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Judgment Title: **Canty** v PRTB & Connolly v **Canty**

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Court: Supreme Court

Composition of Court: Denham J., Hardiman J., Fennelly J., Macken J., Finnegan J.

Judgment by: Fennelly J.

Status of Judgment: Approved

Judgments by	Link to Judgment	Result	Concurring
Fennelly J.	Link	Other (see notes)	Denham J., Hardiman J., Macken J., Finnegan J.

Notes on Memo: Dismiss Appeal in 191/07 Question answered in affirmative in 425/10

THE SUPREME COURT

Appeal No. 191/2007

Denham J.
Hardiman J.
Fennelly J.
Macken J.
Finnegan J.

BETWEEN

JACK CANTY

APPELLANT

AND

PRIVATE RESIDENTIAL TENANCIES BOARD

RESPONDENT

AND

DAVID CONNOLLY

NOTICE PARTY/RESPONDENT

Appeal No. 425 / 2010

CASE STATED

IN THE MATTER OF THE RESIDENTIAL TENANCIES ACT, 2004

BETWEEN

JACK CANTY

APPELLANT

AND

DAVID CONNOLLY

RESPONDENT

JUDGMENT of Mr. Justice Fennelly delivered the 19th day of July 2011.

1. This judgment deals with two cases brought before the Court by Mr Jack **Canty**. In the first, he appeals against a decision of the High Court (McKechnie J) refusing him judicial review in relation to a decision of the respondent (the Private Residential Tenancies Board, hereinafter "the Board") to issue summonses prosecuting him for breaches of the terms of a direction of the Board. The second case is a case stated from the High Court (de Valera J) on an appeal taken by Mr **Canty** to the Circuit Court. The question is whether the court may deal with an interim direction of the Board after a final Determination Order has been made.

2. The above case no 190/07 is an appeal against a judgment of McKechnie J in the High Court, of 27th April 2007, in which he refused the appellant's application for judicial review, principally in the form of prohibition, seeking to prevent the Board from prosecuting the appellant for offences contrary to the Residential Tenancies Act, 2004 (hereinafter "the 2004 Act").

3. The factual background to the proceedings is that the appellant was a tenant of a residential property owned by the Notice Party. In three summonses issued on 21st July 2006, the respondent alleges that the appellant had failed to comply with the terms of a Determination Order made on 19th April 2006 under the provisions of the 2004 Act. The appellant advances three grounds in support of his application for judicial review. He also claims that McKechnie J wrongly refused him leave to amend his judicial review statement by the addition of a fourth ground.

4. On 22nd September 2004, the appellant entered into an agreement in writing with the Notice Party whereby he became tenant to the latter of a dwellinghouse at 14, The Orchard, Crosshaven, Co. Cork for the term of six months from 22nd September 2004 to 31st March 2005 at a rent of €700 per month, renewable, at the appellant's option, for a further period of six months on the same terms and for a further period of twelve months subject to the option of the Notice Party to increase the rent by a specified amount.

5. Early in the tenancy, a dispute broke out between the parties regarding the high level of ESB bills, which was apparently due to a fault in the wiring system. This fault and responsibility for it were acknowledged on behalf of the Notice Party. Nonetheless, disputes became protracted and acrimonious.

6. At this point, it should be noted that the tenancy had not been registered with the respondent as is required by the provisions of the 2004 Act. The Notice Party was advised of the need for this step in March 2005. He obtained a registration form and asked the appellant to sign the form and supply the necessary information, which included his PPS number. The appellant has never supplied that information, although he has been at pains to rely on the failure to register in his proceedings for judicial review. He has offered this Court no explanation for this omission.

7. Both parties referred disputes to the respondent for dispute resolution pursuant to the 2004 Act. The appellant complained that the Notice Party had failed to undertake necessary repairs to the heating system and that he suffered expense and loss of amenity, in particular by having to reduce the area of the dwelling he could afford to heat. The Notice Party served a notice of termination of tenancy. The details of these disputes need not concern us. They were resolved by the respondent in accordance with the statutory procedures.

8. On 5th August 2005, the tenancy was duly registered with the respondent and the appellant was informed of this fact in writing by the respondent.

