

25. The appellant argued that the Tribunal ought not to have permitted Ms. Keane to give evidence and that the Tribunal ought to have sought documentary proof of approvals from the Board of Monopod for the steps that were taken on its behalf. Subject to the overriding obligation to ensure a fair hearing, the Tribunal has some level of discretion in respect of the manner in which it conducts hearings. This has been discussed in detail in the decision of this court (Barr J.) in *Stulpinaite v The Residential Tenancies Board & Whelan* [2021] IEHC 178. That judgment addresses, from paragraphs 59 to 63, the question of the procedures of the Tribunal and the approach to be adopted to the admission of evidence in that forum. I agree with that analysis, and note the observations of the court at para. 63:

"The court is satisfied that the Tribunal has the power to act on documentary evidence and on hearsay evidence and can adopt such informal procedures as appear to it to be appropriate as being best suited to achieving a fair resolution in the case. However, the Tribunal must always act within the bounds of fairness…"

26. In the circumstances of this appeal, the court is satisfied that there was sufficient evidence that Monopod was the landlord at the relevant time, and was a proper party to the dispute. The Tribunal was entitled to hear the evidence of Ms. Keane. That evidence combined with the documentary evidence made it unnecessary for the Tribunal to engage with the question of board approval and it was entitled to proceed on the basis that the actions of the company as reflected in the evidence, representation and documents, were properly authorised. Finally, in relation to the ancillary issues, the court can see no good reason why the Tribunal ought to have allowed Monopod to be questioned about how the purchase of the premises was funded. It was not relevant to the proper issues before the Tribunal, and, if anything, was introduced as part of an attempt to have the Tribunal engage in or consider issues of title, which, as set out below, is not permitted.

27. At the start of the analysis of the substantive issues it is important to note that at all stages the appellant accepted that Monopod was the registered owner of the premises. It is well established that an entry of ownership on the Register of Titles is conclusive of ownership, see section 31 of the Registration of Title Act 1964, as amended. In the context of an action for summary possession, the Supreme Court has made clear (a) that the correctness of the Register cannot be challenged by way of defence in summary possession proceedings, and (b) if proceedings to amend or rectify the Register are in being with the purpose of challenging the correctness of the Register, on grounds of actual fraud or mistake, this might amount to a ground to adjourn the action for possession or to list it to run after the conclusion of the rectification action, see the observations of Baker J. at paragraphs 50 and 51 of *Bank of Ireland*

Mortgage Bank v. Cody & anor [2021] IESC 26. In this case, there has been no evidence whatsoever that any action was in being to challenge the correctness of the Register, and it was accepted that Monopod was the registered owner. There was an assertion, but no evidence, before the Tribunal that Monopod purchased the premises on foot of some form of flawed sales process. Moreover, it is seriously questionable that a tenant appellant could ever rely on a form of *jus tertii* type argument by pressing a case based on the asserted rights and entitlements of Mr. White. By analogy with the approach in *Bank of Ireland Mortgage Bank v. Cody & anor* (and before having to consider the argument related to section 110 of the 2004 Act), the court considers that there could have been no valid reason for the Tribunal proceeding on any basis other than that Monopod was the registered owner of the property. In the premises, the court is satisfied that the Tribunal was entitled to proceed without having regard to arguments relating to the source of Monopod's title to the premises.

28. The court is satisfied that the Tribunal was correct in fact and law to proceed on the basis that Monopod and the appellant were the proper parties to the dispute submitted for resolution to the respondent. The Tribunal was obliged to (and in my view did) have proper regard to the definitions of "landlord" and "tenant" that are set out in section 5 of the 2004 Act. In that regard, section 5 of the 2004 Act provides the following definitions.

29. "Landlord" is defined as meaning "the person for the time being entitled to receive (otherwise than as agent for another person) the rent paid in respect of a dwelling by the tenant thereof and, where the context so admits, includes a person who has ceased to be so entitled by reason of the termination of the tenancy."

30. "Tenant" is defined as meaning "the person for the time being entitled to the occupation of a dwelling under a tenancy and, where the context so admits, includes a person who has ceased to be entitled to that occupation by reason of the termination of his or her tenancy."

31. In this case there was ample evidence that Monopod was the person who was, for the time being, entitled to receive the rent paid in respect of the premises by the appellant. The court will not disturb the findings of fact (or inferences) of the Tribunal in that regard. As noted above, the uncontested evidence fully supported the finding that there was a relationship of landlord and tenant between Monopod and the appellant. The documentary evidence which was exhibited by the respondent's witnesses, and which was not challenged by the appellant, support that factual position:

a. The solicitors acting for the appellant in the context of the initial adjudication raised no issue relating to the status of Monopod or that it was a proper party to the dispute process under the 2004 Act. At that point, the focus entirely was on the questions of overholding following the service of a notice of termination and the question of arrears of rent.

b. Second, the respondent exhibits a form completed by the appellant for the purpose of an application for rent supplement review/supplementary allowance which was completed and signed by the appellant on the 29 January 2020. In that document, the appellant identifies the property and describes the landlord as Keane Thompson Property Investment Limited – where that company later changed its name to Monopod Limited. The landlord's agent's signature was attached to the document and signed by Ms. Keane on the 4 February 2020. A similar form appears to have been completed on the 25 September 2020 by Monopod for the benefit of the appellant.

c. Third, albeit that a dispute arose as to the proper quantum of rent, it was undisputed that the appellant was paying rent to Monopod on a monthly basis from in or around January 2020 up to the hearing before the Tribunal.

