



THE HIGH COURT

Record No. 2025/1758 JR

BETWEEN

GABRIELA HENNIGAN

Applicant

-and-

RESIDENTIAL TENANCIES BOARD

Respondent

-and-

LAURENT STACCHETTI

Notice Party

Ex Tempore Decision of Ms Justice Sara Phelan delivered 31st July 2026

1. This is my *ex tempore* decision in an application for leave to issue judicial review proceedings, which said application was made on notice to the respondent. For the reasons set out below, I am refusing the applicant leave to issue judicial review proceedings.

Brief factual background

2. The applicant is the owner, together with her husband (Mr Michael Hennigan), of a dwelling or property (“property”) in Dublin and in August 2023 they – as landlords – entered into a fixed term tenancy agreement with the notice party – as tenant – for the period from 11 September 2023 to 01 June 2024. The applicant claims that the tenancy agreement was superseded by a licence agreement on 11 September 2023 and that the notice party agreed to the change, but this is in dispute between the parties, with the notice party claiming that the first he became aware of this licence agreement was during the dispute resolution process facilitated by the respondent, the Residential Tenancies Board. Curiously, whilst the applicant and Mr Hennigan were named as landlords on the tenancy agreement and as licensors/homeowners on the subsequent licence agreement (which was signed solely by the applicant insofar as was evident from the papers before me), Mr Hennigan was not named as an applicant in the proceedings before me. Thus, and when referring in this decision to matters before the respondent, I will refer on most occasions to the applicant and Mr Hennigan as the “landlords” and when referring to the judicial review application, I will simply refer to the applicant as the “applicant”.
3. At the end of March 2024, the notice party was informed (whilst he was out of the country) that he would not be permitted entry into the property upon his return unless he paid an invoice sent to him by the applicant on 25 March 2024 and received by him on 31 March 2024. That invoice (the validity of which was contested by the notice party during the respondent’s dispute resolution process) was not paid and when the notice party returned to the property on 03 April 2024 the locks had been changed, despite the fact that the notice party had not been served with a notice of termination and despite the fact that rent had been paid up to 22 April 2024. The notice party ultimately retrieved his belongings from the property in mid-April 2024 and, on 12 April 2024, the notice party applied to the respondent for an adjudication of the dispute between the landlords and him.

4. The resolution of disputes between landlords and tenants is governed by Part 6 of the Residential Tenancies Act 2004 (“Act”) and for the purpose of this decision, the dispute was subject to adjudication by a single adjudicator, followed by an appeal – from the determination of the adjudicator – to the Tenancy Tribunal (“Tribunal”) comprised of three members.

5. The adjudication took place virtually/online on 27 August 2024 but the landlords were not present and the adjudicator’s report noted:

“As the respondent Landlords were not present at the scheduled time of the hearing I contacted the RTB and I was informed that the respondent landlords had received notification of the date and time of the hearing. After the conclusion of the hearing I was informed by the RTB that the landlords had emailed stating that they could not attend the hearing due to medical reasons. They were asked to provide vouching documentation which they failed to do. The hearing proceeded in their absence.”

The adjudicator held, in his determination, that the termination of the tenancy was unlawful and a sum of €15,000 in damages was awarded to the notice party.

6. The landlords appealed this determination to the Tribunal and a virtual/online hearing took place over three days – at which the applicant (but not Mr Hennigan) attended – on 06 February 2025, 21 March 2025 and 08 May 2025. On 06 February 2025 the applicant and the notice party were informed at the commencement of the hearing (as is evident from the Transcript from Day 1, 06 February 2025) *inter alia* that:

- the adjudication decision had been set aside by reason of the landlords’ appeal;
- the appeal before the Tribunal was a *de novo* hearing (i.e., that the Tribunal would “*reconsider all of the matters that are in dispute between the parties*”) and the Tribunal was not bound by the adjudicator’s report;
- the Tribunal hearing was a public hearing and members of the public were entitled to apply to the respondent for login details and they could attend and observe;

- journalists sometimes attended Tribunal hearings and there had been press interest in the outcomes of Tribunals;
- journalists could take up a copy of the Tribunal report (once the Tribunal had made its determination) and such report was on the internet and was a public document;
- once a Tribunal report was on the internet there was a loss of privacy;
- the parties could enter into a settlement instead of the Tribunal making a determination, and such settlement would be private and the details of the settlement would not be publicly available;
- the determination of the Tribunal was legally binding on the parties; and
- there was an appeal from the determination of the Tribunal to the High Court on a point of law, but not on a finding of fact by the Tribunal;

and some of this information was reiterated at the commencement of the resumed hearing on 21 March 2025.

7. The Tribunal report issued on 16 September 2025, followed by a determination order on 24 September 2025. The Tribunal made four findings which were noted in its report as follows:

1. *“The Tribunal finds that the Respondent Tenant’s tenancy was a tenancy of a dwelling within the meaning of the Act and accordingly the Tribunal has jurisdiction to determine the dispute.”*
2. *“The Appellant Landlords are in breach of obligations, pursuant to section 12(1)(a) of the Act, in interfering with the Respondent Tenant’s peaceful and exclusive occupation of the dwelling and are liable for damages for that breach of €3,500.”*
3. *“The Respondent Landlords are in breach of Landlord obligations in unlawfully terminating the tenancy and the Tenant is entitled to damages in the sum of €3,500 for that breach.”*
4. *“The Appellant Landlord has unlawfully retained the Respondent Tenant’s deposit in the sum of €850 and must return it forthwith.”*

Each finding was supported by detailed reasons.

Procedural background

8. The applicant (as a litigant in person) filed a statement of grounds on 21 November 2025 in support of an application for leave to issue judicial review proceedings and this was accompanied by a verifying affidavit sworn on the same date. Thereafter, the applicant swore a grounding affidavit on 27 November 2025 and an appearance was entered on behalf of the respondent on 08 December 2025.
9. It appears that the matter first came before the High Court by way of leave application on 16 February 2026, and albeit that the matter was by way of *ex parte* application, counsel for the respondent was present in court on that date, the respondent having been served by the applicant with a book of exhibits and related papers on 25 November 2025 and 26 November 2025. On 16 February 2026, an order was made by Simons J to the effect that:
 - the applicant was to file and serve an originating notice of motion by 02 March 2026 returnable to 21 April 2026, together with copies of the statement of grounds and any amended statement of grounds, verifying affidavits and written submissions provided to the Court for the leave application; and
 - all documents were to be served on the respondent's solicitor by email.

It should be noted that I have not had sight of any written submissions provided to the Court for the leave application and the applicant did not refer to same on any of the occasions on which this matter came before me. It also appears, from perusing the various affidavits of the applicant as referred to hereunder, that she understood that Simons J had actually granted her leave to apply for judicial review but it is clear from the order as perfected that this understanding was erroneous.

10. The matter first came before me on 21 April 2026 (being the return date for the notice of motion) and on that occasion it appeared that the applicant had not issued the notice of motion as directed by Simons J on 16 February 2026 and neither had papers been properly served on the respondent. It also appeared that a number of

additional affidavits (nine in total) had been sworn by the applicant on 21 April 2026 and an amended statement of grounds was also dated 21 April 2026. On that occasion I:

- extended the time, to close of business on 21 April 2026, for the filing of the originating notice of motion and affidavits;
- directed that papers were to be served on the respondent by email by close of business on 24 April 2026, to include all affidavits and exhibits relied upon by the applicant, and if they could not be sent in a single email by reason of e.g., attachment size, they were to be sent in sequential emails and the applicant was to then send a final email to the respondent advising the respondent as to the total number of emails sent by her;
- informed the applicant that if documents were not exhibited in her affidavits, such documents could not be relied upon by her in court/at hearing; and
- requested the respondent's solicitor to write to the applicant outlining the directions as made by me.