9. The respondent decided to hear and determine the two disputes together. For that purpose, on 25th August 2005, it gave notice of an adjudication hearing for 12th September 2005. The adjudication hearing in fact took place on 19th October 2005. Its report was dated 26th October 2006. The appellant requested that the respondent appoint a Tribunal to hear the matter de novo. He filed a notice of appeal on 5th December 2005.

10. The respondent constituted a three-person Tenancy Tribunal in accordance with section 102 of the 2004 Act. The Tribunal sat on 27th January and 20th February 2006. The report of the Tribunal deals both with the dispute referred by the appellant and that referred by the Notice Party. In broad terms, the Tribunal accepted that the appellant had grounds for complaint regarding the matter of excessive electricity bills, although, it is fair to say that the legitimacy but not the extent of this complaint had been accepted on behalf of the Notice Party. The Tribunal held that the notice of termination of tenancy served by the Notice Party was not valid. At the heart of the matter was that, as the dispute continued, rent was mounting up and not being paid. As of February 2006, about €7,700 was outstanding. The appellant had offered to pay €300 per month, based on his own assessment of his loss of amenity. He claimed that he was entitled to withhold rent because of what he called the "retaliatory nature of the notice of termination."

11. In the event, the Tribunal decided that it would make an interim direction in accordance with section 117 of the 2004 Act "in respect of rent." It ruled that its interim direction "might not necessarily be the relief provided for in the final determination in the matter." The interim direction, given on 15th February 2006, was as follows:

> "INTERIM DIRECTION
>
> 1. Mr **Canty** [the appellant] shall forthwith pay to Mr Connolly [the Notice Party] the sum of €3,300 being part of the rent outstanding.
>
> 2. Mr **Canty** shall pay to Mr Connolly within 30 days from the date of this hearing the sum of €2,200 in respect of outstanding rent less the agreed deduction of €475 in respect of electricity consumption.

> 3. Mr **Canty** shall pay to Mr Connolly the further sum of €2,400, being the balance of the arrears within 60 days from the date of this hearing."

12. The Tribunal reconvened on 22nd February 2006. It made its final determination in its report of 13th April 2006. It determined that the appellant was entitled to a total sum of €1,000 in respect of loss of amenity as a result of the defective heating system. That was to be "set off against the sum of €475 already agreed to be paid by the respondent Landlord in respect of ESB bills, with the balance of €525 to be set off against the arrears of rent due by the Applicant Tenant." It ordered the appellant to pay all arrears of rent, "amounting to the sum of €8,400 at the date of the resumed hearing (being twelve months at €700 per month." It added that further sums were to be "payable as they fall due."

13. The appellant did not appeal against this final order, which, accordingly became binding on the parties pursuant to section 123(2) of the 2004 Act. The Act contains no corresponding provision in respect of an interim direction.

14. On 11th April 2006, the Notice Party applied to the Circuit Court in Cork, pursuant to section 124 of the 2004 Act, for an order directing the appellant to comply with the interim direction of 15th February. That was, of course, prior to the issue by the Tribunal of its final determination. The appellant contested the jurisdiction of the Circuit Court.

15. The Circuit Court required the appellant to lodge in court the sum, initially of €5,000, later reduced to €3,250.

16. On 19th July 2006, the Circuit Court made an order in the following terms:

> 1. That the Respondent [the appellant] be directed to comply with the terms of the Determination made by the Private Residential Tenancies Board on the 15th day of February 2006, allow for deduction of €3250.00 lodged in court by the Respondent on the 18th day of July 2006.
>
> 2. That the Respondent be directed to furnish his Personal Public Service Number to the Applicant [the Notice Party].
>
> 3. That the sum of €3250.00 lodged in Court on the 18th day of July 2006 be paid out to [the Notice Party] via his Solicitors.
>
> 4. That the Notice Party do recover the costs of these proceedings from the Respondent when taxed and ascertained.

17. In effect, the appellant had been required to lodge the sum of €3250 in court but that sum was paid out to the Notice Party.

18. The appellant did not comply with the interim direction. Nor did he comply with the final determination. He did, however, pay into court the sum already mentioned together with a further sum required by order of the High Court. These sums amounting to some €5000 have been paid out to the Notice Party. Otherwise, the appellant has not paid any rent. Nor has he provided his P.P.S. number.

