

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2025] IEHC 113

Record No. 2024/291 MCA

BETWEEN:

MACIEJ OLASZEWSKI

APPLICANT

AND

THE RESIDENTIAL TENANCIES BOARD

RESPONDENT

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 25th day of February 2025

INTRODUCTION

Preliminary

1. This judgment deals with a preliminary issue in a purported appeal taken by Mr. Maciej Olaszewski (“the appellant”) against a Determination Order made by the Residential Tenancies Board (“the RTB”), dated 31st January 2024 in relation to a rented property located at 9 Coolrairie Estate, Mayorstone, Limerick.
2. On 24th July 2024, the High Court (Hyland J.) directed that a preliminary hearing as to whether the appellant’s application was issued outside of the relevant period of 21 days provided for in section 123(8) of the Residential Tenancies Act 2004, as amended (“the 2004 Act”).
3. This judgment is concerned with that preliminary issue and not with the merits of the underlying application.
4. The appellant represented himself; Declan Harmon BL appeared for the RTB.

THE ISSUE

5. As mentioned, the preliminary issue directed by the court relates to the fact that in seeking to bring an appeal against the Determination Order, a purported notice of motion was served by the appellant on both the RTB and the Central Office of the High Court on 23rd February 2024, but this had not in fact issued from the High Court prior to service.

6. The averments and exhibits set out in the Affidavit of Janette O'Halloran, Head of Legal Affairs and Enforcement of the RTB, sworn on 6th September 2024, confirm that the relevant Determination Order was made on 31st January 2024 and was issued to the parties on 6th February 2024 by registered post. Consequent upon the application of the 2004 Act, and in particular, section 123(3) and section 123(8) thereof, an appeal was required to have been issued by 27th February 2024.

Notice of Motion

7. The notice of motion, the subject of this application, is dated 23rd February 2024. It has three receipt date stamps. The important one, insofar as the preliminary issue is concerned, is the date stamp of the Central Office of the High Court, which is dated 17th June 2024. The other date stamps confirm that the RTB received the notice of motion on 25th June 2024 and that the RTB Dublin received same on 26th June 2024.
8. The preamble to the notice of motion states as follows:

“Please take notice that I, Maciej Olaszewski, the plaintiff, intended to bring a motion before this Honourable Court on ~~27 May 2024~~ (24 July) at ~~12pm~~ [10.00am] or as soon thereafter as counsel may be heard from the following relief:-

[(1) An extension of time to appeal the decision of the Residential Tenancies Board if required]

(2) To dispute the DEFENDANT Determination Order issued on 06th Feb 2024.

The grounds upon which this motion is made are as follows”.

9. In the application before me, the appellant stated that he had not, in fact, added the reference to “[*(1) An extension of time to appeal the decision of the Residential Tenancies Board if required]*” or had struck out the reference to “*27th May*” and “*12pm*” and that those amendments had been made by an official in the Central Office.

10. This supports the central issue in this case, namely, that the appellant had served a notice of motion which had not, in fact, issued from the Central Office of the High Court. The insertion or addition of an extension of time to appeal the decision of the RTB does not, of course, determine whether or not the appellant is entitled to such an extension, which is an aspect of the preliminary issue to be determined.

11. The appellant makes the further complaint that, arising from the direction of the High Court (Hyland J.), the RTB was required to file its opposition papers within four weeks from 24th July 2024 and the appellant was to file his response within a further four weeks, but that the RTB failed to meet this deadline. Mr. Harmon BL, on behalf of the RTB, states that the appellant has omitted a reference to the intervention of the period comprising the long vacation which he submits should be factored into that period. In any event, the statement of opposition was date stamped as filed in the Central Office of the High Court on 10th September 2024 and the appellant’s response was dated 20th September 2024.

12. Whether or not the long vacation was factored in, in terms of the direction, there is no prejudice to the appellant. I also note that, on 12th August 2024, Byrne Wallace LLP, solicitors for the RTB, wrote to the appellant and the stated as follows:

“We refer to the above matter which appeared for mention before Hyland J. on Wednesday, 24th July 2024.

On that date, Hyland J. made the following directions:-

- (1) The RTB has four weeks from 24th July 2024 to file opposition papers.*
- (2) The appellant has a further four weeks therefrom to file a response if required.*
- (3) The matter was adjourned for mention to 6th November 2024.*
- (4) Byrne Wallace LLP to write to the appellant setting out these directions.*

We confirm that the RTB’s opposition papers will be served on you in due course. Please confirm whether you consent to service of papers by email in this matter by return to artoconnor@Byrnewallace.com.”

