

**Residential Tenancies Act 2004**

**Private Residential Tenancies Board Tribunal**

**Report of Tribunal Reference No: TR 03/DR492/2009. Case Reference Number DR492/2007**

**Appellant Landlord:** Paul O'Leary

**Respondent Tenants:** Robert Brzozowski and Edyta Suszko

**Address of Dwelling:** 125 Blarney Street, Cork.

**Tribunal:** Eoin O'Sullivan (Chairperson)  
Keara Donnelly  
Mary Morris

**Date of Hearing:** 19 March 2009

**Venue:** Cork County Council, Carrigrohane Straight, Cork

**Attendees:**

For the Appellant: Paul O'Leary  
Peg O'Leary  
Shane Doorley, O'Flynn Exhams Solicitors

For the Respondents: Darius Olezak

**In Attendance** PRTB Representative: Adrian McGrath  
Gwen Malone Stenographers Ltd

**Background:**

1. In November of 2006 the Tenants entered into an agreement to rent the dwelling on a short-term basis at a monthly rent of €800 and paid a security deposit of €800. They took over the dwelling from work colleagues who had occupied the dwelling since August 2003. The Tenants vacated the dwelling on 21 February 2007 and sought the return of their security deposit less the sum of €31.71 which was outstanding in respect of gas and electricity bills which were in the name of the landlord.
2. An adjudication was held on 2 July 2008 and a report subsequently issued to the parties. The Tenants claimed that whilst in taking over the dwelling from their work colleagues who vacated the dwelling this was with the consent of the landlord and that a new tenancy was in effect created between the Landlord and them.
3. They claimed that the security deposit was paid to the outgoing tenants in compliance with the wishes of the Landlord. The Landlord, through his representative, claimed that Mr. Brzozowski and Ms. Suszko were in fact sub-tenants of the previous tenants. The Adjudicator found that Mr. Brzozowski and Ms. Suszko were tenants, not sub-tenants, and that the relationship of landlord and tenant existed between the parties. The Adjudicator also found that Mr. Brzozowski and Ms. Suszko paid the security deposit to the previous tenants and that the landlord was not entitled to retain the security deposit.
4. On 25 November 2008, the Landlord appealed the adjudicator's determination on the grounds that he denied that he caused the ESB and gas accounts to be transferred back into his name when the outgoing tenants departed; that he never authorised the applicant tenants to pay a security to the outgoing tenants and that the damage to the dwelling was in excess of normal wear and tear.
5. The PRTB appointed Eoin O'Sullivan (Chairperson), Keara Donnelly and Mary Morris as a Tenancy Tribunal to hear the appeal pursuant to Section 102 & 103 of the Act and appointed Eoin O'Sullivan to be the Chair.
6. On 19 March 2009 the Tribunal convened a hearing at 2.30 pm at Cork County Council, Carrigrohane Straight, Cork and the relevant parties were sworn in.

**Appellant Landlord's Case:**

The Landlord outlined his case whereby he claimed the sum of €1,300 in respect of damages to the dwelling, that he never instructed Mr. Brzozowski and Ms. Suszko to pay a deposit to the outgoing tenants, that he never instructed any of the tenants to transfer the utility bills to his name and that he believed that Mr. Brzozowski and Ms. Suszko were in fact sub-tenants of the previous tenants.

He gave evidence that he collected the rent from Mr. Brzozowski and Ms. Suszko but this was a matter of convenience only as the head tenant did not live as close to the dwelling as he did.

He also gave evidence that when Mr. Brzozowski and Ms. Suszko took occupation of the dwelling, that he only gave a cursory inspection, as it was his belief that the tenancy was ongoing.

### **Respondent Tenants Case:**

Mr. Olezak, representing Mr. Brzozowski and Ms. Suszko, gave evidence to the Tribunal that he was present when Mr. Brzozowski and Ms. Suszko took occupation of the dwelling and was witness to them giving the previous tenants the sum of €800 following an instruction from the Landlord and a further €800 to the Landlord in respect of the first months rent. The tenants moved out on 21 February 2007 but they were unable to meet with the landlord until 23 February 2007 when the keys of the dwelling were handed back, but no check of the dwelling took place at that time when he claimed the dwelling was clean, in any event.

### **Findings of the Tribunal and Reasons Therefor:**

1. The Tribunal finds that a valid tenancy existed between Mr. Brzozowski and Ms. Suszko and Mr. O'Leary, not a sub-tenancy as claimed. The Landlord collected the rent directly from the Tenants and the previous tenants had no further relationship with the landlord.
2. In respect of the payment of a deposit of €800 by Mr. Brzozowski and Ms. Suszko to the previous tenants on the instructions of the Landlord, which is denied by the Landlord, the Tribunal finds that, on the balance of probabilities, that the payment took place, albeit some confusion may have arisen on the part of both parties.
3. The claim for €1,300 in respect of damages, above normal wear and tear, to the dwelling is denied. The Respondent Tenants were in occupation for approximately four months and the oral evidence given to the Tribunal suggested that the alleged damages were not recent. With the commencement of the new tenancy in November 2006, the Landlord should have conducted a thorough inspection of the dwelling and at that stage, sought relief from the previous tenants in respect of the alleged damages. At the termination of the tenancy between the Landlord and Mr. Brzozowski and Ms. Suszko, no inspection took place and therefore the Tenants cannot be expected to be liable for any alleged damages.

**Determination:**

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

The Adjudicators determination is upheld to the effect that:-

- The Appellant Landlord, Mr. Paul O’Leary shall pay the sum of €668.29 to the Respondent Tenants, Mr. Robert Brzozowski and Ms. Edyta Suszko within seven days of the date of issue of the Order by the PRTB, being the security deposit less outstanding utility bills.

The Tribunal hereby notifies the Private Residential Tenancies Board of the Determination made on 22 April 2009.

**Signed:**

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**Eoin O’Sullivan, Chairperson**

For and on behalf of the Tribunal.