On 25 August 2006, solicitors representing the Board wrote to the appellant threatening that proceedings would be issued against him pursuant to section 126 of the 2004 Act based on his failure to comply with the final Determination Order made by the respondent on 19th April 2006. Three summonses were issued on 21st July 2006 made returnable to Cork District Court on 16th October 2006. The summonses were served on the appellants on 29th August 2006. Those summonses allege, respectively, that the appellant had failed to comply with the terms of the Determination Order, within the respective times allowed in, by:

> • Failing to pay the sum of €8,400 being arrears of rent at a rate of €700 per month for the period March 2005 to February 2006;
>
> • Failing to furnish the respondent with his PPS number;

- Failing to pay the Notice Party rent at the rate of €700 per month from March 2006.

19. The appellant appealed to the High Court against the decision of the Circuit Court of 19th July 2006. In effect, he claims that the interim direction could no longer be enforced once a final determination had been made. After the hearing of the case in the High Court and while judgement had been reserved by de Valera J, the appellant applied to the learned judge and he agreed that he would state a case to this court in the form of the following question:

> "May a private landlord proceed under s, 124 of the Residential Tenancies Act 2004 to Enforce a s. 117 [of the same Act] ' interim direction' after a s. 121(1)(c) [of the same Act] ' final determination' has been issued by the (Private Residential Tenancies) Board notwithstanding the provision(s) of s.189 [of the same Act]?"

20. That question is the subject of the second matter dealt with in this judgment (Appeal No. 425/10).

Judicial Review Proceedings

21. On 1st November 2006, the appellant applied for leave to apply for judicial review by way of certiorari of the decision of the Board to prosecute him, and prohibition and/or an injunction to restrain the Board from proceeding with the prosecution. The grounds are expressed in diffuse language and employ unfamiliar American legal jargon. However, McKechnie J discerned the following three central points of complaint, even if it is not clear that the grounds, particularly the second one set out below, are clearly put forward in the Statement to Ground Judicial Review. In essence, the grounds are as follows:

> 1. The report of the Board which contains its Determination Order is required by section 103(7) of the Act to be a "decision of a majority of the members of the Tribunal," but was signed by only one;
>
> 2. The tenancy had not been registered at the date of the referral of the disputes to the respondent: for that reason the Board had no jurisdiction to deal with the disputes;
>
> 3. The Board did not have power to institute criminal proceedings until it had taken the appropriate civil proceedings to enforce its orders.

22. In addition, the appellant claims that McKechnie J wrongfully refused to permit him to amend his grounds so as to include an additional complaint, namely that the seal of the Board had not been properly authenticated pursuant to section 173 of the 2004 Act.

23. It was decided in the High Court that the Board and the Notice Party should be put on notice of the application for leave. A first hearing for that purpose was held on 23rd February 2007. While no order was made up, it is agreed that McKechnie J on that date decided to grant leave on the three grounds mentioned above. Accordingly, the full hearing took place on 27th April 2007. At that stage the court had the benefit of affidavits sworn by the two members, other than the chairperson, who had sat on the Tenancy Tribunal of the Board. They were to the effect that the decision of the Tribunal was unanimous.

24. McKechnie J rejected all three grounds of judicial review. It is unnecessary to repeat his reasons. They are largely replicated in what I have to say below.

First Point; a majority decision

25. The Tribunal's determination is contained in the form of a full report dated 19th April 2006. The report recounts in some detail the proceedings which had taken place and the Tribunal's own conclusions. It provides places for the signatures of three persons above their printed names: Aideen Hayden, Anne Colley and Conn Murray. In fact, only Aideen Hayden signed as "Chair." The whole of the appellant's case revolves around this. He treats the decision as being that of only the chairperson. He says that the evidence of the other two members was not contemporaneous.

26. In my view, this point is completely without merit. The report and findings of the Tribunal are expressed throughout as being the views of the Tribunal. No reasonable person would read it as comprising the view only of the person who signed it. Section 103(7) does not require any

particular formality: merely that the decision be by majority. McKechnie J rightly observed that it was "not a signature, or seal or authorisation provision." The High Court knew from the unchallenged evidence of the other two members that the decision was, in fact, unanimous.