11. On 21 April 2026, I was also informed that the applicant had appealed the Tribunal determination to the High Court on a point of law as she was entitled to do, pursuant to the provisions of s.123(3) of the Act. And once a determination had been appealed, such appeal had a suspensive effect and the determination order did not become binding on the parties (applying s.123(2) of the Act). On 21 April 2026 and as regards the statutory appeal on a point of law ("statutory appeal"), I directed that the respondent file opposition papers in the statutory appeal by close of business on 15 May 2026 and I further informed the applicant that since she had two separate matters before the High Court, the papers for each matter had to be separately filed and separately served on the respondent – in other words, there should be one full set of papers for the judicial review and a separate full set of papers for the statutory appeal, even if there were a cross-over in material relied upon by the applicant.
12. The matter came back before me on 28 April 2026, having been listed primarily to ensure that my directions had been complied with, and it transpired that firstly, the

applicant had issued a notice of motion returnable for 19 May 2026 in the judicial review leave application (not for 12 May 2026 as directed by me on 21 April 2026) and secondly, full sets of papers had not been served on the respondent in breach of my directions on 21 April 2026. I reluctantly extended time for the applicant to serve papers on the respondent (excluding any papers served by close of business on 24 April 2026) to midnight (at the applicant's request) on 01 May 2026, with a direction (again) that papers be served in a single email chain and the applicant was warned that this was her last chance to serve papers by soft copy. I alerted the applicant to my concern that the order of Simons J was made on 16 February 2026 and in excess of two months later (on 28 April 2026) the matter had not really been moved on due to inaction or lack of action on the part of the applicant. This concern was all the more so in circumstances where the applicant was stressing the urgency of the matter to me.

13. The matter came back before me on 05 May 2026, again to ascertain that all papers had been served, and unfortunately, it again transpired that the respondent had not received all papers. In those circumstances, and having heard from both parties, I gave liberty to the respondent to constitute a file by taking up the documentation from the Central Office and I noted that the matter was listed for mention only before me on 19 May 2026 since the judicial review notice of motion was returnable to that date. I also extended the time for the respondent to put in opposition papers (in both the statutory appeal and the judicial review) to 27 May 2026 and directed that any replying affidavits to be sworn on behalf of the respondent should also be filed and served by that date, and I listed the matter before me on 03 June 2026.
14. On 19 May 2026, counsel for the respondent informed me that whilst they had taken up documentation from the Central Office, there were still some exhibits which were not in the respondent's possession, and counsel stated that any deficiencies would be highlighted in the filed papers, which they would compile for the Court. I asked the respondent to provide my judicial assistant with this compiled booklet of pleadings for my attention by close of business on 29 May

2026. Counsel for the respondent informed me that further directions were not required and that a hearing date could be allocated on 03 June 2026. The applicant requested that her application be heard ‘on the papers’, given her personal circumstances, but I informed the applicant that the process was an adversarial one and that it was for her to make her case and for the respondent to respond and that this could take place either virtually/online or in person. In this regard it should be noted that in her point of law affidavit sworn on 21 April 2026 (see §21 hereunder for reference to the full title to this affidavit) the applicant relied on O.84, r.24(1) RSC to ground her application for an ‘on the papers’ hearing, but it seems to me that the applicant is under a misapprehension as to the import of O.84, r.24(1) and it certainly does not go so far as to provide for an ‘on the papers’ consideration by the Court. I also noted on 19 May 2026 that the Court must look after its process such that cases were/are dealt with fairly for and by both sides. The applicant then asked for the earliest possible hearing date, ideally before the end of June. I indicated that I would not be able to guarantee such an early hearing date but stated that she could apply for an urgent hearing date for the leave application on the 03 June 2026, whilst noting that the delays in the process up to 19 May 2026 were caused by her delay in serving papers on the respondent. Lastly, whilst the applicant informed me that she had over 2000 pages of additional papers that she intended to file on that day, 19 May 2026, I informed the applicant that she was not permitted to file any more papers unless, having received the replying affidavit from the respondent in the judicial review leave application, she needed to file an affidavit in reply and, if so, she could have additional time to do so but that she would have to persuade me of the relevance of any additional papers on the 03 June 2026.

15. On 03 June 2026, counsel for the respondent confirmed that all papers were filed and served on the applicant by 27 May 2026. The applicant indicated that she had filed a replying affidavit (in both the statutory appeal and the judicial review leave application), and she sought permission to serve same on the respondent. I again informed her that she had to file two separate sets of paperwork, one for the statutory appeal and the other for the judicial review leave application – i.e., one

affidavit for the statutory appeal and one for the judicial review. I stated that if the documentation were necessary for the statutory appeal, I would allow the applicant time to file that affidavit. And the applicant confirmed that what was contained in the affidavit was in response to the statutory appeal opposition papers. I asked how much time she needed and she informed me that the affidavit would be filed by 09 June 2026. Thus, the first direction I made was that, in relation to the statutory appeal, the applicant would have the affidavit in reply to the opposition papers filed and that such affidavit plus exhibits would be served on the respondent by close of business, 5.00pm, 09 June 2026. I asked the applicant if she were certain that that afforded her sufficient time because I would not be allowing any further extensions and she confirmed that 09 June 2026 was acceptable from her perspective. I informed the applicant that I had hoped that I might have been able to deal with the leave application during the course of that afternoon of 03 June 2026, but that this was now not possible in light of her filing another affidavit, since the paperwork was not yet closed. I repeated that 5.00pm on 09 June 2026 was a hard deadline for any further affidavits/exhibits – in either the statutory appeal or the judicial review – to be filed and served.

16. The applicant then requested to join her daughter to the judicial review proceedings and for the reasons I set out at §30 below I did not accede to that request and I informed the applicant that if she disagreed with my order not to join her daughter to the proceedings, she could appeal my order. The applicant then asked to be allowed to make her judicial review leave application on 09 June 2026 and I informed the applicant that I would see, on 09 June 2026, what dates were available to hear the judicial review leave application.
17. Thereafter, I informed counsel for the respondent that I would not refuse her permission to file an affidavit in reply to the applicant's latest affidavit once same were served, but that I would advise caution in that regard, so that it might be possible to assign a hearing date sooner rather than later. Counsel for the respondent again raised a concern about exhibits being sent piecemeal by email and I informed the applicant that if she hadn't sent exhibits to the respondent, then

I wouldn't accept them. The applicant replied to the effect that she would not like to be restrained in any way, to which I replied that whilst she had rights, these were limited by/subject to the directions of the Court. I then asked the applicant how she would like to send the exhibits to the respondent and she replied, by email as PDFs. However, I informed the applicant that this method had not worked in the past and I needed to be sure that the respondent and I were receiving the exhibits. The applicant informed me that there would be physical bound bundles in the List Room, to which counsel for the respondent replied that her client was unable to take up exhibits from the Central Office, since they were not retained by the Central Office. I thus made a direction that the exhibits were to be served by way of hard copy on the respondent's solicitor and that the applicant could liaise with the respondent's solicitor (outside the court room, following the directions hearing) as to how the applicant might give her the hard copy exhibits. Separately, I informed the applicant that I was making no directions as to the casefiles for a separate determination (see §31 below) since they had nothing to do with the statutory appeal or judicial review. The applicant then, again, requested an 'on the papers' assessment of the judicial review, citing reasonable accommodation rules, and I, again, refused this application (however, see also §71 below, as regards the form of the leave hearing on 15 July 2026). Finally, I put the matter in for mention before me on 10 June 2026, solely so as to ascertain whether the respondent had been served with the paperwork, and as such whether the matter was ready to be assigned a date for hearing.

18. The matter was next before me on 10 June 2026, and the applicant was facilitated with virtual/online attendance, having attended in person up to that point in time. The matter was listed solely for mention to confirm compliance with my directions on 03 June 2026 and counsel for the respondent confirmed that they hadn't received any papers from the applicant, and I was furnished with a booklet of correspondence, containing correspondence between the respondent's solicitor and the applicant. The respondent's solicitor had written to the applicant outlining the directions made on 03 June 2026, and the applicant confirmed that she had received the letter, and I also had sight of such letter. Counsel for the respondent proceeded

to open the letter to me and in the course of so doing, the applicant's connection failed and she went offline. As soon as I saw the applicant drop offline, I halted the respondent's submissions and the registrar subsequently emailed the applicant, to which there was no immediate response. Unfortunately, the respondent's solicitor did not have a mobile number for the applicant and no further contact was made with the applicant on 10 June 2026. Given that I was anxious to afford the applicant an opportunity to make any representations she needed to make, particularly where I had gleaned from counsel for the respondent, before the applicant went offline, that the respondent's solicitor had not received any documentation, I listed the matter for 16 June 2026 for mention, and I asked the respondent's solicitor to write to the applicant, to inform her that:

- the matter had been listed for 16 June 2026 for the same reason that it had been listed for 10 June 2026 (i.e., to ascertain whether the applicant had served the respondent with the documentation);
- the applicant had the opportunity to appear virtually/online or in person on that date;
- if there were any difficulties in her appearing on 16 June 2026, then I would allow counsel for the respondent to make any representations she wished to make based on the booklet of correspondence before me, and which had been emailed to the applicant by the respondent's solicitor.

