

Residential Tenancies Act 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR 01/DR1348/2009. Case Ref No: DR1348/2007

Appellant Landlord: Peter Madden

Respondent Tenants: Patryk Reich

Address of Dwelling: Apartment 413, Aviary House, Mount Kennett Court,
Dock Road, Limerick.

Tribunal: Eoin O'Sullivan (Chairperson)
Gus Cummins
Bill Holohan

Date of Hearing: 6 April 2009

Venue: Room F2/R2, Limerick County Council, Dooradoyle,
Limerick.

Attendees:

For the Appellant: Peter Madden

For the Respondents: Patrych Reich
Edyta Zglobis

In Attendance: PRTB Representative: Sonia Darwish
Gwen Malone Stenographers Ltd

Background:

On 20 June 2008, an Adjudication was held on foot of an application from the Tenant Patryk Reich, in respect of the non-return of €200 from the security deposit of €550. The Adjudicator found that the tenancy commenced on 24 January 2007, for an initial period of six months, with an agreed rent of €550 per month and a deposit of €550. The tenancy was validly terminated in September 2007. The Landlord returned €350 from the deposit of €550 having retained €200 in respect of damage to two chairs, some minor painting works and the cleaning of a carpet. The Adjudicator determined that the Landlord refund the €200 retained and further determined that the Landlord reimburse the Tenant the sum of €500 for loss of earnings and damages resulting from an injury sustained when one of the chairs in the dwelling collapsed under him.

On 30 October 2008, the Landlord appealed the Determination of the Adjudicator on a number of grounds including the authority of the Adjudicator to award damages for personal injuries and that the damage to the dwelling, was in excess of normal wear and tear.

The PRTB appointed Eoin O`Sullivan (Chairperson), Gus Cummins and Bill Holohan as a Tenancy Tribunal to hear the appeal pursuant to section 102 & 103 of the Act.

On the 6 April 2009 the Tribunal convened a hearing at 2.30 pm in Limerick County Council, Dooradoyle, Co. Limerick.

Appellant Landlord's Case:

The Appellant Landlord reiterated his case set out in his application of the 30 October 2009, in which he claimed he was entitled to retain €200 from the deposit to replace two chairs that were damaged by the Tenant to cover the cost of some minor paint work and carpet cleaning. He claimed that the chairs were in good condition at the outset of the tenancy and that he had received no complaints about their alleged poor condition. When the Tenant vacated the dwelling, the landlord's agent compiled a checklist of the condition of the dwelling and determined that that some paintwork was required, that a carpet needed cleaning and two chairs were broken. The landlord claimed the cost of replacing the two chairs amounted to €120, the minor repainting cost €40 and claimed a further €40 for the general cleaning of the apartment, including the carpet, giving a total of €200 to be deducted from the security deposit of €550.

He also disputed the jurisdiction of the Adjudicator to award the sum of €500 for personal injuries claimed by the Tenant.

Respondent Tenant's Case:

The tenant claimed, and it was not disputed, that he moved into the dwelling on 4 January 2007 for an initial agreed six month period at a rent of €550 per month and a security deposit of €550, and left on the 24 September 2007 having provided a valid notice of termination. The Tenant reiterated his claim set out in their application to the PRTB for dispute resolution that he was entitled to the full return of the deposit of €550 as he left the dwelling in clean condition and the chairs were in a poor condition when they took up occupancy and subsequently broke in the course of normal use.

He complained to the Landlords agent about the condition of the chairs, but received no satisfaction in the matter. A witness, Edyta Zglobis, who had lived in the dwelling, provided corroborating evidence and confirmed the account provided by the tenant.

Findings of the Tribunal and Reasons Therefor:

1. No new substantive evidence was adduced at the Tribunal.
2. Contradictory interpretations of events presented in the oral evidence provided considerable difficulties for the Tribunal in determining the events that led to the withholding of a portion of the deposit by the Landlord. Section 12(1)(d) of the Act stipulates that a landlord of a dwelling shall, subject to the subsection (4), return or repay promptly any deposit paid by the tenant to the landlord on entering into an agreement for the tenancy or lease. Thus, the clear onus is on the Landlord to return the deposit unless subsection 4 applies, which in this particular case, relates to the costs that would be incurred by the landlord, were he or she to take them, in taking such steps as are reasonable for the purposes of remedying the deterioration of the dwelling above normal wear and tear.
3. No compelling evidence was presented to the Tribunal that led them to alter the adjudicator's determination on this issue. The necessity to paint the walls and to clean the carpets amount to normal wear and tear and the chairs at issue were damaged at the outset and deficient.
4. On the issue of the payment to the Tenant of €500 for personal injuries, the Tribunal determines that the Board has no jurisdiction to deal with personal injury claims and sets aside this award.

Determination:

The Appellant Landlord shall, within seven days of the date of this Order refund to the Respondent Tenant, the €200 withheld from the Deposit.

The Tribunal hereby notifies the Private Residential Tenancies Board of the Determination made on 21 April 2009.

Signed:

Eoin O'Sullivan, Chairperson

For and on behalf of the Tribunal.