

How to Prepare & Present Your Case at an RTB Adjudication or Tribunal Hearing

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Main Areas of My Talk Today

- How does one become a RTB Adjudicator & Who are they ?
- The RTB Adjudicator training & their role in the Dispute Resolution process
- What is the process from the Adjudicators side of things?
- I will set out the formal process of the hearing on the day of the Adjudication
- I will make some observations of previous cases I have been in and the quality of evidence
- I will set out a list of fundamental pieces of evidence that needs to be lodged with the RTB before the Adjudication or Tribunal hearing.
- I will touch on the importance of having witnesses present to give evidence

Curriculum Vitae of a RTB Adjudicator

- What was deemed suitable and/or what was required to present a good C.V?
- -Academic Degree or Equivalent (NQAI level 7) upwards which contains a legal element
- -Relevant work experience
- -Knowledge of Residential Tenancies Act 2004 & All Amendments Acts
- -Excellent Report writing skills
- -Experience of housing issues and policies
- -Knowledge of relevant legislation and legal process experience

What is Involved With The Exam Process

- **What types of questions are asked?**
- **Mock situations are given for the candidate to do mock reports on**
- **What are they looking for from this exam?**
- **People with excellent knowledge of the Act & Amendment Acts**
- **The ability to write reports that are to the point**
- **Knowing where to find in the Act the relevant Section(s) that applied to the case at hand**
- **Very Good Grasp of English Language**

The Interview Process

What tasks were set at the interview?

- **Small group case discussions**
- **What Qualities were they looking for in their Adjudicators?**
- **-Independent/Fair minded**
- **-Objective**
- **-Decisive in Decision Making**
- **-Good Oral Communication Skills**
- **-Being Adaptable and Self Confident**
- **-Good Team Worker**
- **-Skills in Influencing and Persuasiveness**



If you are successful what happens next?

- Letter of Appointment from RTB Chairperson

“This is to certify that Mr. Murphy was appointed by the Board of the Residential Tenancies Board as an Adjudicator to the panel of Adjudicators established by the Private Residential Tenancies Board under section 164(4) of the Residential Tenancies Act 2004. The appointment was effective from 6th December, 2007 for a period of 3 years”

Training Seminars after their Appointment

- **What do the Adjudicators learn at these Seminars ?**

- Adjudicator's Reports and Layout
- Checklist for the Preparation of the Determination Orders
- Format & Layout of Determination orders
- Sample Determination Orders are discussed
- Discussion on particular Sections of the RTA 2004
- Debate!
- Important to note that to become an adjudicator it is a long road (nearly 1 year) and requires 100% commitment.

Who are the RTB Adjudicators & What are their professional backgrounds?

- -Retired and practicing Solicitors/Barristers
- -Professional Adjudicators/Arbitrators from the Chartered Institute of Arbitrators.
- **Where are they from?**
- The RTB has to have a mix of Adjudicators located around the country in order to hear cases outside Dublin.
- **What is the Range of age?**
Fair to say the age varies from 35yrs to 65yrs
- **Are the adjudicators made up of predominantly male professionals?**
No, Excellent 50%-50% mix
- Now that this process is running many years I am finding that the majority of the Adjudicators are very good but there are still a small amount of the Dos that are questionable hence one needs to appeal to them to Tribunal. This may also be a failure of the landlord to understand the process and not deliver their case properly.

What is the Adjudicator's Role in the entire process?

- Adjudicator receives a call from a Case Officer in the RTB confirming their availability to hear 3 cases on a particular date.
 - Adjudicator then has each case sent to him/her by way of An Post tracking envelopes with each case detail set out in a report.
 - Adjudicator reads each case, prepares a file and clears his/her diary for the day. (may ask case officer for more details)
 - Adjudicator arrives on the day to hear the 3 cases. A typical day is clearly set out as follows:
- | Time: | Type of Case: | Level of Difficulty: |
|--------------|-----------------------|-----------------------------|
| 10:30a.m | Deposit retention | Easy |
| 12:00p.m | Rent Arrears | Normal |
| 2:30p.m | Anti-Social Behaviour | Very Difficult |

Observation of quality of presentations by Parties at Adjudication Hearings: Extremely Poor!