19. The matter then came back before me on 16 June 2026, and the applicant appeared virtually/online. I informed her that the purpose of the matter being listed for mention on 16 June 2026 was because when it was last listed for mention (on 10 June 2026), the applicant appeared to lose the virtual/online connection. I then noted the reasons for which the matter had been listed for mention, firstly, to ascertain whether the applicant had served the hard copy exhibits on the respondent's solicitor, which was to have been done by 5:00pm on 09 June 2026, and secondly, to ascertain whether the respondent wished to file any affidavit in reply to the applicant's latest affidavit *vis-à-vis* the application for leave to issue judicial review proceedings on notice, and if the respondent were not looking for liberty to file any additional affidavit in the judicial review, I was going to fix a

date to hear the leave application. Counsel for the respondent informed me that hard copy papers (affidavits and exhibits) had not been served by the deadline and that being so, there was no need for the respondent to file any affidavit in reply, and I informed the parties that I was going to fix a date to hear the leave application. I also informed the parties that I was aware that certain emails had been sent to the Courts Service for my attention (being emails sent by the applicant to the respondent's solicitor with a request that they be brought to my attention), and I confirmed that they had been forwarded to me, but given the purposes for which the matter had been listed for mention (i.e., to ascertain the matters already outlined above), I had not looked at those emails. And I then informed the applicant that if there were content in the emails which was supported by affidavits already filed by her, then such matters could be raised in the course of the leave application. I flagged that the delays to date were caused by the applicant and that I was very conscious that she had filed her application in November 2025 and that being almost seven months ago, the leave application had still not been heard. The applicant asked for the hearing date not to be prolonged and I stated that the reason that the matter had been extended time and time again was because of difficulties, on the part of the applicant, in filing and serving papers. I asked the applicant if there were a particular day or days in July that would suit her to have the leave application heard and she replied that any day in mid-July would suit her. I set the date for 15 July 2026, for 2:00pm, and informed the applicant that she would have one hour to present her application, that the respondent would have 45 minutes to respond, and that the applicant would have 15 minutes to reply and to close matters off. I confirmed that I had received the booklet of pleadings from the respondent's solicitor on 29 May 2026 and the applicant informed me that upon reviewing the booklet, she observed that there was 'crucial missing evidence' which related to the health hazards and the 'fraternisation' of the adjudicator with the notice party, and she asked if the respondent could reply as to whether they can locate this missing evidence. Counsel for the respondent stated that the landlord/tenant dispute had nothing to do with the condition of the property, it concerned the relation between landlord and tenant. Following further discussion, the applicant stated that she had concerns that she was being ambushed by the respondent's

solicitor and that the evidence had been deliberately omitted from the papers, and I informed her that the issue was that there had been a repeat difficulty/non-compliance at her end *vis-à-vis* in the service of papers and it was difficult for me to ascertain if there were missing material. I informed the applicant that the only way I could consider matters was by commencing the leave application on 15 July 2026 and I informed the applicant that she could bring any relevant documentation that she believed was missing from the booklet to court on the 15 July 2026, and that I would consider whether I needed to have sight of it, depending on its relevance and whether it had been referred to in her grounding affidavit sworn on 27 November 2025.

20. The applicant then sought leave to amend her statement of grounds and given that she had already amended her statement of grounds (albeit that neither I nor Simons J appeared to have granted her liberty to do so) and given the delays in the process up to that point, I did not grant her liberty to amend her statement of grounds any further. The applicant then referred to a notice of motion which she filed, but did not serve, seeking to join her daughter as an applicant, to which I replied that I did not believe that her daughter was an appropriate individual to be joined to the proceedings at that juncture and that I would deal with the joinder of her daughter to the proceedings on 15 July 2026 and that if I granted leave to issue judicial review proceedings then I would consider whether it was appropriate to join her daughter to those proceedings. If leave were not granted, then the joinder of the applicant's daughter was irrelevant. I then informed the applicant that she may bring documentation with her for the hearing on 15 July 2026, but that I would only consider that documentation if it were relevant and if it were referred to in the affidavits before me and that I would hear oral submissions from both parties on 15 July 2026. I also informed the applicant that it would be in ease of her if she were able to attend court in person on 15 July 2026 since it was a much easier way of dealing with matters than for her attending virtually/online but that in-person attendance was just a suggestion from my perspective. Lastly, I noted that Mr Hennigan was not referred to as co-applicant/co-appellant in the proceedings and the applicant stated that she had made a clerical error. In response, I informed the

applicant that if she wished to join Mr Hennigan as a co-applicant/co-appellant she may apply to do so on 15 July 2026 and lastly, I also adjourned the statutory appeal to 15 July 2026.

Discussion

21. The judicial review leave application finally came on for hearing before me on 15 July 2026 and the papers before me on that date were:

- the statement of grounds, dated 21 November 2025;
- a verifying affidavit of the applicant, sworn 21 November 2025;
- a grounding affidavit of the applicant, with various exhibits, sworn 27 November 2025;
- a memorandum of appearance on behalf of the respondent, dated 08 December 2025;
- nine affidavits sworn by the applicant on 21 April 2026, concerning:
 - o the amended statement of grounds;
 - o service (two separate affidavits);
 - o compliance with service;
 - o a point of law appeal, conflict of interest, concealment of the minor co-applicant, adjudicator bias and jurisdictional void (“point of law affidavit”);
 - o water-damage chronology and non-disclosure;
 - o media harassment and an ex parte injunction application;
 - o temporal proximity and adverse public-body communications;
 - o personal and welfare issues;
- an amended statement of grounds, dated 21 April 2026;
- an affidavit of Louise Loughlin on behalf of the respondent, with various exhibits, sworn 26 May 2026.

22. It should be noted that there were no exhibits to any of the affidavits sworn 21 April 2026 before the Court, albeit there was a reference in the point of law affidavit to supporting exhibits (LT-1 through LT-40) in the context of the applicant’s

submission of 21 October 2025, but the affidavit did not clarify in her affidavit the matter to which this submission related and such submission was not before me. As set out at § and § above, on 16 June 2026 I informed the applicant that she was permitted to furnish me – at the leave hearing on 15 July 2026 – with any documentation that she said was missing from the papers. However, it was not possible for the applicant to furnish documentation at the leave hearing, given that she did not attend court physically on 15 July 2026 and she had not advised in advance that she would be attending virtually/online. The platform used by the Courts Service for virtual/online hearings does not currently permit screen-sharing to show documentation remotely, without a request in advance of the hearing for such facility, and the applicant did not advise in advance that she would require screen-sharing facilities. In this regard I note that the Registrar received an email from the applicant at 14:00 on 15 July 2026, the exact time the matter was listed for hearing, indicating that she would be appearing virtually/online.

