

Residential Tenancies Act 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR09/DR741/2009. Case Reference No: DR DR741/2008.

Appellant Tenant: X

Respondent Landlords: Shane Somers and Neil Somers

Address of Dwelling: Y

Tribunal: Eoin O’Sullivan (Chairperson)
Dervla Quinn
Pat J. Riney

Date of Hearing: 2nd March 2009

Venue: Private Residential Tenancies Board, O’Connell Bridge
House, D’Olier Street, Dublin 2.

Attendees:

For the Appellant: X
Miriam Tyrell, Threshold
Patricia Martin, Threshold

For the Respondents: Neil Somers
Shane Somers

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

1. Background:

On 31 July 2008, an Adjudication was held on foot of an application from the Tenant, X in respect of an alleged illegal eviction. The Applicant Tenant did not attend the Adjudication, but her representative from Threshold, explained that the Tenant believed that the Landlords had illegally evicted her from dwelling on 29 April 2008. It was the Tenants understanding that a Notice of Termination had been served on her on 5 December 2007, and that it was the Tenants representative's opinion that this Notice of Termination was invalid. However, the Tenant representative did accept that the Tenant had failed to appeal the validity of this notice within 28 days set down by the Act. The Tenant representative stated that, it was the Tenants case that on 29 April 2008, she was illegally evicted in contravention of section 58 of the Residential Tenancies Act 2004.

The Landlords stated that they had served a Notice of Termination on the Tenant on 5 December 2007 giving a termination date of 31 March 2008. The reason for the Notice of Termination was that Landlord and his partner intended to move into the dwelling. A copy of the Notice of Termination was given to the Tenant on 27 January 2007 and again on 27 February 2008. On 28 March 2008, the Parties jointly signed an agreement that outlined that the final month's rent had not been collected and that this would constitute a return of the Tenants security deposit. The agreement also stated that the Tenant agreed to move out on 24 April 2008. The Tenants representative stated that this agreement might have been signed under duress.

On the 29 April 2008, the landlords arrived at the property in mid-afternoon and stated that they found the doors open and no sign of the Tenant. They proceeded to pack the Tenants belongings and moved the Tenants car. Sometime later, the Gardai arrived, after having been called by a neighbour. The Landlords explained the situation to the Gardai and at this point the Tenant arrived.

At the Adjudication, the Landlords showed a video of the proceedings and on the audio the Tenant could clearly be heard saying that she had nowhere to go and that she wanted to get back into the property. She could also be heard asking the Landlords not to touch her belongings. One of the Landlords could be heard offering to put the Tenant up in a hotel and move her belongings to anywhere the Tenant wanted. The Tenant left the property, but came back several times during the evening and there were verbal confrontations. It was the Tenants evidence that at some stage, that evening, a neighbour called to the house and told the Landlord that the applicant had money in the wardrobe and in a biscuit tin. This neighbour, and a friend of the Tenant along with the Landlords entered the dwelling, retrieved the money and counted it. Those present signed a document stating that the amount retrieved was €5435.

The following morning, 30 April 2008, the Tenant returned to the dwelling, and following a verbal confrontation between the Tenant and the Landlord, the Gardai called to the house and it was agreed between the parties, in front of the Gardai, that the Landlords would move the Tenants property to a storage facility, with the cost of renting the storage facility to be paid by the Tenant. The Parties signed a document, which stated:

X had now moved out of Y. She had nominated all her belongings be brought to a self-storage facility unit in Santry. We have transported all her goods to the nominated location at our personal cost. During the moving of her property we discovered a large sum of cash in the house. This was counted in front of a neighbour, so as there is no discrepancy over the amount. The total was €5,435. This amount was returned to the applicant less €220.00 (Kerosene), €275.00 (replacement of carpet), €325.00 (rent arrears), €110.00 (ESB), €109.00 (replacement hob), €100.00 (estimated damage to the hall door), €100.00 (estimated damage to the internal door). This amount was taken as Maria's deposit had been refunded to her in good faith over a month ago, on the understanding that all outstanding bills and damages would be paid for before her departure, this did not happen. As yet I have not yet accounted for the significant damage to the house caused by the poor quality the home was kept. I was informed by a carpet store that all the carpets will have to be replaced. Maria and I have agreed that we will take no further action and consider the matter now closed.

The Adjudicator determined that the documentary, verbal and video evidence would all point to the conclusion that an illegal eviction had occurred. However, the agreement signed on 30 April 2008 purported to be the final settlement between the parties. On this basis, the Adjudicator dismissed the application.

On 26 November 2008, the PRTB received an appeal from the Tenant against the determination of the Adjudicator on the grounds that her property and personal belongings were missing. The PRTB appointed Eoin O` Sullivan (Chairperson), Dervla Quinn and Pat. J. Riney as a Tenancy Tribunal to hear the appeal pursuant to section 102 and 103 of the Act. On 2 March 2009 the Tribunal convened a hearing at 10.00 am at the Private Residential Tenancies Board, O`Connell Bridge House, D`Olier Street, Dublin 2. The Tribunal swore in both parties.

3. Documents Submitted Included:

- PRTB File

4. Submissions of the Parties.

Appellant Tenant's Case:

The Tenant stated that her claim before the Tribunal was that following an invalid Notice of Termination, she was illegally evicted from the dwelling on 29 April 2008.

