

**RESIDENTIAL TENANCIES ACT 2004**

**Private Residential Tenancies Board Tribunal**

**Report of Tribunal Reference No: TR04/DR182/2009 Case Reference No: DR182/2007**

<b>Appellant Tenant:</b>	Jonathan Crean
<b>Respondent Landlord:</b>	Fiach McHugh
<b>Address of Rented Dwelling:</b>	Ashville Ballymakenny Road Drogheda Co. Louth
<b>Tribunal:</b>	Orla Coyne (Chairperson) Nesta Kelly Michael Farry
<b>Venue:</b>	The Council Chamber Louth County Council County Hall Millennium Centre Dundalk Co. Louth
<b>Date of Hearing:</b>	26 March 2009
<b>Attendees</b>	
For the Appellant:	No appearance
For the Respondent:	Johnnie O' Kane (Agent on behalf of Landlord)
<b>In Attendance:</b>	Sonia Darwish (PRTB staff) Gwen Malone Stenographers

**Background:**

1. On the 22 February 2007 the Landlord made an application for dispute resolution services to the Private Residential Tenancies Board (the “PRTB”). The matter concerned €438 in respect of the filling of an oil tank with oil. Pursuant to Section 78 of the Act an Adjudicator was appointed and heard the case on the 8 July 2008. The Adjudicator’s report of the proceedings and determination was sent to both parties. Subsequently, a valid Notice of Appeal was received from the Appellant Tenant on 13 October 2008. The Appellant Tenant was appealing the decision of the Adjudicator stating in particular that the receipt for the refill of oil produced at the adjudication hearing was not a correct receipt.
2. On the 7 January 2009 the PRTB constituted a Tenancy Tribunal and appointed Orla Coyne, Nesta Kelly and Charles Corcoran as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Orla Coyne to be the Chairperson of the Tribunal (the “Chairperson”). Subsequently Charles Corcoran was substituted by Michael Farry.
3. On the 4 March 2009 the parties were notified of the constitution of the Tribunal and provided with details of the date and venue set for the hearing and were provided with a copy of the Tenancy Tribunal Hearing Procedures.

**Documents Submitted Included:**

1. Application for Dispute Resolution.
2. Correspondence between the Appellant and the Respondent and the PRTB and copied to all parties.
3. Report of the Adjudication Hearing dated the 14 July 2007
4. Notice of Appeal dated the 13 October 2008.

**Procedure:**

On the opening of the Tribunal the Chairperson was advised that the Appellant Tenant was not present at the venue. The Tribunal waited 30 minutes to see if the Tenant would attend. The Chairperson opened the Tribunal and addressed the representative on behalf of the Landlord and also addressed the member of the PRTB. She asked Ms. Darwish, the representative of the PRTB, to confirm whether or not the Appellant Tenant had been properly notified of the venue, the date and time of the hearing. Ms. Darwish read into the record that the Notice of the Tenancy Tribunal Hearing was sent to the Tenant on 4 March 2009 under An Post item number LL051981611IE.

It was post tracked for delivery to the address given on file for Mr. Crean on the 5 March 2009. Ms. Darwish confirmed that the address to which it was sent was the last address that Mr. Crean, the Tenant, had furnished to the PRTB and was correctly addressed. Ms. Darwish, when asked by the Tribunal whether or not Mr. Crean the Tenant had made any notification or contact either verbally or in writing with the PRTB that he sought an Adjournment of the hearing of the Tribunal which had been constituted for the 26 March 2009, she confirmed that he had not contacted the PRTB to advise that he sought an Adjournment either verbally or in writing.

The Chairperson asked the Landlord's representative, Mr. O' Kane whether or not he wished to say anything in respect of the matter before the Tribunal. He said that they had made their case before the Adjudicator and that he did not have anything further to add; however he did seek his costs for having attended at the Tribunal hearing as the Appellant Tenant had not appeared who had made the application before the Tribunal for the Appeal.

The Tribunal advised Mr. O' Kane that the Landlord would be advised of the Tribunal's determination in due course.

The Tribunal was then concluded.

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

1. The Appellant Tenant had brought an Application for Dispute Resolution to the PRTB. However, the Tenant had failed to appear at the hearing. The Tribunal therefore confirms the determination of the Adjudicator and that the sum of €438.65 be paid to the Landlord by the Tenant within fourteen (14) days of the issue of the Determination Order.
2. The Tribunal further finds that the Appellant Tenant was properly notified of the hearing date and venue of the Tribunal and had made no attempt to contact the PRTB to advise if he wished to seek an adjournment and had given no reasons why he was not in a position to attend.
3. The Tribunal makes no award for costs or expenses as requested by the Landlord's agent, namely Mr. Johnnie O'Kane to him.
4. The Appellant Tenant has availed of the PRTB appeal process and a Tribunal has been convened to deal with the appeal. Contrary to the Tribunal procedures, the Tenant has made no effort to contact the Tribunal to inform the Tribunal of his non attendance. The Tribunal notes that the Tenant did not seek to have the hearing adjourned and finds it regrettable that the PRTB has been put to the expense of convening a Tribunal.

Consequently, the Tribunal directs that the Tenant pay the sum of €2,000 as a contribution towards the cost of the Tribunal pursuant to section 115(2)(i) of the Act.

### **Determination**

The Tribunal pursuant to Section 108(1) determines as follows:

1. The Determination of the Adjudication of 8 July 2008 is confirmed to the effect that:-
  - The Appellant Tenant shall pay the sum of €438.65 to the Respondent Landlord, being the amount that the Landlord had to expend to fill the oil tank in respect of the tenancy of the dwelling at at Ashville, Ballymakenny Road, Drogheda , Co. Louth. The said sum is to be paid to the Respondent Landlord by the Appellant Tenant within fourteen (14) days of the date of issue of this Determination Order.
2. In addition, the Appellant Tenant shall pay the sum of €2,000 to the PRTB, within 21 days of the date of issue of the determination Order, being a contribution to the costs of the Tenancy Tribunal pursuant to Section 115(2)(i) of The Residential Tenancies Act 2004.

And hereby notifies the Private Residential Tenancies Board of this determination made on the 30 day of April 2009.

**Signed:**

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Orla Coyne (Chairperson)  
For and on behalf of the Tribunal.