23. Furthermore, each of the affidavits sworn on 21 April 2026 concerned, to a certain extent, overlapping material and there was repetition across all affidavits. Thus, I have not analysed each affidavit in detail below, but rather I have attempted to deal with the applicant's concerns by reference to subject matter/specific issues.
24. The reliefs sought by the applicant in her statement of grounds dated 21 November 2025 were:
 - a. an order of *certiorari* quashing the Tribunal determination order of 24 September 2025;
 - b. a stay on the determination order, prohibiting any further steps to enforce that order pending the determination of the judicial review proceedings;
 - c. declarations that:
 - i. the respondent exceeded its jurisdiction and acted *ultra vires* by mischaracterising a licence to occupy as a tenancy protected by the Act;
 - ii. the respondent committed an error of law by failing to consider mandatory relevant considerations, including the property's

- uninhabitable condition confirmed in prior proceedings before the respondent, and the notice party status as a licence (not tenant);
- iii. the respondent breached natural justice and fair procedures by refusing adjournments during documented medical emergencies affecting the applicant and her severely disabled daughter (“applicant’s daughter”);
 - iv. the respondent failed to consider substantial material evidence including: medical reports linking health deterioration to toxic mould exposure; expert surveyor’s report declaring property unfit for habitation; photographic evidence of prior related extensive degree of damages, including water kitchen [sic] and damages in two bathrooms, recent pictures of 19 November 2025 with extensive black mould contamination and ongoing leak, psychological and educational reports concerning the applicant’s daughter; and financial hardship documentation;
 - v. the compensation quantum awarded was manifestly unreasonable, disproportionate, and failed to reflect the gravity and duration (over four years of the house water damaged, 1.5 years of living in unsafe conditions causing hazard to health, and 2.5 years of living in an unhealthy house by the applicant’s elder daughter) of documented health hazards, property damage, and consequential losses;
 - vi. the decision-making process was contaminated by bias and procedural irregularity;
- d. any additional orders as the Court deemed fit;
 - e. urgent interim relief;
 - f. procedural relief; and
 - g. consequential relief (maximum awardable compensation), setting out the compensatory damages sought – which were further particularised in the statement of grounds, the details of which are not necessary to recite at this juncture;

and the applicant then set out reasons/grounds to substantiate each relief sought.

25. The amended statement of grounds, dated 21 April 2026 (and in which the applicant sought to name her daughter as co-applicant), sought the following reliefs:
- a. an order of *certiorari* quashing the decision(s) and/or determination(s) of the respondent the subject of these proceedings, on the grounds set out in Part 5 of the statement of grounds;
 - b. declarations that:
 - i. the respondent acted in breach of fair procedures and natural justice in the conduct of its proceedings, contrary to Article 40.3 of the Constitution of Ireland and the principles of *audi alteram partem* and *nemo iudex in causa sua*;
 - ii. the respondent failed to make reasonable accommodation for the applicant's daughter, as a person with a disability within the meaning of the Equal Status Act 2000 (as amended) and that such failure rendered its determination procedurally and substantively invalid;
 - iii. the respondent failed to take adequate account of the rights of the applicant's daughter under Article 42A of the Constitution of Ireland in the conduct of its proceedings and the making of its determination;
 - iv. the respondent's determination was made in breach of the applicant's rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life and home), as given effect in domestic law by the European Convention on Human Rights Act 2003;
 - v. the respondent's determination was made in breach of the applicant's rights under Article 6 of the European Convention on Human Rights (right to a fair hearing), as given effect in domestic law by the European Convention on Human Rights Act 2003;
 - vi. the respondent failed to comply with its obligations under, and to act consistently with, Articles 7, 19 and 24 of the United Nations Convention on the Rights of Persons with Disabilities, the Optional Protocol to which entered into force for Ireland on 30 November 2024;

- c. an order remitting the matter to the Respondent for fresh determination in accordance with the findings of the High Court, before an appropriately constituted tribunal, with appropriate procedural protections;
- d. such injunctive or interim relief as the Court may consider appropriate pending the determination of the judicial review proceedings;
- e. costs;
- f. such further or other relief as this Honourable Court may consider appropriate.

and the applicant again set out reasons/grounds to substantiate each relief sought. Whilst the applicant was not formally granted liberty to rely on this amended statement of grounds in advance of the hearing on 15 July 2026, I am satisfied in the particular circumstances of this case to consider same in the context of this decision.

- 26. When the matter came before me on 15 July 2026, I had had an opportunity to review the papers – provided by the respondent – in advance of the hearing (a copy of which said papers were also available to the applicant) and the applicant and counsel for the respondent also made submissions to me. Furthermore, I reviewed the papers in detail subsequent to the hearing, for the purpose of this decision.
- 27. At the outset, the applicant applied for an order that the application be heard *in camera* – this relief having been sought in the applicant’s statement of grounds, filed 21 November 2025, pursuant to s.134 of the Act and Order 105 of the Rules of the Superior Courts (but by way of observation, it appears to me that s.134 of the Act, dealing with the obligation to register a tenancy with the respondent, makes no reference to anonymity or *in camera* matters and RSC O.105 relates to appeals from the Labour Court) – on the basis that she would be making submissions to me about private matters concerning *inter alia* her vulnerable daughter and the applicant’s role as a special needs teacher. The respondent objected on the basis that the matter before me related to a determination by the Tribunal concerning the applicant (and Mr Hennigan) as landlords and the notice party as tenant and any

issues regarding the applicant's daughter were irrelevant to the application before me. Having then heard the applicant in reply, I made a ruling refusing the applicant's application on the grounds that:

- the parties to the agreement (be that a tenancy agreement or a licence agreement) – to allow the notice party to reside in the property – did not include the applicant's daughter;
- therefore her daughter was not a party to the dispute before the respondent;
- as such, her daughter had no entitlement to be joined in the judicial review proceedings;
- whilst understanding that the applicant was a carer for her daughter, that was a completely separate matter, and the applicant's position as carer and the applicant's daughter's circumstances were not relevant to the matters that I had to determine, and the applicant's daughter was not a party to those matters.

And lastly, having been informed that she could appeal my ruling to the Court of Appeal and/or continue with the hearing, the applicant elected to continue with the hearing.

28. The applicant then moved on to her leave submissions (and by submissions, I mean oral submissions since no written leave submissions were before me) and whilst the applicant did not formally refer to the statement of grounds or the amended statement of grounds in her submissions, it was clear that her submissions were based on the pleadings and affidavits before me and the applicant was afforded ample time to make submissions in what was, simply, an application for leave on notice. The respondent was then afforded time to respond and the applicant was allowed further time in reply.
29. Having considered the entirety of the papers before me, the applicant's submissions and the respondent's submissions, I am not prepared to grant the applicant leave to issue judicial review proceedings for the reasons as set out hereunder.

30. Firstly, however, it should be noted at this juncture that the applicant's daughter's disability and the applicant's view that her family should be accorded protection because of her daughter's disability, formed a theme that permeated the applicant's affidavits and her amended statement of grounds. Whilst not for one minute wishing to detract from the difficult circumstances by reason of the applicant's daughter's diagnosis (and I had sight of a report from Prof Michael Fitzgerald, Consultant Child and Adult Psychiatrist dated 18 May 2015 which was exhibited to the applicant's affidavit sworn on 27 November 2025) and the applicant's position as carer for her daughter and the applicant's concerns for her daughter, it cannot be gainsaid that the only parties to the Tribunal determination were the applicant and Mr Hennigan as landlords and the notice party as tenant, and as the applicant's daughter was not a party to the Tribunal dispute resolution proceedings, it is not appropriate that she be joined as a co-applicant to the present judicial review leave application.
31. Secondly, throughout the applicant's affidavits (and in the applicant's statement of grounds, but not the amended statement of grounds), the applicant referred to a separate matter or separate Tribunal determination ("separate matter" or "separate determination") in respect of the property involving Mr Hennigan and her as landlords and a limited liability company as tenant ("third party tenant"). The Tribunal determination (which was to the landlords' benefit) in this separate matter is dated 30 September 2024 and the determination order is dated 16 October 2024, whereby the third party tenant was obliged to pay a sum of money to the landlords in respect of damages in excess of normal wear and tear caused to the property. The reason for the applicant's referencing this separate matter appears to be two-fold; firstly, to seek leave to challenge the separate determination by way of judicial review, and secondly, to allege bias as against the Tribunal Chairperson in the present case, since she had been a Tribunal member, but not Tribunal Chairperson, in the separate matter.
32. Given that the determination order in the separate matter is dated 16 October 2024, and the time period within which an applicant may apply for judicial review is three

months from the date when grounds for the application first arose – see Rules of the Superior Courts, Order 84, rule 21(1) – any application by the applicant for leave to judicially review the separate determination of the Tribunal is well out of time. Whilst I do have discretion to extend time, that discretion is not open-ended and the principles by which I may exercise this discretion are well-established. Under O.84, r.21(3), a court has a discretion to extend time if there is good and sufficient reason to do so. It is clear from Costello J’s decision (as he then was) in ***O’Donnell v. Dun Laoghaire Corporation*** [1991] ILRM 301 that the phrase ‘good reason’ is of wide import but must be judged objectively. An applicant must afford a justifiable reason for the delay, establish a causal connection between the reason proffered and the failure to bring the complaint in time, and satisfy the Court that the complaint would have been presented in time were it not for the intervention of factors relied upon. And Costello J noted that even if this test were to be met, the Court may exercise its discretion not to extend time where the applicant has acquiesced in the situation arising from the decision he or she subsequently challenges. Subsequent case law has elaborated upon the factors that may be considered when deciding whether there is good and sufficient reason to extend time, *inter alia* the period of delay, the *prima facie* strength or merits of the applicant’s case, any personal circumstances affecting the applicant, the blameworthiness of the applicant and whether any third party rights were affected.

