

Residential Tenancies Act 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No.TR16/DR234/2008. Case Reference No. DR234/2007

Appellant Landlord: Majid Azad.

Respondent Tenant: Kumaran Sinnathambi.

Address of Rented Dwelling: Apt 10, Maryborough Mews, Douglas, Cork.

Tribunal: Thomas Reilly (Chair)
Mary Heaslip,
Bill Holohan.

Venue: Council Chambers, City Hall, Anglesea Street, Cork.

Date of Hearing: Wednesday 1st October 2008.

Attendees: For the Appellant Majid Azad.

For the Respondent: Kumaran Sinnathambi.

In Attendance: Sonia Darwish (PRTB Staff)
Gwen Malone Stenographers.

Application:

This was an appeal of an adjudication held on Tuesday September 4th 2007. The grounds of the appeal were deposit retention relating to the tenancy of apartment 10. Maryborough Mews, Douglas, Cork.

The adjudicator found in favour of the respondent tenant and directed the repayment of the deposit amounting to €900 within 7 days of the issuing of a Determination Order by the Board. Occupation of the property commenced on 24th June 2005 and ceased on 22nd January 2007. On commencement of the tenancy a deposit of €900 in addition to a further €932 being one months rent in advance, plus €32.50 refuse charges was paid to the Landlords agents Rose Property Management.

The appellant landlord appealed the adjudicators decision and on the 9th of May 2008 the PRTB constituted a Tenancy Tribunal and appointed Thomas Reilly, Mary Heaslip and Bill Holohan as Members pursuant to sections 102 & 103 of the Residential Tenancies Act 2004 (The “Act”) and appointed Thomas Reilly to be the chairperson of the Tribunal (“the Chairperson”).

Appellant Landlord’s Case:

The appellant landlord stated that he let his property through an Agent as he resided in Dublin. The tenancy agreement with his tenant was for a period of one year, after which the landlord expected his tenant to approach him with regard to a possible extension of the lease, rent review etc. The landlord suggested that he had tried to arrange meetings with the tenant on a number of occasions, however these were then cancelled by the tenant. When a meeting did take place, the landlord stated that he was shocked at the condition of his property and decided that it was going to be sold. This decision was communicated to the tenant who agreed that he would have the necessary cleaning carried out in preparation for viewings, and the generation of a sales brochure to include pictures of the accommodation.

On inspection of the property by the Agency post the cleaning, it was indicated that the cleaning was not adequate. Items that required further attention were windows, mirrors, shower unit glass, and glasses. Attention was focussed in particular on what was alleged to be grease on the glass and the walls; this in the view of the landlord was as a result of inadequate ventilation i.e. not opening windows when cooking. The landlord advised the tenant that he required the property to be in “showroom style”. Failing a satisfactory level of cleanliness the landlord stated that he would have no choice but to engage the services of a cleaning company to carry out the work. Two plants which were in the property at the beginning of the tenancy were stated to be neglected and dead. Correspondence was exchanged with the tenant at this point indicating the costs incurred by the landlord, though no documentary evidence was provided to vouch for this expenditure.

1. Cleaning :	€200:00
2. Replace Plants :	€375:00
3. Time & Travel :	€150:00
Total	€725:00.

This sum, when deducted from the deposit of €900 leaves a balance of €175 which was issued to the tenant on the 4th of May 2007 by cheque.

The landlord did apologise for his non appearance at the adjudication hearing as he was abroad on holidays and also for his omission in not advising the PRTB of a change of address

Respondent Tenant's Case:

The tenant stated that he took up residence in the property on 24th June 2005 at an agreed rent of €900 per calendar month, having also paid a deposit of €900. The rent was paid monthly by Direct Debit. The rental transactions were conducted by Rose Property Management and all moneys paid were receipted.

On December 1st 2006, the landlord contacted the tenant and advised him that he was putting the property on the market. The tenant advised the landlord that he would vacate the property on January 24th 2007. Estate agents were appointed to take photographs, prepare brochures and ensure the property was in a saleable condition. It was agreed that the Agents would collect the keys and inspect the property on the day of departure. The tenant departed the property on the 19th of January albeit the rent was paid up to 24th. The landlord was notified of the vacating of the property and requested to arrange for the inspection of it. The landlord did not inspect the property at this stage, however the tenant was sent a text message to inform him that Jean Shanahan of DNG Harris Auctioneers would call to carry out the inspection. The tenant stated that he was instructed to leave the keys of the property in a shop owned by the landlord which he did.

A neighbour of the tenant contacted him on the 17th of February to advise that the landlord was in the property and on hearing this, the tenant went over and met with the landlord. The landlord stated that there was grease or an oily film on the glassware which he was not happy about, this was disputed by the tenant. At this stage photographs were taken by the tenant in the presence of the landlord

On 8th March 2007, Marion Hutchinson of Hutchinson Solicitors wrote to the landlord stating she was acting for the tenant and requesting return of the deposit within 7 days. No reply to this letter arrived and a further letter dated the 4th of May 2007 was issued stating that proceedings would be taken without further notice. The tenant later received an undated letter from the landlord giving reasons why he did not return the deposit. The document featured the alleged costs involved in putting the property back in its former condition and the residue of €175:00 left over following deduction of all alleged costs from the deposit. A cheque in the sum of € 175 was enclosed; this cheque has not been cashed.

During the period of occupation repairs were required e.g. dealing with a burst pipe, valves had to be replaced and carpets had to be replaced. All of which caused inconvenience to the family. Resulting from the burst pipe the family spent time and effort in drying and cleaning the damaged area while also having to stay in Bed and Breakfast accommodation for two days. The tenant stated that his landlord failed in his duty to inspect the property on departure of the tenants despite requests to do so, failed to notify him of alleged damage caused and failed to return the deposit.

Findings of Fact and Reasons for Determination:

1. The parties entered into a fixed term agreement for a period of twelve months beginning on the 24th of June 2006.
2. By mutual verbal agreement an extension was agreed after the initial 12 months had expired.
3. A security Deposit of €900 was paid at the commencement of the tenancy.
4. A sum of €932:50 was paid by direct debit monthly up to and including the 24th of December 2006 (€900 rental plus €32.50 refuse charge)
5. The security deposit has not been returned contrary to Section 12(d) of the Act.
6. No valid Notice of Termination was served by the landlord on the tenant.

Determination:

In the matter of Mr Majid Azad, Appellant Landlord and Mr Kumaran Sinnathambi, Respondent Tenant, the Tribunal, pursuant to Section 108(1) of the Act, determines that:

1. The Appellant Landlord shall refund the deposit to the Respondent Tenant in the sum of €900.
2. The Appellant Landlord shall pay damages in the sum of €400 to the Respondent Tenant for breach of the obligation to promptly refund the deposit to the tenant.
3. All sums, in total € 1,300.00 shall be paid to Mr Kumaran Sinnathambi within 28days of the date of issue of the Order by the Board.

Signed:

Thomas Reilly, Chairman
for and on behalf of the Tribunal.

The Tribunal hereby notifies the Private Residential Tenancies Board of this determination made on this 27th day of November 2008.