

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR11/DR756/2009 Case Reference No: DR756/2007

Appellant Tenant: Georgia Pistoia

Respondent Landlord: David O'Brien

Address of Rented Dwelling: 132 South Circular Road
Dublin 8

Tribunal: Orla Coyne (Chairperson)
Dervla Quinn
Liam Nolan

Venue: Floor 2, OCBH, D'Olier Street, Dublin 2

Date of Hearing: 6 March 2009

Attendees

For the Appellant:

Georgia Pistoia - Tenant
Joasia Goldin
Olga Okoneshkova
Miriam Tyrell – Threshold
Teresa Snow – Threshold

For the Respondent:

David O'Brien – Landlord
Robert Walsh Solicitor
(of Robert Walsh & Co. Solicitors)

Derek Burke
Patrick Kevelle
(witnesses for the Landlord)

In Attendance: Adrian McGrath (PRTB staff)
Gwen Malone Stenographers

Background:

1. On the 5 July 2007 the Applicant Tenant made an application for dispute resolution services to the Private Residential Tenancy Board (the “PRTB”). The matter concerned an alleged unlawful termination of a Part Four Tenancy; personal property thrown out without permission; no written or verbal notice by Landlord to terminate the tenancy; payment of rent while builders were working on the refurbishment of the house; lack of notice given by Landlord of major refurbishment which was being carried out and non furnishing of the Landlord’s PPS number to the Tenant.
2. Pursuant to Section 78 of the Act an Adjudicator was appointed and heard the case on the 20 August 2008. The Adjudicator’s report of the proceedings and determination was sent to both parties. Subsequently, a Notice of Appeal was received from the Appellant Tenant on the 3 December 2008. The Appellant Tenant was appealing the findings of the Adjudicator which were
 - (a) The Respondent Landlord did not terminate the Appellant Tenant’s Part Four Tenancy of the dwelling.
 - (b) The Landlord was not in breach of his obligations under the Act in respect of giving due notice to the Tenant of the refurbishment work to be carried out at 132 South Circular Road, Dublin 8 (the Dwelling) while the Tenant was in occupation of the dwelling.
 - (c) The Landlord did not dispose of the Tenant’s personal possessions.
 - (d) That the Tenant pay damages of €100 to each of the two witnesses of the Landlord who appeared on his behalf at the Adjudication.
3. On the 7 January 2009 the PRTB appointed Orla Coyne, Liam Nolan and Dervla Quinn Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Orla Coyne to be the Chairperson of the Tribunal (the “Chairperson”).
4. On the 5 February 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 6th September 2008.
4. Notice of Appeal dated the 3 December 2008

Procedure:

Prior to opening the case for the Appellant, the Chairperson indicated how the hearing was to be conducted and made reference to the Tribunal Procedures furnished to both parties and all parties acknowledged that they had been received and understood. In particular the Chairperson explained how the business of the hearing would proceed and referred to the relatively informal nature of the hearing, although requiring that the evidence would be taken on oath and that to give false evidence on oath would be in contempt of the Tribunal. Anyone doing so could be found guilty of an offence. The Chairperson also pointed out that the hearing was being recorded by Gwen Malone Stenographers.

Appellant Tenant's Case:

Miriam Tyrell of Threshold put the Tenant's case before the Tribunal and stated that the Tenancy commenced in March of 2003 at the Dwelling and that she had lived at the address until March of 2007. She had during the period obtained a Part Four Tenancy under the Act. Another tenant in the house told the Appellant Tenant that the house was to be sold and that the Tenants had to move out. However this was proved not to be the situation, the Landlord, it was alleged, told the Tenant to stay as he was going to carry out some refurbishment work to the house which would only take about four weeks. Ms. Tyrell went on to state that the Tenant did not leave the house of her own volition, that she went on a previously booked holiday and extended it with the agreement of the Landlord because the refurbishment was more major and was taking longer than expected.