33. The applicant requested, in her affidavit sworn 27 November 2025, liberty to supplement her grounds “*to include an additional* [ground involving the third party tenant] *and the social welfare context*” but nowhere in her affidavits did the applicant properly explain the delay in seeking leave to judicially review the respondent as regards the separate determination. The applicant averred that following the separate determination her health deteriorated acutely and she gave details as to her health difficulties, but apart from exhibiting blood test results and certain medical correspondence (all in Polish), the applicant provided no medical report explaining why she could not have filed a judicial review leave application within three months of 16 October 2024. Furthermore, the applicant averred that she was in contact with the Department of Social Protection (as regards matters

unrelated to the present case) and that her daily life was consumed by urgent medical appointments, home tuition crises relating to her daughter, mortgage stress and basic survival.

34. In her point of law affidavit, the applicant averred in greater detail as to the relevance of the separate determination, the omissions in the separate determination, and the connection between the two determinations. And she averred to personal financial crisis from October 2023 onwards, as well as medical conditions affecting her health, and the health of her husband, her daughter and her elder daughter, as grounds for an extension of time in respect of this separate determination (in both the context of the judicial review and the statutory appeal). However, no medical reports or other documentation were exhibited to this point of law affidavit in support of these claims.
35. Furthermore, it is very clear that by 06 February 2025 (i.e., not long outside the three-month window following the determination order in the separate matter), the applicant was sufficiently well to attend the first of three days of the Tribunal hearing in the matter now before me and thus, it seems to me, that there was nothing to prevent the applicant from filing a judicial review leave application as regards the separate matter from in or around February 2025, as opposed to leaving the application until approximately nine months later when her grounding affidavit was sworn on 27 November 2025.
36. Lastly, the determination order in the separate matter was complied with by the third party tenant in or around January 2025 (approximately 18 months ago).
37. Thus, and firstly, taking the applicant's unsubstantiated delay into account; secondly, the applicant was active in relation to the present matter since at least February 2025; and thirdly, the third party tenant complied with the determination order in excess of 18 months ago (and the matter must be presumed to be long-finalised from their perspective), I am not satisfied that there are grounds for me to

exercise my discretion to extend the time within which the applicant may apply for leave to judicially review the Tribunal determination in the separate matter.

38. Thirdly, the applicant sought liberty to supplement her grounds to rely on the social welfare context and again this was a theme running through the applicant's affidavits. However, in circumstances where the applicant's (and her family's) financial situation bears no relevance to the matters to be determined by the respondent, which were in broad terms:

- whether or not the agreement between the landlords and the tenant was a tenancy agreement and, if so;
- whether or not the terms of such tenancy agreement were breached by the landlords and, if so;
- whether the tenant was entitled to compensation;

I am of the view that the applicant's statement of grounds should not be amended in this regard.

39. Fourthly, it must be noted that the condition of the applicant's property (whether such damage was caused by the third party tenant or otherwise) was another theme that permeated the applicant's affidavits and statements of grounds. The applicant appeared to be under a misapprehension that the Tribunal and/or the Court could take the condition of the property into account in some way even though the matters to be determined by the respondent were solely those as set out at §38 above, and the applicant had made no allegations *vis-à-vis* damage to the property by the notice party.

40. Thus, any complaints as made by the applicant that the Tribunal failed to take into account:

- the applicant's daughter's presentation;
- the health of the applicant's family;
- the financial circumstances of the applicant's family; and/or
- the condition of the property;

are misplaced in the context of what was before the Tribunal to consider and determine, and the Tribunal had no function in terms of these issues.

41. The statement of grounds sought the reliefs as set out at §24 above. The primary relief sought by the applicant was *certiorari* of the Tribunal determination dated 16 September 2025 on the basis of “*Jurisdictional Error (Ultra Vires) – Licence Not Tenancy*” and that the Tribunal fundamentally erred in law by assuming jurisdiction where none existed. In other words, the Tribunal made a finding that a tenancy existed, whilst it was the applicant’s case that the notice party simply had a licence to occupy and no more, and in those circumstances, the notice party was not an individual who was afforded protection under the Act. This is a classic point of law appeal and in circumstances where the applicant may avail of an alternative remedy, being a statutory appeal pursuant to s.123(3) of the Act, and in circumstances where the applicant has a statutory appeal extant before the High Court, there is simply no good reason to grant leave on this basis.
42. The recent decision of the Supreme Court in *Amariei v. The Chief Appeals Officer* [\[2026\] IESC 22](#); [2026] 2 ILRM 335 is of relevance in the context of the availability of an alternative remedy. Donnelly J, in giving judgment for the Court, set out the principles in relation to the Court’s discretion to refuse judicial review where an alternative remedy exists, at §105, and she stated that the default position was that a party should pursue a statutory appeal or review rather than initiate judicial review proceedings and that the rationale for this principle was multifaceted. Donnelly J also noted that the exercise of discretion to refuse to grant a remedy of judicial review which may otherwise be justified, is tightly bounded by legal and constitutional considerations and that the High Court’s judicial review power over administrative bodies and courts of limited jurisdiction acts as a safeguard to the rule of law, and the balancing of these important legal and constitutional considerations is central to the exercise of the High Court’s discretion. Cases where judicial review will be permitted are exceptions to the general rule, and in such cases an applicant may not have to exhaust an alternative

remedy where it is not adequate, or where there is a particular exigency in the interests of justice which requires judicial review to lie. However, the present case does not, it seems to me to fall into the category of exceptions to the general rule and in the circumstances of this case, the applicant has not satisfied me that I should exercise my discretion to allow her to apply for judicial review on this ground of jurisdictional error, and particularly where the applicant already has a statutory appeal in being.

43. The next ground relied upon by the applicant was “*Breach of Natural Justice and Fair Procedures*” on the basis that the respondent refused the landlords’ repeated requests for an adjournment of the adjudication hearing on 27 August 2024. It is clear from the affidavit of Louise Loughlin sworn 26 May 2025 that the landlords were notified, by letter emailed on 06 August 2024, that a virtual adjudication hearing would take place at 11:30am on 27 August 2024 to determine the dispute. And, in addition to the letter of notification, the respondent furnished the landlords with a copy of the respondent’s “*Guide to Evidence*” and its “*Guide to Virtual Dispute Resolution Hearings*”. The letter stated that adjournments were granted only in exceptional circumstances and required documentary evidence to support same. It also stated that a hearing would proceed as scheduled unless a party had been informed that a request had been acceded to. I have had sight of that letter as an exhibit to the affidavit of Louise Loughlin.
44. Furthermore, the respondent’s Dispute Resolution Procedural Rules, as referred to in the affidavit of Louise Loughlin, provide at page 6, *vis-à-vis* adjournments that:
 - “18. *Applications by parties for the adjournment or deferral of a mediation, adjudication or tenancy tribunal hearing to another date may only be considered in very limited and exceptional circumstances and in accordance with the principles of fair procedures and due process. The RTB must be notified as soon as possible of any such application.*
 19. *The party who is seeking an adjournment will be asked to provide substantive reasons and documentation, as may be appropriate, to support their application for an adjournment (for example, a medical certificate confirming an up-coming hospital procedure).*

20. *A mediator, adjudicator or tenancy tribunal may also adjourn a hearing to another date specified by it, if it considers it necessary to do so in the interests of justice and fair procedures.”*

