

Residential Tenancies Act 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Ref No. TR 02/DR831/2009. Case reference No DR831 2008

Appellant Landlords': Michael Horan and Maria Horan

Respondent Tenant: Bastian Hubrich

Address of Dwelling: Biddy's Cottage Bishops Lane Ballymore Eustace
Co Kildare.

Tribunal: Dervla Quinn. (Chairperson)
Anne Colley.
John Lynch.

Date of Hearing: 9 March 2009.

Venue: PRTB Offices, O'Connell Bridge House, D'Olier
Street, Dublin 2.

Attendees:

For the Appellant: Michael Horan and Maria Horan. (Landlords)

For the Respondent: Bastian Hubrich. (Tenant)
Suzanne Dalton. (Witness)
Miriam Tyrrell. (Threshold)
Claudine Ernst. (PRTB appointed translator)

In Attendance: PRTB Representative Adrian Mc Grath.
Gwen Malone Stenographers Ltd.

1. Background.

On 19 November 2007 the parties entered into a 12 month agreement for the letting of the Dwelling at a rent of €1,200 per month and a deposit of €1,200. From the start of the letting the relationship between the parties was difficult. On 18 July 2008 the Landlord served a notice attempting to terminate the letting on 3 days notice, and then changed the locks and removed the Tenant's belongings from the dwelling, forcing him to sleep in his van for one night and subsequently in friends' houses. The Tenant lodged an application for dispute resolution services with the PRTB which was received on 24 July 2008. The Tenant sought dispute resolution services in relation to an invalid notice of termination, illegal eviction, retention of the deposit, standard and maintenance of dwelling and breach of Landlords obligations. The matter came before the Adjudicator on 15 August 2008. The Adjudicator determined that the Notice of Termination was invalid and that the Landlord had carried out an illegal eviction and should pay to the Tenant the sum of €6,201.55 being the deposit of €1,200, €601.55 in respect of general expenses incurred by the Tenant, €2,400 arising from expenses incurred by the Tenant as a result of the illegal eviction and €2,000 general damages in respect of the distress and discomfort incurred by the Tenant as a consequence of being unlawfully locked out. The Landlord did not attend the adjudication. By letter dated 9 November 2008 the Landlords' lodged an appeal to the Adjudicator's decision on the grounds that the Tenant had made false claims.

The PRTB appointed Dervla Quinn (Chairperson), Anne Colley and John Lynch as a Tenancy Tribunal to hear the appeal pursuant to section 102 & 103 of the Act. On the 9th day of March 2009 the Tribunal convened a hearing at 2.00 pm at the offices of the PRTB at O'Connell Bridge House D'Olier Street Dublin 2. The Tribunal concluded at 4.05 pm. All parties took the oath at the commencement of the Tribunal.

2. SUBMISSIONS OF THE PARTIES

Appellant Landlords' submission:

Mr. Michael Horan, one of the Landlords began by reading from a prepared text in which he had set out the chronological events surrounding the letting. The Tribunal pointed out to the Landlord that as he had not submitted a copy of the prepared text in advance in accordance with Section 16 of the Tribunals Procedures, he should not continue to read from the text. Mr Horan continued with his evidence referring frequently to his prepared text.

The main point which the Landlord was anxious to explain in some detail to the Tribunal was the fact that from early on in the letting the parties had not been on good terms. Problems arose in relation to damage to the garage door, the Dyson vacuum, the microwave, the cooker, the kitchen table and the post box. The Landlord had not brought any evidence by way of photographs or vouchers to support his evidence in this regard.

Two separate break-ins had occurred at the Dwelling one in March and the other in May of 2008. After the first break-in the Landlord's brother fixed the window which was the point of entry. After the second break in the Tenant had the repairs to the front door repaired by a locksmith at a cost of €601.55 as he felt insecure. By letter of 6 July 2008 the Tenant advised the Landlord that he would be setting this amount off against the rent and that he intended leaving the Dwelling by 19 September 2008. The Landlord took exception to this letter and by letter of 18 July 2008 served a 3 day Notice of Termination on the Tenant. The Landlord then attended the Dwelling at about 7 am on the morning of 22 July 2008 and in the absence of the Tenant removed his goods and changed the locks.