When she returned from holiday the Landlord allegedly said that she would sign a new Lease Agreement at the same address. Under the new lease the rent would be increased although she was not given the required notice under the Act in writing of this increase. The Tenant prior to going on her holiday took back her deposit less any utility bills from the Landlord as he was also returning the deposit to another tenant. However, her rent was paid up until the end of March 2007. The Landlord had advised her that there would be no need for her to move her belongings because her room only needed a little work while she was away. The refurbishment work had commenced before she left on her holidays. However, just before she departed on her holidays she was contacted by the Landlord to say that it was necessary for her to move her belongings before she left on her holiday period because of the building work.

She managed to get most of her belongings from the Dwelling and move them into the homes of different friends, but a number of her possessions were still in the Dwelling.

She also returned her keys to the Landlord because she said that the Landlord allegedly said he was going to change the locks as part of the refurbishment.

When she returned from holidays she spent the first night in the home of one of her witnesses because she had given the keys back and could not gain entry to the Dwelling. She phoned the Landlord the next day and visited the Dwelling. The builders were still in the Dwelling. She was told her belongings were gone and that the builders may have thrown them out. As a result she was left homeless for April and May 2007 and only secured accommodation in June 2007. Evidence was submitted to the Tribunal of an e-mail that the Tenant had sent on 1 April 2007 on www.daft.ie stating that she was looking for temporary accommodation until the renovations were finished in her flat. The Tenant refuted:

1. That she indicated to the Landlord in late 2006 that she wished to end her tenancy;
2. That she changed her mind and requested to remain as a Tenant;
3. That she would not return to the Tenancy or that she intended to live elsewhere;
4. That a friend of hers collected her belongings from the tenancy and returned her keys to the Landlord;

She stated that she lived in the house until March 2007 when she left for a short holiday and her rent was paid up to date until the end of the month. That she had great difficulty in obtaining the Landlord's PPS Number and still did not have it

Threshold on her behalf further stated that the Landlord breached his obligations by:

1. Causing her to lose her entitlement under the Act as a Part Four Tenant and the security that this entails
2. By not giving a written Notice of Termination of the Tenancy under the Act
3. The Tenant not enjoying peaceful and exclusive occupation of her Tenancy
4. Causing her to be at a loss of a number of her belongings which were still in the dwelling when she left for her holiday
5. Causing her to be left homeless when she returned from her holiday at the end of March

Appellant Tenant's Evidence:

The Appellant Tenant alleged that the Landlord had not sold the house. She said she never had a conversation with anybody about ending her Tenancy and that she had not arranged for anyone to collect her belongings from the Dwelling or return her keys. She said that the deposit was returned to her because the Landlord said that he had to show to another Tenant in the Dwelling that the tenancy was finished, but that she did not have to leave the Dwelling. She said that her rent was paid by direct debit from her bank account every month. She said that the Landlord said that when the refurbishment was done to the house that he would offer her a new lease and that the rent would be increased. She only returned the keys as part of the refurbishment as the Landlord was going to change the locks. She said she extended her holiday to three weeks in total because of the refurbishment work.

When she came back at the end of March 2007 she rang the Landlord. When she contacted him he said that the work would take a little longer. When she went into the Dwelling her belongings were gone and she was told by the Landlord that the builders had probably thrown them away. She presumed when she came back from her holidays that she was going to live at the Dwelling and sign a new Lease at the increased rent but this did not happen as the refurbishments were still ongoing. She had to find temporary accommodation, whereby she placed an advertisement on the www.daft.ie website on 1 April 2007 seeking temporary accommodation. The Tenant gave a list of items she said still remained in the Dwelling. The other items she brought to her friends' houses. She said that after the 1 April she stayed with different friends for different periods of time and eventually on the 8 June 2007 she found her own accommodation.