45. It is also averred to in the affidavit of Louise Loughlin that, on 08 August 2024 and 14 August 2024, the landlords sought an adjournment of the adjudication that was to take place on 27 August 2024 to a date in October/November 2024, on the grounds that the landlords did not have care for their daughter and that they needed to paint and renovate the property for the purpose of re-letting it. By email dated 15 August 2024, the respondent informed the landlords that an adjournment would not be granted and reiterated that adjournments were granted in exceptional circumstances, must be supported by documentary evidence and that work commitments were not generally considered exceptional. The email noted that the hearing would proceed as scheduled unless advised otherwise and that the applicant could nominate someone else to act on her behalf at the hearing. A further request for an adjournment, on the same grounds, was made on 22 August 2024, and on 27 August 2024 (i.e., the morning of the hearing) the applicant made a further request on the grounds that she was in hospital with her husband and her daughter and that they would forward on documentation in support of the adjournment request. Apart from the email from the applicant on 27 August 2024 (which was sent to the respondent by the applicant when submitting her appeal form), the other communications as set out in this paragraph do not appear to be exhibited to the affidavit of Louise Loughlin, but I have had sight of them from the separate papers for the statutory appeal, where they are exhibited to the applicant’s affidavit sworn on 17 November 2025.
46. As set out at §5 above, the virtual/online adjudication hearing took place on 27 August 2024, without the landlords being in attendance and the adjudicator’s determination issued thereafter. The adjudication report records that the adjudicator was satisfied that the landlords were on notice of the hearing and that, after the hearing, the adjudicator was notified that an adjournment had been sought by the applicant but that supporting documentation had not been provided. In other

words, the landlords had not heeded the respondent's warning that documentary evidence was required to support an adjournment request.

47. In a frequently cited passage of ***G v. DPP*** [1994] 1 IR 374, Denham J (as she then was) described, at p.382, the arguable grounds threshold that an applicant must reach at leave stage as a preliminary filtering process to prevent an abuse of the process, or to prevent trivial or un-stateable cases from proceeding and thus impeding public authorities unnecessarily. And in ***Esmé v. Minister for Justice and Law Reform*** [2015] IESC 26 at §15, Charleton J elaborated upon the meaning of arguability, stating that *“any issue in law can be argued: but that is not the test. A point of law is only arguable within the meaning of the relevant decisions if it could, by the standards of a rational preliminary analysis, ultimately have a prospect of success. It is required for an applicant for leave to commence judicial review proceedings to demonstrate that an argument can be made which indicates that the argument is not empty”*. In essence, the thrust of the applicant's arguments must demonstrate an arguable prospect of success for leave to be granted.
48. Applying these principles, it does not appear to me that the applicant has arguable grounds for judicial review of the adjudication. The landlords were not prejudiced in any way by the adjudication proceeding in their absence, firstly, when they had been well-apprised of the conditions precedent to the granting of an adjournment (as set out in the letter of 06 August 2024); secondly, and as regards an adjudicator's hearing in August, it is clear from the affidavit of Louise Loughlin that in a call on 23 April 2024, when a member of the respondent's staff contacted the Applicant to confirm contact details, the Applicant requested that a hearing not be scheduled until the end of August 2024 (and with a hearing date of 27 August 2024 this request was clearly accommodated by the respondent); thirdly, where there was a second landlord – Mr Hennigan – who could have appeared on 27 August 2024; and fourthly, when the landlords had a statutory right of appeal to the Tribunal (which right they ultimately exercised by way of appeal form, received by the respondent on 28 November 2024) which was a full *de novo* appeal. Thus, I am not satisfied to grant the applicant leave on this ground.

49. The next ground relied upon by the applicant was “*Failure to Consider Mandatory Relevant Considerations*” which comprised in essence of the uninhabitable condition of the property, the medical evidence relating to the applicant and her daughter, social and financial hardship, and prior under compensation in the separate matter. On the same basis as set out above at §38 above, none of these grounds are relevant to the matters to be considered by the Tribunal and applying the principles as set out at §47 above, I am not satisfied to grant the applicant leave on these grounds.
50. The next ground was “*Manifest Unreasonableness (Irrationality)*” and again these grounds largely relate to matters not properly before the Tribunal (e.g., the awarding of compensation to the notice party instead of the applicant, penalisation of the applicant despite the documented licence agreement and the uninhabitable condition of the property, catastrophic health and financial losses, under compensation of the landlords across two cases over three years) and applying the principles as set out at §47 above, I am not satisfied to grant the applicant leave on these grounds. Separately, the applicant claimed that the Tribunal relied on the incorrect invoice issued to the notice party, which affected the award of damages to the notice party, and it appears to me that this is a matter which the applicant may raise on her statutory appeal and thus it is not a complaint that is amenable to judicial review in the particular circumstances of this case.
51. The next ground was “*Contaminated Decision-Making Process*” and related to the fact that the Tribunal Chairperson was a Tribunal Member in the separate matter. The applicant stated that the Tribunal Chairperson possessed detailed prior knowledge of the property’s condition:- specifically, that it was extensively damaged, unfit for rental under the Act, and hazardous to the health of its occupants and the applicant’s family. The applicant alleged that the Tribunal Chairperson’s ongoing involvement in both cases contaminated the Tribunal process through an appearance of bias, repeated misrepresentations of fact, and conduct which collectively and materially prejudiced the applicant and the dual participation

undermined the requirement for impartial adjudication and raised serious concerns as to the fairness of the hearing in accordance with constitutional and ECHR principles, the net effect of which was that the decision-making process was fundamentally flawed and the applicant was denied a fair and impartial tribunal. The applicant averred in her affidavit sworn 27 November 2025 that the Tribunal Chair had previously presided on the separate matter and did not disclose this and that she refused to recuse herself or address this. And in the point of law affidavit, the applicant averred that the Chairperson failed to disclose the applicable conflict of interest and recusal rules and the applicant made bald assertions that the Tribunal Chairperson had pre-formed views on the applicant's credibility, financial position and conduct and that the Tribunal Chairperson was not approaching the determinations with a fresh mind. Separately, the applicant made averments in this affidavit *inter alia* to the effect that:

- the Tribunal Chairperson failed to take the applicant's daughter into account and failed to mention the applicant's daughter in the Tribunal report;
- various matters, that were known to the Tribunal Chairperson from her previous dealings with the separate determination, were not mentioned in the Tribunal report;
- the Tribunal Chairperson used inflammatory language in the Tribunal report, the publication of which led to reputational and other damage;
- the Tribunal Chairperson did not accede to the applicant's submission that the notice party's occupation of the property was pursuant to licence as opposed to tenancy agreement;
- the adjudicator, in effect and by determining that the matter came within the remit of the Act, blocked the applicant's right of access to the District Court to recover monies from the notice party.

52. The principles underpinning decision-maker bias and the threshold for same were set out in *Kelly v. UCD* [2025] IESC 6, by O'Donnell CJ, where he held at §71 that the test for bias is consistent across public bodies, and that is whether a reasonable observer would have a reasonable apprehension of bias. There are three components to this test which must be assessed together. Firstly, the reasonable

and informed observer, which imports an objective standard. Secondly, the apprehension of bias necessary is akin to the standard of reasonable doubt, and must be reasoned and cogent. Thirdly, objective bias is best understood as a reasonable apprehension that the case will not receive a fair and impartial hearing.

53. Firstly, to deal with the averments as to bias and conflict of interest as set out at §51 above, it appears that the applicant did not bring any of her concerns as regards the identity of the Tribunal Chairperson to the attention of the Tribunal, despite having attended at the Tribunal on three separate occasions. Following the decision of Henchy J in *Corrigan v. Irish Land Commission* [1977] IR 377, where a decision is challenged on the grounds of bias in the tribunal which gave it, a Court should not interfere where it appears that the fact or suspicion of bias was present to the mind of the challenging party at the hearing before the tribunal, and the point as to bias or suspected bias was not made by them at the hearing. Whilst it is unclear from the papers before me whether the applicant knew of the identity of the Chairperson before the hearing, it is clear that the identity of the Chairperson was known to the applicant during the (staggered) course of the hearing – and at least from 06 February 2025 – and the applicant had ample opportunity to make her stated concerns known to the Tribunal and this she did not do.
54. Separately, it must be noted that the separate matter in which the Tribunal Chairperson acted as Tribunal Member related to an unconnected and distinct complaint, involving a different tenant and a different tenancy period and the applicant has not provided any material that leads me to conclude that there could be a reasonable apprehension of bias on the basis of the *Kelly* principles. The Tribunal Members are wholly independent decision-makers, who make decisions on the evidence before them and not on evidence adduced in unrelated cases, and there is simply no basis or material before me to support the applicant's bald assertions that the Tribunal Chairperson had pre-formed views on the applicant's credibility, financial position and conduct and that the Tribunal Chairperson was not approaching the determinations with a fresh mind.