13. The substance of the issue was enjoined by the parties in a Statement of Opposition dated 6th September 2024 on behalf of the RTB and a Response to that Statement of Opposition, on behalf of the appellant, which was dated 20th September 2024.

14. These matters were averred to on behalf of the RTB in the affidavits of Janette O'Halloran, Head of Legal Affairs and Enforcement with the RTB, sworn on 6th September 2024 and in the Affidavit of Art O'Connor, Solicitor of Byrne Wallace LLP (the RTB's solicitors) also dated 6th September 2024.

15. The issues, from the appellant's perspective, were also averred to by Mr. Olaszewski in an affidavit sworn on 18th September 2024, which also set out exhibits confirming the date of service of the unissued notice of motion on 23rd February 2024, issues with the stamp duty and that, on 17th February 2024, the appellant had notified both the RTB and his landlord of his intention to appeal the Determination Order to the High Court.

16. In summary, the RTB's position is that having regard to the 2004 Act and relevant case-law and in circumstances where the appellant's purported appeal was issued out of time and the High Court has no jurisdiction to allow an extension of time, the appellant's application must fail.

17. In summary, at paragraphs 5 to 9 of the Response document dated 20th September 2024, the appellant *inter alia* sets out the position, insofar as he is concerned, in relation to the preliminary issue, as follows:

“(5) *The Notice of Motion was filed within the 21-day period; however, delays in registration were beyond my control.*

(6) *Prior to submitting the documents to the High Court, I was informed of an incorrect stamp duty fee, resulting in the return of the documents. I promptly*

rectified this error by amending the documents and paying the appropriate stamp duty.

(7) *The original Notice of Motion was served on the 23rd February, within the 21-day deadline. Both the RTB and the High Court were served on the same day.*

(8) *The registration of the Notice occurred on the 17th June, after escalation efforts. This delay was beyond my control, and the court subsequently scheduled the hearing within a month of registration, which I acknowledge and appreciate.*

(9) *In summary, the RTB provided false information regarding the timelines of service, failed to file its opposition papers on time, and I provided evidence showing that I filed my documents in accordance with the prescribed timelines.”*

THE RESIDENTIAL TENANCIES ACT 2004 (AS AMENDED)

18. Section 123(1) to (8) of the 2004 Act provides for the binding nature of Determination Orders as follows:

“(1) A determination order embodying the terms of an agreement referred to in section 96(1) or the determination of an adjudicator under section 97 shall become binding on the parties concerned on the order being issued to them.

(2) A determination order embodying the terms of a determination of the Tribunal shall, on the expiry of the relevant period, become

binding on the parties concerned unless, before that expiry, an appeal in relation to the determination is made under subsection (3).

(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.^[1]

(4) The determination of the High Court on such an appeal shall be final and conclusive.

(5) The High Court may, as a consequence of the determination it so makes, direct the Director to cancel the determination order concerned or to vary it in such manner as the Court specifies and the Director shall cancel or vary the order accordingly; if the cancellation or variation directed to be made relates to a determination of the Tribunal not to deal with the dispute in accordance with section 85, the Board shall, in addition, refer all or part, as appropriate, of the dispute to the Tribunal for determination by the Tribunal and the provisions of this Part shall, with any necessary modifications, apply to that determination.

(6) References in section 124 to a determination order shall, where that order embodies the terms of a determination of the Tribunal, be construed as references to—

(a) such an order as respects which an appeal against the determination embodied in it has not been made under this section within the relevant period or, if such appeal has been brought, it has been abandoned, or

¹ Underlining added in this judgment.

(b) if such an appeal has been brought (and the result of the appeal does not require the Director to cancel the order under subsection (5)), as the case may be—

(i) such an order in the terms as it was originally made, or

(ii) such an order in the terms as it stands following the variation of it by the Director under subsection (5).

(7) The Board shall publish, in such manner as it thinks fit—

(a) a determination order issued by the Director (including such an order as it stands varied by it under subsection (5)),

(b) notice of the cancellation of such an order under subsection (5) or section 125.

*(8) In this section “relevant period” means the period of 21 days beginning on the date that the determination order concerned is issued to the parties.”*²

ORDER 84C OF THE RULES OF THE SUPERIOR COURTS 1986³

19. O. 84C, r. 1(2) of the RSC 1986 provides as follows:

“1. (2) Where any enactment provides for an appeal to be made to the High Court or to a judge of the High Court from a decision or determination made or direction given by a person or body, other than a court, which person or body is authorised by any enactment to

² Underlining added in this judgment.

³ Also herein referred to as “RSC 1986”.

make such decision or determination or give such direction (in this Order referred to as ‘the deciding body’), and provision for the procedure applicable is not made either by the enactment concerned or by another Order of these Rules, the procedure set out in the following rules of this Order shall apply, subject to any requirement of the relevant enactment”.