Cross Examination

On cross examination the Tenant gave evidence that she removed belongings before she went on holidays from the Dwelling on her own. There were four other tenants originally in the Dwelling and as one tenant left he/she was replaced. She said that she never sub-let her room and she also confirmed once again that although she had requested a number of times, she never received the Landlord's PPS Number. She also replied that the reason she gave back her deposit and keys was because the Landlord stated that he wanted another tenant to leave because he owed money in rent arrears and the locks were going to be changed as part of the refurbishment to the Dwelling. She never accepted that the Tenancy was coming to an end.

The Tenant explained why she did not attend the Adjudication on the 20 August 2008 was because on the first notification she had advised the PRTB that she was out of the country. The subsequent date for the rescheduled hearing was sent to her while she was on holidays. She was not in a position to read it but she had contacted Threshold who represented her. It was confirmed that she was seeking compensation for the alleged unlawful termination of her Tenancy and seeking specific damages for her missing belongings.

Ms. Golden (Witness for the Tenant)

Ms Golden stated that she gave a book of photographs to the Tenant for her birthday on 8 February 2007. She was with her in the dwelling and had dinner. When the Tenant came back from her holidays she rang her that evening and said that she had nowhere to stay and could she stay with her in her house. She stayed approximately two weeks with her.

Olga Okoneshkova (Witness for the Tenant)

Ms Okoneshkova said that she was in the dwelling on 14 February 2007. Her evidence and the evidence of the prior witness was to refute the allegation by the Landlord that the Tenant would not be returning to the Dwelling after Christmas, which was withdrawn by the Landlord's representative during the course of the cross examination.

Before the Landlord gave his evidence the Landlord, his witnesses and his representative withdrew to consider documents and photographs which he stated he did not receive from the PRTB prior to the hearing. They returned and had no issue with the documents or photographs as produced.

The Respondent Landlord's Case

Mr. Robert Walsh Solicitor on behalf of the Landlord stated that the Landlord's position was that the Tenants when they were told that the house was going to be refurbished were going to leave voluntarily. He said that the four tenants who were there at that time were not getting on well in the house and that they were happy to leave.

The Landlord's Evidence

The Landlord stated that in November 2006 he had received a call from the Tenant saying that she was in dispute with another Tenant and that she was leaving. He said that when he had the conversation with her he told her that it would be better if everybody left. He went to the Dwelling on the same day and spoke to all the other tenants except Ms. Pistoia. He said as it was not working out that he would give them a month or two to leave to enable them to try and find somewhere else to go. It was his understanding that they were leaving by agreement. He said there was no bad feeling about them leaving and that everybody's rent was at that stage up to date. It was put to the Tribunal that the arrangement in the house was quite loose, that although there were four tenants at any given time staying in the house as any given tenant left he or she was replaced by the other tenants in the house with a new tenant.

Mr. Walsh stated on behalf of the Landlord that because the Tenant's rent was paid to the end of March, it was not that the Landlord accepted that the Tenancy was continuing. It did not prove in any way that he accepted that the Tenancy was still in existence. The Landlord had arranged to meet with the Tenant before she went on her holidays to give her deposit

back. There were no bad feelings and that she was leaving of her own volition. The Tenant asked could she leave her possessions in the Dwelling as she was going to Italy on holiday. The Landlord advised her at that stage that he was going to start the renovations. He believed that once he had given her deposit back and that she had handed in her keys that the Tenancy was terminated. This together with the refurbishment work which had started and that everyone had been notified about. The Landlord denied that he mentioned that the rent was going to be increased because he was renovating the house in order to sell it. He did not mention to the Tenant about her entering into a new lease upon her return. He said that when he gave her deposit back which was about two or three weeks before she went on holiday that she removed all her belongings. He said he was advised by one of the other tenants that her boyfriend had called and collected whatever belongings were left shortly after she left the dwelling to go on holidays. It was only eighteen months later that he knew that there was any dispute when he received correspondence from the PRTB.

The Tribunal put to the Landlord that the Tenant in her direct evidence said that her understanding from her conversation with the Landlord was that she was going to enter into a new Lease but there appeared to be a misunderstanding between what the Landlord understood and what the Tenant understood. Also the call that was made to the Landlord in November 2006 was in respect of a dispute she was having with one of the other tenants and not that she wanted to move.

