

LEGAL UPDATE

Receiver was not a necessary party to tenant's appeal

Doyle-v-Private Residential Tenancies Board [2016] IEHC 36
(High Court, Baker J, 2 February 2016)

The High Court determined that a receiver, as notice party, was not entitled to his costs in an unsuccessful statutory appeal brought by a tenant of a determination by the Private Residential Tenancies Board, on the grounds that the interests of the receiver and that of the Board were identical, and that the receiver did not have to participate in the litigation. However, the receiver was entitled to costs incurred due to the tenant's procedural errors.

The costs depend on the degree of participation of the notice party and whether that was justified, ie. whether a notice party was a 'necessary party' as a litigant. A notice party to a statutory appeal has a choice whether to instruct lawyers, and a separate choice whether to attend and participate in the hearing.

In this case, the interest of the receiver and that of the PRTB were identical, namely an interest in upholding the decision that the tenancy was lawfully determined and that substantial arrears of rent were owed and were directed to be paid. The notice party (receiver) could adequately have dealt with this appeal by direct engagement with the solicitors for the PRTB. Awarding the receiver with costs would have defeated the purpose of the legislation and the desire of the Oireachtas to achieve a cost-effective and speedy resolution of disputes in the residential sector.

However, procedural errors made by the tenant in the prosecution of the claim added considerably to the costs and expenses incurred by the receiver in having to engage with the appeal and, as a result, the receiver was entitled to the costs of the appearances and attendances necessitated by the initiation of the proceedings in the incorrect manner.

Conclusion

It is imperative that parties are aware of the impact of this ruling on a receiver's potential entitlements and risks when pursuing the litigation route. A receiver may not be entitled to have their costs covered if they were not deemed to be a necessary party to the litigation.

For more information, please call:



JAMES SHERWIN
Partner
D: +353 1 2120450
M: +353 86 6074627
Email: jsherwin@sor.ie
[Online profile](#)

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