20. O. 84C, r. 2.(5) of the RSC 1986 provides that:

“Subject to any provision to the contrary in the relevant enactment,⁴ the notice of motion shall be issued - (a) not later than twenty-one days following the giving by the deciding body to the intending appellant of notice of the deciding body’s decision, or (b) within such further period as the Court, on application made to it by the intending appellant, may allow where the Court is satisfied that there is good and sufficient reason for extending that period and that the extension of the period would not result in an injustice being done to any other person concerned in the matter.”

21. The principle legal issue which arises in the application before me was addressed in the decision of the High Court (Noonan J.) in *Noone v RTB* [2017] IEHC 556; [2019] 1 I.R. 205.

⁴ Underlining added in this judgment.

22. In *Noone*, the following *obiter dicta* in the judgment delivered by Hogan J. in the Court of Appeal⁵ in *Keon v Gibbs* [2017] IECA 195 was referred to and adopted by Noonan J.:

*“[24.] Perhaps the first thing to note is that there is nothing in s. 123 of the 2004 Act which indicates that this statutory time limit might be extended under any circumstances. It is true that in *Law Society of Ireland v. Tobin* [2016] IECA 26 this Court held that it enjoys an inherent jurisdiction to extend time where the relevant statutory provision permitting an appeal did not expressly provide for such a power. This, however, was in the context of an appeal from the High Court to this Court, where the right of appeal is constitutionally guaranteed by Article 34.4.1 unless regulated or excepted by law.*

*[25.] The present case is quite different, since - unlike the position in *Tobin* - the right of appeal to the High Court from the Tribunal is entirely dependent on statutory vestiture. If, however, the Oireachtas has not provided for a power to extend time in this particular context, an issue must arise as to whether there is such a power at all under any circumstances, no matter what good reason for the delay may be advanced by any putative appellant.*

[26.] The second thing to note is that the High Court proceeded on the basis that Ord. 84C independently conferred a power to extend time. I am not, with respect, convinced, however, that this premise is altogether correct. It is true that Ord. 84C, r. 2(5)(b) does provide for

⁵ The Court of Appeal comprised Finlay Geoghegan, Peart and Hogan JJ.

*a power to extend time, but this is expressed to be contingent on ‘any provision to the contrary in any relevant enactment.’⁶ If the proper construction of s. 123(3) of the 2004 Act is that it provides for a strict 21 day time limit which is not capable of extension, then this would amount to a ‘provision to the contrary’ such as would negative the potential operation of Ord. 84C, r. 2(5)(b). Certainly, if this is the proper construction of s. 123(3), then the scope of that appellate jurisdiction could not be changed or enlarged by Rules of Court: see, e.g. , *The State (O’Flaherty) v. O Floinn* [1954] I.R. 295 ; *Rainey v. Delap* [1988] I.R. 470. A further consideration is that in view of the provisions of Article 15.2.1 of the Constitution (which vests exclusive legislative power in the Oireachtas) then, as I observed in *Gokul v. Aer Lingus plc* [2013] IEHC 432: ‘any such change could only be brought by primary legislation enacted by the Oireachtas and could not be done not simply by Rule of Court’”.*

23. After referring to and adopting the above extract from the judgment of Hogan J. in *Keon v Gibbs* [2017] IECA 195, Noonan J. then addressed, at paragraphs 21 and 22 of his judgment in *Noone*, the central question, which also forms the gravamen of the preliminary issue on this application, as follows:

“(21) The wording of s. 123(3) and (8) is clear on its face and an appeal must be brought within 21 days of the date that the determination order is issued. By any reckoning, the appellant was

⁶ Underlining added in this judgment.

outside the 21 day period in bringing this appeal. There does not appear to me to be any ambiguity in the wording of the section which might be said to leave open the possibility of the court having a discretion to extend the time. Had the Oireachtas intended that such a discretion be available to the court, it could have expressly so provided. It is worth noting in that regard that s. 88 of the 2004 Act gives express power to the RTB to extend the time limited by the Act for referral of a dispute to it for resolution.

Thus section 88 provides: “(1) The Board may, on application to it, extend the time limited by any provision of this or any other Part for the referral of a dispute to it for resolution. (2) The Board shall not extend the time concerned unless the applicant for the extension shows good grounds for why the time should be extended...”

(22) Had the Oireachtas wished to provide for a similar power to extend on the part of the court in the case of an appeal to the High Court, it would presumably have done so in similar terms. The fact that the Oireachtas did not do so must be viewed as not only deliberate but as amounting to a provision “to the contrary” within the meaning of O. 84C r. 2(5)(b) as suggested by Hogan J”.