27. The appellant seeks to invest the simple requirement that the decision be by majority with a need for formal expression, which is entirely absent from the section. I reject this ground of appeal.

Second Point: the tenancy was not registered

28. On the facts, the tenancy was not registered until 5th August 2005. It was not, therefore, registered when the two disputes were referred to the respondent. The appellant says that it follows that the respondent had no jurisdiction to deal with the disputes. This point turns essentially on section 83 of the 2004 Act, which provides:

> (1) Subject to subsection (3), the Board shall not—
>
> (a) deal initially with a dispute referred to it under this Part, or
>
> (b) allow any other procedure under this Part to be followed in relation to a dispute referred to it under this Part,
>
> if the fee of the specified amount prescribed by rules under section 109 in relation to that initial dealing or the following of that procedure has not been paid to it.
>
> (2) Subject to subsection (3), the Board shall not deal with a dispute in relation to a tenancy referred to it under this Part by the landlord of the dwelling concerned if the tenancy is not registered under Part 7.
>
> (3) The Board may, in the case of a default in payment of a particular fee or registration under Part 7 of a particular tenancy, notify the person or persons concerned of the default and afford the person or persons concerned a reasonable opportunity to rectify the matter; if the matter is rectified within a reasonable time the Board shall, subject to this Part, deal with the dispute or permit the other procedure to be followed in relation to it, as the case may be.

29. As already mentioned, the Notice Party obtained a registration form in early March 2005. He delivered it to the appellant so that he might sign it and supply the necessary information, which included his PPS number. The appellant ignored this and other requests, saying at most that the matter "was under advisement." The appellant, from as early as 22nd March 2005, was writing to the respondent saying that he wished his landlord "to be accountable for violating the law." He was at pains, in the same letter, to insist that registration was not a condition of his own access to the Board's processes. In this he was technically correct. It is clear, however, that he declined to co-operate in having the tenancy registered.

30. McKechnie J rightly took the view that this section, in particular, subsection 2, "does not declare an application received prior to the registration of the tenancy to be a void one." He found subsection 3 to be of particular assistance. It showed that the respondent has "power to deal in a pragmatic way with an application which precedes the registration of a tenancy." I agree. That provision permits the Board to notify an applicant of any default in registration for the purpose, expressly stated, of affording the person concerned "an opportunity to rectify the matter." It also allows a reasonable time for that purpose. Once the matter has been attended to, the Board is obliged—the word is "shall"—to deal with the dispute. This section does not deprive the Board of jurisdiction to receive a dispute merely because the tenancy has not been registered. Certainly, it may not deal with it until the matter is attended to. But that is all.

31. On the facts, the Board did not take any substantive step to deal with the disputes until after 5th August 2006, when the tenancy had been registered. I would add that it comes oddly from the appellant to make the point about absence of registration in view of his own patent failure to co-operate in the process, even to the extent of failing to provide his own PPS number.

32. The appellant makes an additional point based on rule 4 of the "Dispute Procedure Rules" of the Board. That Rule reads:

> "The Board shall not accept a dispute referral from a landlord of a tenancy that is not registered with the Board."

33. Section 109(1) of the 2004 Act provides:

> "The procedure to be followed under this Part in relation to a dispute shall, subject to this Part, be such as shall be determined by the Board by rules made by it with the consent of the Minister."

34. The procedural rules, including Rule 4, were adopted under this provision. Even if the law were not so, in any event, the rules are expressly made "subject to the provisions of the Act." (Rule 1) There could be no question of a procedural rule contradicting the terms of section 83 of the Act by laying down an additional rule affecting the jurisdiction of the Board. The appellant relies on the definition of an enactment in section 2 of the Interpretation Act 2005 and, in particular, on section 20 of that Act, which provides that a definition in an enactment is to apply both to that enactment and in any Act under which the enactment was made. I cannot see how that provision can affect the relationship between Rule 4 and section 83 of the 2004 Act.

35. It is impossible to resist the conclusion that the appellant used the failure in registration as a means of obstructing the Notice Party's access to the processes of the Board and not for any bona fide purpose.