32. The above matters – taken with the undisputed evidence that Monopod was the registered owner - constituted sufficient evidence for the Tribunal to find that Monopod was the person entitled to receive the rent and a proper party to the dispute process. In those premises, it is clear that the Tribunal was faced with and resolved properly a dispute or disagreement within the meaning of section 75 of the 2004 Act. Furthermore, the Tribunal was correct to find that Mr White was not a proper party to the dispute before the Tribunal.

33. I have also derived considerable assistance from the decision of the High Court (Simons J.) in *James Anderson and Pepper Finance Corporation (Ireland) DAC v. Fitzgerald* [2023] IEHC 309. While that case was concerned with a contested application to adjourn proceedings seeking to recover lands pursuant to section 62 of the Registration of Title Act 1964, the judgment contains an extremely helpful discussion of the approach to be adopted to issues relating to the nature of the RTB's statutory jurisdiction. In that case, the second defendant had claimed that she had the benefit of a tenancy under Part 4 of the 2004 Act which could only be lawfully terminated by the service of a valid notice of termination. The second defendant had made a referral to the RTB and submitted that the application brought by the plaintiffs pursuant to section 62 of the 1964 Act should be adjourned pending that adjudication. Simons J. found that the High Court retained jurisdiction to determine whether the second defendant could assert a tenancy which is binding against either of the plaintiffs, and that the High Court did not have to cede jurisdiction in that regard to the RTB. The reasons for that conclusion were set out from paras. 21 – 33 of the judgment. In reaching its conclusion, the court considered the jurisdiction over disputes conferred on the RTB by Part 6 of the 2004 Act. In the discussion, the Court noted that the RTB's jurisdiction is based on a condition precedent that either there is a tenancy in existence or that there had been a tenancy and a dispute arose as to whether it had been validly terminated, and that emerged from the wording of section 76 (1) and (3) of the 2004 Act. The court noted that while the RTB has jurisdiction to determine a "dispute"

between a landlord and tenant, including a dispute in relation to the termination of their tenancy, the RTB does not have jurisdiction to determine conclusively the question of jurisdictional fact as to whether a valid tenancy ever existed. As such, the existence of a tenancy is either to be viewed as a condition precedent or a jurisdictional fact. In those premises, where there is a dispute between the parties to a referral as to whether a tenancy ever existed, the RTB may for pragmatic reasons, be prepared to form a view in relation to the existence or otherwise of a tenancy. As noted by Simons J.(at para. 29):-

> "If the RTB is of the view that no tenancy ever existed, then it should decline jurisdiction in accordance with the procedure prescribed under Section 84 of the Act. If, conversely, the RTB is of the view that a tenancy does or did exist, then it may be prepared to embark upon the adjudication".

34. However, Simons J. noted that (at para. 30):-

> "….the RTB's view in this regard cannot be final and conclusive. If the RTB were mistakenly to assume jurisdiction in a case where the factual circumstances did not give rise to a tenancy, this would represent an error of law on its part. For example, the relevant premises may have been occupied pursuant to a caretaker's agreement rather than a tenancy. The same logic applies where a supposed tenancy is invalid because it has been created in breach of a negative pledge clause in a deed of mortgage and charge. The RTB cannot, by its own error, expand upon its own jurisdiction; rather, its competence is confined to the statutory jurisdiction conferred upon it by the legislature".

35. In the circumstances, for the reasons discussed above, I am satisfied that the Tribunal correctly assumed jurisdiction in this case and correctly identified the proper parties to the dispute.

36. Finally, the court is satisfied that the Tribunal did not in any sense act in breach of section 110 of the 2004 Act. That section provides:

> "The title to any lands, or property shall not be drawn into question in any proceedings before a mediator, an adjudicator or the Tribunal under this Part."

37. No authorities were opened to the court in relation to the proper interpretation of section 110, and the court considers it appropriate to leave any substantive questions in relation to the meaning and operation of the section to a case where the issue is argued fully and properly. However, for the purposes of this appeal, it is appropriate to observe that the section appears to have a relationship to the broader proposition in pre-existing landlord and tenant law that a tenant should not impeach the title of their landlord. In this appeal, it is clear for the reasons set out above that the Tribunal properly proceeded on the basis that Monopod was the registered owner of the premises, was in regular receipt of rent from the tenant, and had been identified by the appellant as her landlord in formal documents seeking statutory payments. Monopod was the landlord within the meaning of section 5 of the 2004 Act, and a proper party to the dispute resolution process under the Act. Recognising that fact for the purposes of the procedures under the 2004 Act did not involve the Tribunal determining any question of title to the premises. In fact, it is quite clear that approach adopted – apparently by Mr. Gilroy - before the Tribunal amounted to a misguided attempt to stultify the process of the Tribunal by asserting the existence of a title dispute. This was so despite the fact that there was no evidence whatsoever that Mr. White had ever sought to litigate that issue in the courts. Viewed in that way, the court is satisfied that rather than determining a title dispute, the Tribunal quite correctly acted in accordance with section 110 of the 2004 by not considering or determining the asserted title dispute.

38. For the reasons set out above, the court will refuse the appeal herein. As this decision is being delivered electronically the matter will be listed for final orders and any issue in relation to costs on the 14 November 2023.