- **-Hand written and messy submissions**
- **-No copies of lease to hand (if they are to hand they are not signed, dated or witnessed!)**
- **-No Photographic Evidence or Copies of Original Inventory (Wear and Tear)**
- **-People just decide not to turn up even though they made the application!**
- **-No Schedule or proof of payments of Rent to hand (Handwritten into Excel Spread sheets)**
- **-Complete and utter ignorance of the Act by Letting and/or Managing Agents (Illegal Evictions)**
- **-No copies of Receipts for costs incurred in relation to damages or deposits**
- **-Threshold Representation of Tenants (landlords on the back foot)**
- **-Landlords self representing without any substantiating paperwork or evidence !**

Other Observations & Questions

- I think it is clear to see that the people who apply to the RTB to become Adjudicators have to go through a long process & are well qualified
- The RTB is a well organised and informed department (but can be very slow at times!)
- There are young and interested Case officers working and assisting (but not influencing) the Adjudicators in the RTB
- Is the system working from the side of the Adjudicators?
- Is the newly introduced phone mediation speeding up the process?
- Are Landlords, Tenants, 3rd Parties & Tenant Activist Groups attending the RTB hearings well informed in how to present their cases properly? (How does this affect the process?)
- Are there enough Adjudicators to hear cases? What was/is my own experience of the RTB?
- What does the current and Future hold for the RTB & Public Opinion? Deposits

During the Hearing What is the Process ?

- Applicant Landlord or Tenant gives evidence first (Full & Final Agreements)
- Respondent Landlord or Tenant gives their evidence next
- Cross examination allowed by both parties on each parties evidence
- Adjudicator will sometimes interrupt and ask questions to clarify issues
- If you forget to lodge evidence and you are late on submissions then give it as oral evidence or the adjudicator will use their discretionary powers to admit it.
- The adjudicator will offer an opportunity to try and settle matters between both parties that will form their final Determination Order
- It is key that you make sure that the adjudicator has read your evidence that you have lodged and your lease is an important document too (recent case!)
- Don't try and outsmart the adjudicator they will 100% know the Act(s) better than you will

*****Lodging a Case & Evidence*****

Deposit Retention for Excessive Wear & Tear/Rent Arrears

- Copy of the lease and standing order if you have it
- Copy of Inventory list or excel sheet (should be with lease)
- Copy of photos of property and or items claiming damage on before tenant moved in and after they left
- Copy of invoices/receipts of payments for replacements and/or works
- Copy of proof of payment of above if necessary (bank statements)
- Copy of communication to the tenant on your concerns on how they are keeping the property during an inspection if any
- If deductions for Pro-rata rent show calculation of this or rent schedule

*****Lodging a Case & Evidence*****

In a case a tenant is claiming a notice is invalid (property going for sale)

- Copy of the formal notice showing it is in the valid format incl periods
- Copy of communication with Auctioneer to go and value the property landlord
- Copy of a letter of Appraisal and valuation from Estate Agent
- Copy of proposed letter of engagement from Agent
- Copy of communication with solicitor by landlord on letting them know of sale
- **For Retrospective Claims by Tenants seeking Compensation claiming the landlord issued the N.O.T due to sale under disingenuous circumstances, i.e. just to get tenant out you also need;**
- Copy of diary of viewings and record of bids (sometimes not sold)
- Copy of myhome, daft and other online advertising and print adverts
- Copy of email threads of conversations between agent and landlord
- Copy of invoices/receipts the landlord paid for advertising (incl board)
- Copy of photo of board on the property while for sale
- Copy of communication with tenant offering them property back (6 months)

*****Lodging a Case & Evidence*****

In a case a tenant is claiming a notice is invalid (Landlord or family member use)

- Copy of the valid notice showing correct format and number of days given
- In the instance of a son or daughter wanting to live in the property (college) you should bring that person along as a witness (best evidence is both)
- On top of that copy of confirmation of the college placement showing the campus is within a reasonable radius of the subject property (plausible and/or probability) notice was given in a perfectly honest manner.
- If the adjudicator feels that a landlord is trying to create the illusion that they want to sell the property or have a son or daughter live in it just to get a tenant out because they are a “difficult tenant” they will see through this and you will lose the case and it will lead to Thousands of Euro awarded to tenant
- Remember the “**Burden of Proof**” is on the landlord in these cases

*****Lodging a Case & Evidence*****

In a case a tenant is claiming failure of landlords obligations

- In recent times I have found more and more tenants are bringing along various tenant activist groups to represent them
- Generally these are retrospective cases about Property maintenance or sometimes the tenant is still living there
- In order to prevent a DO going against landlord one needs;
- In some cases the tenant never mentioned problem during tenancy
- Show emails showing a response by landlord in timely fashion
- Nowadays one needs to put in copies of texts/WhatsApp
- A lot of the time tenants make complaint but delay access
- Provide invoices/receipts of work done and even photos
- Provide other evidence to rebuke false allegations by tenant

Take Home Message

- The RTB Adjudicators are a professional group of trained and educated dispute resolution experts. If you are going into the RTB to represent yourself in a case then you should lodge your evidence in advance of the hearing date, document your evidence correctly, be well prepared and present it in a professional manner on the day.
- There is no point saying that the RTB is “Tenant Friendly” as that is not going to get you a Determination Order in your favour !

Thank you for listening

Marcus O'Connor MSCSI, MRICS



Q & A Time

- Thank you for listening 😊
- Now it is time for Questions and Answers
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