36. I would make one further observation regarding the first two points, even though it does not figure in the High Court judgment. Neither of these points provides any basis for preventing a criminal prosecution. They relate to the evidence to be adduced at the hearing of the prosecution. If there is some imperfection in the evidence, that is a matter for the trial and not for judicial review. However, McKechnie J has dealt with the points on their merits and I have done the same.

The third point: no criminal proceedings prior to civil enforcement.

37. The appellant makes what McKechnie J treated as his most substantive point, namely that the respondent did not have power to institute criminal proceedings prior to exhaustion of the civil remedies provided by the Act. No civil proceedings have been taken to enforce the final determination order. The appellant expresses this complaint in various ways, including that the respondent violated its obligation to act judicially in consideration of the overall intent of the Oireachtas.

38. Section 124(1) of the 2004 Act provides:

> "(1) If the Board or a party mentioned in a determination order is satisfied that another party has failed to comply with one or more terms of that order, the Board or the first-mentioned party may make an application under this section to the Circuit Court for an order under subsection (2)."

39. Section 126 provides:

> (1) A person who fails to comply with one or more terms of a determination order is guilty of an offence.
>
> (2) Subsection (1) has effect notwithstanding the means provided under section 124 for enforcement of a determination order.
>
> (3) A person convicted of an offence under this section shall not be sentenced to any term of imprisonment in respect of that offence if he or she shows that the failure to comply with the term or terms concerned was due to his or her limited financial means.

40. The appellant relied in the High Court on what McKechnie J called a "principle of escalating remedies…" There should be no criminal proceedings until the civil route has been followed. The appellant here also relies on one of the Rules, namely Rule 21:

> "If there is non-compliance with a determination order of the Board and a party brings that fact to the attention of the Board and requests the Board to pursue the enforcement of its determination order, the Board must within 7 days of satisfying itself that the alleged non-compliance has occurred, apply to the Circuit Court for an order under section 124(2) of the Act."

41. The first objection to reliance on this provision has already been made with regard to Rule 4. This purely procedural rule could not affect or restrict the power of the Board to bring a prosecution pursuant to the express power conferred by section 126. The second is that, even in its own terms, it does not apply. It presupposes a request from one of the interested parties, here presumably the Notice Party. There is no evidence that any request was made to the Board as envisaged by the Rule.

42. Finally, and decisively, section 126 states, in the clearest terms, that the power it confers "has effect notwithstanding the means provided under section 124 for enforcement of a determination order." As McKechnie J put it, section 126(2) "can only be read as meaning that the taking of proceedings by way of civil remedy is not a pre-condition to the issue of summonses."

43. The Board submits that, furthermore, it has never been the law that one must exhaust civil remedies prior to initiation of criminal proceedings. The case of *Dillon v Dunne's Stores Ltd.*, [1966] IR 397 arose in the converse circumstances of an attempt to stay civil proceedings pending a criminal trial. However, the following dictum of O'Dalaigh C.J. is instructive: "As the plaintiff could not have had an order to postpone the criminal proceedings until the determination of her civil action, equally the hearing of the civil action cannot be required to await the conclusion of the criminal proceedings…"

44. I would reject this third point as equally without merit.

45. I am also satisfied that McKechnie J was right to refuse the application to amend the grounds for judicial review by the addition of a fourth ground. That was to the effect that the seal of the Board had not been properly authenticated in accordance with the provisions of section 173 of the 2004 Act. The appellant points to section 121(1), which requires that "the seal of the Board shall be affixed to a determination order." That provision is:

46. The seal of the Board shall be authenticated by the signature of—

> "(a) the chairperson of the Board or another member of the Board authorised by the Board to act in that behalf, and
>
> (b) the Director or a member of the staff of the Board authorised by the Board to act in that behalf.
>
> (3) Judicial notice shall be taken of the seal of the Board and every document purporting to be an instrument made by the Board and to be sealed with the seal of the Board (purporting to be authenticated in accordance with subsection (2)) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown."

47. I will assume, without expressing any opinion, that the seal of the Board has not been authenticated in accordance with this section. The respondent says that it has. I cannot see that it could make the slightest difference to the power of the Board to institute the proceedings pursuant to section 126. If some piece of evidence required authentication by the seal of the Board, it would be open to the appellant to object to its admissibility at the hearing of the prosecution. The fact that, at this point in time, a determination order has not been duly sealed does not mean that it cannot be sealed at a future date. Furthermore, as was argued at the hearing, section 173 may be regarded as a provision merely providing for one method of proof. Others may be offered. My essential ground for refusing the appeal on this point is that it provides no basis in law for preventing the prosecution.