Mr. Kevelle (Witness for the Landlord)

It was put to Mr. Kevelle about the complete divergence of evidence between the Landlord and the Tenant. Mr. Kevelle said he was the last person to leave the house and the last person to move in. He moved in around the middle of January 2007 and that he had found out afterwards that the house was going to be sold. He said that Ms. Pistoia was having difficulties with one of the other tenants. That she had left sometime in February or at the beginning of March. He said that he believed the reason why all the Tenants were leaving was that the Landlord was selling the house. The Landlord had also mentioned that there was some dispute in the Dwelling between the tenants. He intended to renovate the house and sell it. He had helped Ms. Pistoia with her luggage into her car and that she had left some belongings at a friend's house and believed that she was leaving for good. He said that a friend of the Tenant came about a week or two after she had left to collect the remainder of her possessions.

The Tribunal adjourned to consider the evidence to that point and on resumption the Chairperson brought to the attention of the Landlord, the Tenant and their representatives that they had been informed that the Landlord's representative Mr. Walsh is a member of the Adjudicator's panel of the PRTB.

Accordingly he was in breach of the Code of Conduct of Adjudicators in representing a party before the Tribunal. The Code of Business Conduct for Mediators and Adjudicators which was circulated to all Mediators and Adjudicators states at point 5 (i) of the Code that *“Mediators and Adjudicators shall not represent any party at an Adjudication, Mediation, Tribunal, or Hearing during their term of appointment to the panel.”*

The Tribunal pointed out that the proceedings to that point in the hearing could be rendered null and void and that a re-hearing of the case could, if the parties so wished, be arranged as quickly as possible under the circumstances. The Tribunal expressed their disappointment at the events given the length of time since the appeal was lodged and were conscious that should a fresh hearing be requested the additional time that this would pose to the parties. Mr. Walsh apologised to all parties and to the Tribunal for the situation that had arisen and stated that it was a genuine mistake on his part.

The Tribunal also pointed out that during the hearing of the Tribunal to that stage there appeared to have been a misunderstanding on behalf of both parties; it was apparent to the Tribunal that the Tenant believed that she was going to continue living in the dwelling and the Landlord's evidence was that when the Tenant was leaving that there was no difficulty in her leaving and that she was leaving voluntarily and not returning to the Dwelling. The evidence that had been given by both parties about the events during that time was diametrically opposed.

There appeared to have been a clear misunderstanding by both parties. However the consequences of the misunderstanding fell more on the Tenant, who stated in her evidence that a number of her goods went missing or were mislaid and a period of months had elapsed before she was able to obtain permanent accommodation.

The Landlord believed that their relationship had been very congenial and there were no difficulties between them. It was put to the Tenant's representative and the Landlord's representative that they might consult with their own clients bearing in mind the matters which had been drawn to their attention. Any submissions that they wished to make to the Tribunal would be heard.

The Tribunal then afforded the parties time to consider the matter. Both parties retired. Following a short adjournment the parties agreed that the Tribunal would continue as the parties had agreed on a settlement which they wished to have recorded by the Tribunal.

The Agreement reached between the Parties was as follows:

1. The Landlord agrees to pay the Tenant €4,000 in full and final settlement of the matter before the Tribunal. The sum of €4,000 is to be paid by the Landlord within

seven (7) days of the date of this Order. The money is to be paid through the offices of Threshold.

2. The Landlord agrees to furnish his PPS number to the Tenant. The PPS number is to be furnished by the Landlord within seven (7) days from the date of this Order.

Determination:

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

1. The Respondent Landlord shall pay to the Appellant Tenant the sum of €4,000 The sum shall be paid within seven (7) days of the making of a Determination Order and shall be paid through the Threshold office.
2. The Landlord shall furnish to the Appellant Tenant his PPS number within seven (7) days of the making of a Determination Order.

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

Signed:

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