24. In applying the decision of the High Court (Noonan J.) in *Noone v RTB* [2017] IEHC 556; [2019] 1 I.R. 205, I am satisfied that the appellant issued the subject appeal outside of the 21 day period prescribed by section 123(8) of the 2004 Act and that the time limit prescribed therein is an absolute one and that I do not enjoy any discretionary jurisdiction to extend the period.

25. Similar issues were also addressed in Chapter 9, Dispute Resolution (Section 13-Tenancy Tribunal) of Cassidy and Ring, *Landlord and Tenant Law: the Residential Sector* (2nd ed., 2020) at paragraphs 9-153 to 9-159 where, by references to the 2004 Act, the RSC 1986 and case law, under the sub-heading “*No extension of the 21 day appeal period*” the learned authors *inter alia* observe beginning, for example, at paragraph 9-153, that “*an appeal of a determination order made by a tenancy tribunal to the High Court on a point of law must be made within 21 days beginning on the date it is issued to the parties. If an appeal is not brought within that time frame, the High Court does not have jurisdiction to extend the appeal period and the appeal will be out of time*”.

26. In addition, I also note the observations of the learned authors of *Delany and McGrath on Civil Procedure* (5th ed., 2023) Chapter 2 – Commencement of Proceedings (Section D – Originating Notice of Motion), at paragraph 2-119, by reference to the decision of Finnegan P. in *McK v F* (unreported, the High Court (Finnegan P.) 12th April 2002) that “*it would appear from the decision in McK v F that the position will generally be that proceedings will be deemed to have been brought when the originating notice of motion has issued out of the Central Office rather when the proceedings have been served*.”

27. It is unfortunate that the appellant in this case sent an “unissued” copy of a notice of motion by registered post on 23rd February 2024 which was received by the RTB on 26th February 2024.

28. By e-mail dated 1st March 2024, the solicitors on behalf of the RTB asked for details of the record number of the purported proceedings and the return date before the High Court, to which there was no reply.
29. The relevant date, however, is the date that the motion “issued” from the Central Office of the High Court for the purpose of establishing whether or not the proceedings were issued within the time limit provided for in section 123(3) and section 123(8) of the 2004 Act.
30. As referred to earlier in this judgment, the date stamp from the Central Office of the High Court on the Notice of Motion is 17th June 2024 and in Mr. O’Connor’s Affidavit sworn on 6th September 2024 he also exhibits a copy a screenshot of the High Court search which refers to “Issue Date: 17/06/2024”, in circumstances where any appeal was required to have been issued by 27th February 2024.
31. In the circumstances, in determining the preliminary issue directed in this case, I find that the appellant’s purported appeal was not issued within the time period prescribed by section 123 of the 2004 Act and that this time period cannot be extended. Accordingly, the appellant’s application must fail *in limine*.

PROPOSED ORDER

32. I proposed to make an order which determines the preliminary issue by finding that the appellant’s purported appeal was not issued within the time period prescribed by section 123 of the Residential Tenancies Act 2004 (as amended) and as this time period cannot be extended, the appellant’s application must fail *in limine*.

33. The central issue, the subject of this judgment, was communicated by the RTB's solicitors in correspondence sent to the appellant on 10th July 2024. The final paragraph of that letter stated as follows:

“In circumstances where our client believes that this appeal is out of time and the Court has no jurisdiction to hear the appeal or to extend time to hear the appeal, our client confirms that if the appeal is withdrawn by the next listing of this matter on 24th July 2024, our client will not seek its costs against you. However, if the matter proceeds beyond that date, we are instructed that our client will pursue all of its costs against you in respect of these proceedings and will take all necessary steps to protect its position in this regard”.

34. My provisional view, subject to hearing further from the parties, is that as the RTB has been entirely successful in the determination of this preliminary issue, the default position – (having regard to section 169(1) of the Legal Services Regulation Act 2015 and (a re-casted) Order 99, rules 2 & 3 of the Rules of the Superior Courts 1986 (as amended)) – is that costs follow the event unless the court orders otherwise, having regard to the particular nature and circumstances of the case and the conduct of the proceedings by the parties (including the matters set out at sections 169(1)(a) to (g) of the Legal Services Regulation Act 2015).

35. I shall put the matter in for mention before me at 10:30 on Thursday 13th March 2025 so that the parties can address final orders and any consequential or ancillary matters

which arise, having regard to my finding that the appellant's application must fail *in limine*, including whether or not there are circumstances arising in this appeal which would militate against making an order of costs in favour of the RTB as against the appellant.

CONLETH BRADLEY