48. I would uphold and affirm the decision of McKechnie J in its entirety. The appellant has produced no credible or arguable ground to challenge or cast doubt on the decision of the Board to

issue the three summonses against the appellant.

49. I turn then to consider the case stated. The essential situation is quite simple. The Respondent, on 15th February gave an interim direction pursuant to section 117 of the 2004 Act requiring the appellant to make certain payments in respect of rent and to provide his PPS number. The direction made it clear, as was consistent with its nature as an interim direction, and as is required by section 117(2), that the interim direction might not necessarily be the relief provided in the final determination. The Tribunal then continued with its consideration of the matter and on 19th April 2006 made a final Determination Order.

50. The appellant wrote to the Circuit Court on 10th May 2006 contending that the order relied upon by the Notice Party had been rendered moot by the final Determination Order of 19th April 2006.

51. Essentially, this is a question of jurisdiction. Does the interim direction automatically merge in the final determination and lose its legal effect? One can see immediately that there is a structural argument in favour of this view. If the appellant were to pay the outstanding sums in respect of rent provided for in the interim direction, it would be quite unjust and obviously wrong if he were to be required to pay the same amounts a second time on foot of a final determination.

52. However, it is necessary to consider the relevant sections. Key among these is section 121(1) which defines the term "determination order." That definition includes a "determination of the Tribunal" (paragraph (c)) and a direction given by a Tribunal pursuant to section 117. I set it out in full:

> "Each of the following—
>
> (a) an agreement mentioned in a report of a mediator under section 95 (4),
>
> (b) a determination mentioned in a report of an adjudicator under section 99,
>
> (c) a determination of the Tribunal notified to the Board under section 108,
>
> (d) a direction given by an adjudicator or the Tribunal under section 82 (5) or 117,
>
> shall be the subject of a written record (in this Act referred to as a "determination order") prepared by the Board and issued by it to the parties concerned."

53. In his written submissions to this Court, the appellant says that what he calls the pivotal point is the distinction between an "interim nature direction" included in section 121(1)(d) by reference to section 117 and a "post-hearing determination" included in 121(1)(c). He points out that under section 123(2) the latter, but not the former, can "become binding on the parties concerned" after the expiry of the relevant period. He reasons from this that an interim direction given under section 117 can never serve as the basis for private enforcement under section 124.

54. This argument, therefore, depends on the words of section 124, which is the enforcement provision. Section 124(1) provides:

> "(1) If the Board or a party mentioned in a determination order is satisfied that another party has failed to comply with one or more terms of that order, the Board or the first-mentioned party may make an application under this section to the Circuit Court for an order under subsection (2)."

55. The appellant contests the inclusion of the interim direction within the definition of "determination order." He regards it as inappropriate to include a step which is essentially short-term and temporary within the definition of a final order which is capable of enforcement by the court.

56. The appellant cannot, however, escape the explicit statutory definition. It includes an interim direction which is, therefore, necessarily enforceable by a Circuit Court order. Indeed, there would be little point in it, if it could not be given legal force and effect. The very purpose of the interim direction in the present case was to provide a remedy in the form of continuing payment of rent while the rest of the dispute was being resolved.

57. Section 117 enables a Tribunal to give interim directions of many types in favour of either landlord or tenant. Section 115(2) gives some idea of the breadth of declarations or directions which may be given by a Tribunal. Depending on their nature and the circumstances, many of these might well form the subject matter of interim directions. They include, for example directions: "that a specified amount of rent or other charge be paid…" (a); "as to the return or payment…of a deposit" (c); "that a dwelling be quitted by a specified date" (e); "as to the right to return to, or continue in occupation…" (g).

58. The matter is expressed thus in Landlord and Tenant Law; The Residential Sector by Una Cassidy and Jennifer Ring (Round Hall Press, Dublin 2010), at 9-94:

> "In addition to making orders which incorporate a final determination, adjudicators and tenancy tribunals may also make interim directions to have effect during the course of the dispute resolution process. The interim relief granted does not necessarily have to be or reflect the relief granted in the final determination of the matter."