When asked by the Tribunal to explain his failure to attend the adjudication the Landlord referred to the Tenants dispute application. In section 12 of this application the Tenant stated that the Landlord had refused to deal with the Tenant "because of nationality and age." The Landlord took this to be an allegation of racism on his part and for this reason chose not to take part in the adjudication hearing. No other reason was proffered by the Landlord for his failure to make himself available to the adjudication process.

When directed by the Tribunal to clarify the events that took place surrounding the ending of the letting the Landlord confirmed that the Adjudicator had in fact been correct in her findings that no valid notice of termination had been served and further that the Tenant had been illegally evicted. Commenting on the amounts awarded in compensation by the Adjudicator the Landlord stated that the fuel tank which had been half full at the start of the letting had been left empty at a cost to him of €500. On the question of damages to the Tenant of €2,400 awarded by the Adjudicator for expenses and domestic necessities the Landlords wife pointed out firstly that they had found the Dwelling to be in very poor condition and secondly that they had been very conscientious in packing up the Tenants belongings when they retook possession.

Respondent Tenant's Submission:

As the Landlord had confirmed to the Tribunal that an illegal eviction had taken place it was left to the Tenant to provide evidence as to the damages and losses that had occurred as a result of the eviction.

Ms Tyrell pointed out to the Tribunal that any allegations as to the poor condition or otherwise of the Dwelling were unsustainable as the Tenant had not been afforded an opportunity to tidy and repair the Dwelling as would have been the case had the Landlord terminated the letting in accordance with the provisions set out in the Act. The Tenant gave evidence of the poor quality of the repairs done by the Landlord's brother after the first break in and this, coupled with the need for more substantial repairs to the front door, meant that they were not happy to rely on the same person to repair the damage after the second break in.

Tribunals Findings and Reasons Therefor:

As confirmed by the evidence of both parties the Landlord failed to serve a valid notice of termination and went on to carry out an illegal eviction. The Adjudicators findings in this regard are entirely correct and her decision to award the sum of €2,000 for discomfort and distress is upheld by the Tribunal.

On the question of the retention of the deposit, the Landlord's evidence as to the empty fuel tank is accepted and the sum of €500 may be properly deducted from the deposit of €1,200, with the balance of €700 to be returned to the Tenant.

The sum of €2,400 for living and domestic necessities is reduced to €1,800 in recognition of the Landlords evidence that they took particular care in packing up the Tenants belongings.

The Tribunal accepts that the Tenants was entitled to use the services of a professional locksmith in fixing the front door after the second break in, and the sum of €601 was properly expended by them in this regard.

The Tribunal does not find the Landlords reasons for his non-attendance at the Adjudication acceptable. In the matter of his appeal the landlord, by his own admission, accepts the adjudicator's findings were correct in that he had failed to serve a valid notice of termination and illegally evicted the tenant

Determination:

The Tribunal, pursuant to Section 108 (1) of the Act, determines that:

- a. The Appellant Landlords shall pay the sum of €2,000 to the Respondent Tenant by way of damages for unlawful termination of his tenancy of the dwelling;

- b. The Appellant Landlords shall pay the sum of €1,800 to the Respondent Tenant by way of damages for domestic necessities consequent on having to vacate the dwelling following the illegal eviction;
- c. The Appellant Landlords shall refund the sum of €700 to the Respondent Tenant, being the security deposit of €1,200 less the sum of €500 for the cost of refilling the oil tank as agreed in the tenancy agreement between the parties;
- d. The Appellant Landlords shall further refund the sum of €601 to the Respondent Tenant for the cost he incurred in carrying out repairs to the front door of the dwelling;
- e. The sum of €5,101 referred to above shall be payable by the Appellant Landlord to the Respondent Tenant within 21 days from the date of issue by him of this determination;
- f. The Appellant Landlords shall further pay the sum of €2,000 to the PRTB as a contribution to the costs of this Tribunal in accordance Section 115(2)(i) of the Act within 21 days from the date of issue of this determination; as by his own admission he agreed with the findings of the adjudicator.

and hereby notifies the Private Residential Tenancies Board of this determination made on this 16th day of March 2009.

Signed:

Dervla Quinn, Chairperson
for and on behalf of the Tribunal