55. Secondly, the additional allegations as made by the applicant in terms of the Tribunal not taking the applicant's daughter into account, have been dealt with elsewhere in this judgment, and since they were not matters to which the Tribunal should have had regard, they cannot form the basis for an allegation of bias. Thirdly, the concerns expressed by the applicant as to publication of the Tribunal report were brought to the applicant's attention at the very commencement of the Tribunal hearing, and the applicant was given an opportunity to compromise the dispute, whereby the details of any settlement would not be made public. Thereafter, the applicant was on notice that the report would be published and no grounds were demonstrated by the applicant that would warrant the reliefs sought by her *inter alia* that the respondent would remove, redact or anonymise the Tribunal report. Further, any complaints that the applicant may have about publication arose after the Tribunal made its determination and, at the time of publication, the Tribunal must be considered to be *functus officio* and not amenable to judicial review for any alleged actions in the aftermath of the determination. Fourthly, the Tribunal was not obliged to accede to the applicant's submission as regards a licence agreement and the fact that the applicant has available to her a statutory appeal on a point of law pursuant to s.123 of the Act negates any concerns as to bias that the applicant may have if this were the tenor of her averment. Fifthly, the adjudicator was also well within his rights to come to the conclusion that he came to and if there were any bias on the part of the adjudicator (which I do not accept to be the case on the basis of the material before me), this has been cured by the remedy of a *de novo* hearing before the Tribunal. Sixthly, any allegations as to bias as made by the applicant were simply bare allegations without any substantiating material, such that I cannot conclude that a reasonable and informed observer would have had a reasonable apprehension (to the standard of reasonable doubt) that the applicant, at the Tribunal hearing, would not have received a fair and impartial hearing. Thus, and in all of the circumstances, I am not of the view that the test in *Kelly* has been met by the applicant.
56. There were also references to adjudicator bias and 'fraternisation' of the adjudicator with the notice party and insofar as I can understand these allegations

they appear to relate to solely the fact that the adjudicator dealt with the adjudication in the applicant's absence. For the reasons as set out above, I do not accept that the applicant was prejudiced by the adjudication and the manner in which it proceeded.

57. Separately, but relevant to the allegation of bias, I note the recent *ex tempore* judgment in a leave application in ***Akram v. Residential Tenancies Board*** [2026] IEHC 273, wherein O'Higgins J encouraged litigants, represented or not, to exercise restraint before accusing a decision maker of any form of bias and I can only join with O'Higgins J in this encouragement. Simply put, allegations of bias should not be made lightly and should not be made without substantiation.
58. Other than as set out at §51 above, the applicant did not set out any further detail on affidavit that would allow me to form any view that she had an arguable case on this ground. Thus, I am not prepared to grant leave to the applicant on this ground.
59. The next ground was "*Procedural Ultra Vires*" in that the respondent failed to comply with its own procedural rules and statutory requirements in conducting hearings and reaching determinations but having reviewed the applicant's various affidavits, there is nothing of substance to support this contention and I am not satisfied to grant leave on this ground. In coming to this specific decision, I am mindful that in the applicant's grounding affidavit of 27 November 2025 she referred to two exhibits which were not included in the papers before me, being exhibit GH6 (a hospital attendance note for the applicant's daughter) and exhibit GH7 (the respondent's extenuating circumstances policy). These exhibits were not before me by reason of the aforementioned *ad hoc* manner in which papers were served upon the respondent, and the inability of the respondent to take up exhibits – in the absence of the applicant providing them directly – since they were not retained by the Central Office, and it has to be noted that the applicant was afforded an opportunity to hand these exhibits into Court on 15 July 2026 (see §19 above). However, as set out earlier in this decision, the applicant did not attend in person

on 15 July 2026 – rather she attended virtually/online – and these exhibits were not specifically referred to as ‘missing’ by the applicant on 15 July 2026.

60. And, for completeness-sake, I should also note that exhibits GH15 and GH16 (noted in handwriting on the applicant’s affidavit sworn 27 November 2025 and appearing to be related to one or more of the applicant’s medical conditions and the condition of the property) appeared to be missing from the papers before me but, as noted above, I gave the applicant an opportunity to provide these exhibits to me on 15 July 2026, and this she did not do.

61. The next ground was on the basis of “*Protection of Constitutional and Convention Rights*” and alleged that the fundamental rights of the applicant and her daughter were engaged, specifically:

- the right to bodily integrity and health;
- the right to family life;
- the rights of a disabled child; and
- fair procedures and access to justice;

and whilst each of these rights are of significant importance, depending upon context, the first three rights listed above are simply not engaged in the present case, given the matters that were before the Tribunal for consideration and as set out at §38 above. The issues before the Tribunal were very narrow and involved the nature of the relationship between the landlords and the notice party and no more. Thus whilst rights to fair procedures and access to justice were, of course, engaged, I have dealt with them elsewhere in this judgment, and the first three rights mentioned above are of no application to the circumstances of the present matter.

62. In circumstances where I am not prepared to grant the applicant leave to issue judicial review proceedings in respect of the primary relief sought (i.e., an order of *certiorari* of the respondent’s determination order), neither am I satisfied that any of the grounds put forward by the applicant and as discussed above, are sufficient to permit the applicant leave to seek judicial review for:

- the various declarations sought in her statement of grounds;
 - urgent interim relief (also discussed at §78 hereunder); and/or
 - consequential relief (which is entirely dependent on relief being granted on one of the other grounds).
63. The amended statement of grounds sought the reliefs as set out at §25 above, and the reasons/grounds relied upon by the applicant are set out hereunder.
64. The applicant first relied upon “*Procedural Unfairness in the RTB Process*” on the basis that, in summary, the respondent:
- a. failed to afford the applicant adequate notice of, and opportunity to participate in, the proceedings and the procedural steps taken by the respondent did not conform to the requirements of fair procedures in line with natural and constitutional justice;
 - b. failed to provide an adequately reasoned decision and the determination, in failing to disclose the evidential and legal basis upon which it was reached, was invalid;
 - c. acted in excess of jurisdiction, or alternatively erred in law, in the manner in which it conducted its proceedings and/or formulated and communicated its determination;
 - d. failed to take into account material considerations which were placed before it, and/or took into account matters which were immaterial or irrelevant to its determination;
 - e. operated a process that was not designed or adapted so as to accommodate the applicant’s participation as a lay litigant carer or the particular circumstances of her household and no steps were taken to make the proceedings accessible to the applicant having regard to her personal circumstances.
65. Having regard to these grounds, it appears to me from having reviewed the Tribunal report/determination and for the reasons as set out elsewhere in this decision, that:

- the applicant was fully aware of the Tribunal proceedings and she participated in same;
- insofar as the applicant's complaints may relate to post-determination procedures (i.e., in the context of the judicial review leave application) these do not constitute valid grounds of complaint;
- the report/determination was detailed and disclosed the evidential and legal basis upon which it was based;
- the applicant's complaints as to excess of jurisdiction or erring in law are points that may be raised in the statutory appeal;
- the material consideration point has not been elaborated upon but insofar as it may relate to the matters as set out at §40 above, such considerations were not matters to which the Tribunal ought to have had regard; and
- the accessibility issue was appropriately dealt with by the respondent by way of ensuring that the applicant did not require an interpreter (the appeal form provided for a request for an interpreter/translator and the applicant ticked "No" and in this form the applicant also informed the respondent that she did not have any special requirements/accessibility requests for the day of the hearing and she informed the respondent that "*my husband will be caring for our child with special needs during a Tribunal hearing*") and by way of advising the applicant that she could have a legal representative or an estate agent represent her (Transcript, Day 1, 06 February 2025, Page 8). Separately, the applicant was also, in fact, granted an adjournment on 06 February 2025 such that the substance of the dispute was not opened before the Tribunal until the next hearing date, on 21 March 2025.