59. In other words, an interim direction may deal with a matter which it becomes unnecessary to include in a final order. For example, an interim direction that the tenant continue to pay rent or that a landlord carry out specified repairs may not necessarily be included in the final order. There is also force in the submission of the Notice Party that the purpose of interim directions is to provide financial relief to persons such as he, who suffers ongoing financial loss and associated hardship during the continuance of proceedings. There is no reason in law or logic why the beneficiary of such a direction should not be able to enforce it even after the final determination order is made.

60. There is no provision in the Act to the effect sought by the appellant, which would merge the interim direction so that it would disappear and lose any value once a final determination was made.

61. An interim direction and a final determination order are alike enforceable by the Circuit Court in accordance with section 124. Provided the Court has power to ensure that no injustice is done, there is no intrinsic injustice in such a system. It may well be, of course, that there is overlap between an interim and a final direction. Clearly, a court will not make an order duplicating enforcement. Section 124 provides that "the Circuit Court shall make an order directing the party concerned (the "respondent") to comply with the term or terms concerned if it is satisfied that the respondent has failed to comply with that term or those terms…" The court will necessarily inquire into compliance with the respective directions and orders and make such order as is just and appropriate.

62. The appellant also submitted that the power to make or enforce interim directions lies only with the Board pursuant to section 189. That section applies "if the circumstances giving rise to or involving the dispute are such that, were proceedings in the Circuit Court to be brought in relation to the dispute, it would be appropriate to apply to that court for interim or interlocutory relief in the matter." In that situation, section 189(3) provides:

> "On being requested by the person (the "referrer") who has referred or is referring a dispute to it to do so, the Board may apply, on the referrer's behalf, to the Circuit Court for such interim or interlocutory relief in the matter as the Board considers appropriate."

63. Section 189 has nothing to do with the enforcement of determination orders, whether in the form of an interim direction or otherwise. As is clear from the wording of section 189(3) it applies, when "a person…has referred or is referring a dispute to [the Board]." The fact that it is not intended to deal with enforcement of determination orders already made is shown by the language of section 189(4) which permits the Board, when deciding whether to accede to a request, to have

regard to "the merits, as they appear to it, of the referrer's contentions that will be dealt with by an adjudicator or the Tribunal…" (emphasis added). The use of the future tense in this provision shows that it is intended to apply to pending disputes.

64. The authors, Una Cassidy and Jennifer Ring, in their work cited above, provide useful examples of the potential value of the provision. At Paragraph 9-112, they explain that:

> "A case of serious antisocial behaviour is an example of where it may be appropriate to make an application for relief under s.189 of the RTA 2004. Another example is where there has been a threatened or an actual unlawful eviction of a tenant from a dwelling."

65. They go on to instance a case where it has not been possible to set up a Tribunal with less than 21 days notice and there is need for urgent relief. The authors cite four instances of cases in which orders were made by different judges of the Circuit Court restraining landlords from interfering with the tenant's peaceful occupation pending resolution of the dispute. (see paragraphs 9-112; 9-114; 9-116; 9-117)

66. The appellant confuses the reference to "interim or interlocutory relief" in section 189(3) with interim directions given by an adjudicator or a Tribunal pursuant to section 117. The latter is a form of interim relief within the context of resolution of a dispute under the statutory procedures. It is enforceable pursuant to section 124, not section 189.

67. The appellant maintains that the effect of section 189 is that no private party may seek enforcement of an interim direction given under section 117. The point is patently without any merit. Section 124 enables either party to a dispute or the Board to apply to the Circuit Court for enforcement. Nothing in section 189 contradicts or qualifies that provision. Even on its own terms, section 189 would apply only if the landlord Notice Party had requested the Board to apply, which did not happen.

68. I am satisfied that the question in the case stated should be answered in the affirmative.

69. Although this judgment deals with only two of the various proceedings taken by the appellant in respect of the tenancy he had from the Notice Party, I think it right to say that none of the legal points were meritorious to the slightest degree. Regrettably, these proceedings and others have delayed the final resolution of disputes under the 2004 Act, which is intended to provide quick and effective remedies. One can only hope that all matters can be resolved without further delay.