In the circumstances, I am not satisfied that the applicant has reached the arguable grounds threshold on the grounds of "*Procedural Unfairness in the RTB Process*".

66. Furthermore, such concerns that the applicant may have as regards inadequacy of reasons may be dealt with by way of a statutory appeal as opposed to being relied upon as grounds for judicial review (see, for example, the decision of Simons J in

O'Sheehan v. RTB [2024] IEHC 409, from §86 and ***AG v. Davis*** [2018] IESC 27; [2018] 2 IR 357, per McKechnie J from §50).

67. The next ground relied upon was “*Failure to Take Account of* [the applicant’s daughter’s] *Disability and the Family’s Vulnerability*” and the particulars were, in summary, that the respondent:
- a. failed to engage with a material consideration and failed to take into account the fact that the applicant’s daughter resided in the property, thereby rendering the respondent’s determination disproportionate;
 - b. failed to make reasonable accommodation for either the applicant as the carer of a person with a disability or for the applicant’s daughter as a person with a disability within the meaning of the Equal Status Act 2000 (as amended) and reasonable accommodation required the respondent to adjust its procedures and its assessment so as to take account of the particular vulnerabilities of the household;
 - c. failed to address the needs and circumstances of the applicant’s daughter, constituting discrimination within the meaning of the Equal Status Act 2000 (as amended), by reference to the disability ground;
 - d. by its determination, in so far as it adversely affected the accommodation and living arrangements of the applicant’s daughter, failed to strike a fair balance between the rights of the parties, contrary to Article 8 ECHR as given effect by the European Convention on Human Rights Act 2003;
68. The next ground relied upon was “*Breach of Fair Procedures, Article 40.3 and Article 42A of the Constitution*” and the particulars were, in summary, that:
- a. the applicant was not afforded a meaningful opportunity to present her case or to respond to adverse material, thereby infringing the constitutional guarantee of fair procedures;
 - b. Article 42A of the Constitution required that in all proceedings concerning children the best interests of the child shall be a primary consideration and the failure by the respondent to make provision for the applicant’s daughter vitiated the determination;

- c. insofar as the procedures or practice of the respondent precluded proper consideration of the interests of the applicant's daughter, such rule or practice was incompatible with Article 42A and cannot be applied so as to deprive the applicant's daughter of the protection of that Article;
69. The applicant also sought to rely on the provisions of the United Nations Convention on the Rights of Persons with Disabilities ("UNCRPD") and, in particular, Articles 7, 19 and 24 and the European Convention on Human Rights ("ECHR"), Articles 6 and 14.
70. Insofar as each of the foregoing grounds rely upon the applicant's daughter's disability or the applicant's position as carer for her daughter or the vulnerability of the applicant's family, I am of the view – for the reasons as already expressed in this decision – that these were not matters relevant to the landlord and tenant dispute which the Tribunal had to consider and determine. And I have already considered the fair procedures ground and have not found for the applicant on this point.
71. Much of the foregoing discussion is based upon the applicant's pleadings and affidavits in circumstances where the applicant's oral submissions were largely focussed on her family's personal, medical and financial circumstances and the fact that, as a special needs family (the applicant's words, not mine), she and her family were treated inappropriately by the State and they were treated in a less favourable or discriminatory way. Thus, it may be considered that the applicant was, in substance and despite my previous rulings, afforded an 'on the papers' consideration of the leave application.
72. Quite apart from the fact that any concerns that the applicant may have had as regards her family's circumstances were not concerns that could properly be remedied by way of judicial review, the applicant put forward no real basis for such claims other than a negative Tribunal determination and an (unsubstantiated) claim of bad faith on the part of the respondent.

73. Separately, the applicant appeared to be under a significant misapprehension or misunderstanding as to the function of the respondent and the function of the statutory scheme under which the respondent operated and the circumstances in which, for example, the provisions of Art.42A of Bunreacht na hÉireann could be invoked. It is clear from Art.42A.4.1 that it applies to specified proceedings concerning the safety or welfare of a child, or the adoption, guardianship or custody of, or access to, a child and whilst the applicant's daughter is clearly valued and cared for within the applicant's family, the Tribunal proceedings did not fall within any of the categories as set out in Art.42A.4.1 and thus the Tribunal determination was not made in proceedings of the type identified in Article 42A.4.1.

74. Furthermore, as regards the reference to the Equal Status Act 2000 ("Act of 2000") in the amended statement of grounds, I note that pursuant to s.5(1) of the Act of 2000:

"A person shall not discriminate in disposing of goods to the public generally or a section of the public or in providing a service, whether the disposal or provision is for consideration or otherwise and whether the service provided can be availed of only by a section of the public."

Whilst the applicant did not specifically refer me to the statutory provisions to which this ground related, it seems to me that the applicant was suggesting in this ground that the respondent discriminated against her in the provision of its dispute-resolution functions.

75. Pursuant to s.21 of the Act of 2000, the avenue of redress in circumstances regarding an allegation of discrimination would ordinarily be to the Director of the Workplace Relations Commission ("WRC"). However, in the WRC adjudication in ***X v. Residential Tenancies Board*** ADJ-00026773 (which adjudication, it must be noted, is not binding on this Court), the WRC applied ***Beatty v. Rent Tribunal*** [2005] IESC 66; [2006] 2 IR 191 and ***Miley & ors v. Employment Appeals Tribunal*** [2016] IESC 20; [2018] 1 IR 787 in finding that:

"The Tribunal was fulfilling quasi-judicial decision making as set down in statute and those functions are covered by the principle of judicial immunity."

The determination and the decision making function of that role is not a service or facility available to the public and do not constitute a service as defined under the Equal Status Act 2000 as amended.”

And in ***Fitzpatrick v. Residential Tenancies Board*** [\[2023\] IEHC 229](#), Simons J held at §30 “it is very doubtful that the carrying out of a quasi-judicial function in respect of landlord and tenant disputes constitutes the provision of a “service” within the meaning of the Equal Status Act 2000”. Thus, it appears that this ground as put forward by the applicant is based on a misconceived understanding of the law. In short, the Equal Status Act 2000 does not apply to how the respondent conducts its procedures and formulates its determinations in circumstances such as those pertaining to the matter before me.

76. The applicant’s oral submissions also largely concerned the separate matter and the damage occasioned to the property by the third party tenants but for the reasons set out above, the applicant’s submissions in this regard are extraneous and irrelevant to the matter before the Tribunal.
77. It should also be noted that, as set out at §22 above, whilst the applicant was unable to provide additional documentation to me at hearing, my decision to refuse the applicant leave to apply for judicial review is based upon legal principles and consideration of issues which are independent of any documentation previously provided by the applicant to the Court by way of exhibits to affidavits filed and served. Thus, I am satisfied that the applicant has not been disadvantaged by the fact that she was unable to provide additional documentation to me at hearing. And it must also be noted that the applicant was informed (see, for example, §19 and §20 above) that any additional documentation that she might wish to rely upon at hearing would only be accepted by me if she had referred to such documentation in affidavits and in coming to my decision, I have fully considered all affidavits filed and served by the applicant.
78. Quite separately, the applicant sought a stay of the enforcement proceedings – *vis-à-vis* the determination order dated 24 September 2025 – in the District Court,

primarily on the basis of financial hardship. By way of background, it appears from the applicant's affidavit sworn 27 November 2025 that the notice party intimated by way of email dated 17 November 2025 that he would commence enforcement proceedings in the District Court should the monies awarded to him on foot of the determination order not be paid. However, in circumstances where the applicant also has an extant statutory appeal, such appeal operates as a stay (see §11 above), there is simply no need for me to make any orders in this regard.

79. Thus, having considered the applicant's application for leave in great detail, I am not satisfied to grant her leave to issue judicial review proceedings on any of the grounds put forward by her, and I will hear the parties on the question of costs.