She further claimed a loss of a sum of money, jewellery and a number of possessions. It was further claimed that the document that she signed purported to be a final settlement between the parties was signed under duress. The Tenant commenced her tenancy in March 2003 at a rent of €875 per month and paid a security deposit of €875. The Tenant acknowledged receipt of a Notice of Termination on 5 December 2007 and that she did not refer the validity of the notice to the Private Residential Tenancies Board.

The Tenant began packing her goods and seeking alternative accommodation. A further Notice of Termination was issued to the Appellant on 28 March 2008. On 29 April 2008, she returned to the dwelling in the afternoon and discovered the Landlords, along with the Gardai, in the dwelling. The Landlords were removing her goods from the dwelling and a verbal altercation occurred. A neighbour who was present allowed her to stay in his nearby house. That evening, her neighbour approached the Landlords as the Tenant was concerned about a sum of money in the dwelling, but the Landlords would not allow her entry. A sum of €5,435 was counted in the presence of the neighbour.

The following day, 30 April 2008, the Landlords contacted the Tenant and informed her that they would move her goods to storage. Under duress she agreed to allow them to move her goods to storage in Santry and the sum of money found in the dwelling was returned to her, less €1,239, which the Landlords deducted for various damage to the dwelling. A document, referred to above, was produced and the Tenant signed it, but in her evidence claimed that she did so because she felt frightened and under stress. She also claimed that her jewellery box, containing jewellery to the value of €500 was not returned to her. She also claimed that additional monies were in the dwelling and not returned to her, but was unclear as to the exact amount. Compensation in the amount of €4,000 for other household goods that were not returned to her was also claimed. No receipts were submitted in support of this claim.

Respondent Landlords' Case:

The Landlords' gave evidence to the Tribunal that they believed they had served a valid Notice of Termination and were given to understand from the Tenant that she would be vacating the dwelling. On 29 April 2008 they entered the dwelling and from then formed the opinion that the Tenant had vacated the dwelling due to the disarray encountered.

They acknowledged that the Tenants car was in the vicinity of the dwelling, but claimed that the car had not been in use for a considerable period of time.

Having formed the belief that the Tenant had vacated the dwelling, they proceeded to pack the remaining goods for the purposes of removing them from the dwelling. When the Tenant arrived at the dwelling, they explained to her that the tenancy had expired as per the Notice of Termination, and offered to assist her in locating alternative accommodation, but would not allow her entry to the dwelling and continued to pack her goods. The Tenant left the dwelling and was accommodated by a neighbour. Later that evening, the neighbour arrived at the dwelling and informed them that the Tenant had a considerable sum of money in the dwelling. The money was located and counted in front of the neighbour. The amount found was €5,435.

The next morning, the Landlords claimed to have reached an agreement with the Tenant that they would move her goods to a storage facility until she located alternative accommodation. The Parties went to the storage facility and following their return, the Landlords returned €3,936 to the Tenant, having deducted €1,239 from the €5,435 found in the dwelling for various expenses, including the cost of storage. Having returned to the dwelling, the Parties signed an agreement in full and final settlement of all outstanding issues relating to the tenancy. The Landlords stated that the agreement was not signed under duress, but was signed with the full consent of the Tenant. In relation to the missing jewellery, the Landlords claimed they returned the jewellery box to the Tenant at the storage facility. In relation to the missing goods, the Landlords claimed that they had removed all the goods in the dwelling to the storage facility and were not liable for any missing goods. They gave evidence that it took up to eight hours to pack the goods and were careful not to damage any goods when packing.

3. Findings of the Tribunal and Reasons Therefor:

- The evidence presented to the Tribunal by the Appellant Tenant was at times unclear, particularly in relation to the amount of money in the dwelling and the amounts sought in compensation for the alleged missing and damaged goods.
- The Notice of Termination served by the Landlords, failed in the opinion of the Tribunal to fully comply with Section 62 of the Residential Tenancies Act, 2004. The requirement under section 62(g) that a Landlord or Tenant is made aware that any issue in relation to the validity of the Notice must be referred to the Private Residential Tenancies Board with 28 days was set out at the very end of the Notice and in a smaller font size than the rest of the notice. The result of this was that it was very difficult to read.
- Irrespective of the validity or otherwise of the Notice, the evidence from both parties leads the Tribunal to determine that an illegal eviction took place. The

defence by the Landlords that they believed that the dwelling was abandoned when they first entered it on 29 April 2008 is not accepted by the Tribunal, and this was compounded by the fact that they refused the Tenant entry to the dwelling when she returned from shopping. The Tribunal determines that the Respondent Landlords pay the Appellant Tenant the sum of €7,500 for the distress and inconvenience suffered. The purported agreement between the parties was, the Tribunal determines, signed by the Appellant Tenant under duress and does not have any validity.

- Considerable difficulty was experienced by the Tribunal in determining the sum of money found in the dwelling and the obtaining accurate estimates for the alleged damage and missing goods. On balance, the Tribunal accepts the evidence of the Respondent Landlords in relation to amount of money found in the dwelling. In the absence of any clear evidence in relation to the allegation of missing goods and damage, the Tribunal makes no finding in this regard.
- The deduction of €1,239 by the Landlords from the sum of money found in the dwelling was not challenged by the Appellant and the Tribunal makes no finding on this matter.

5. Determination:

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

- The Respondent Landlords', Shane Somers and Neil Somers, pay the Appellant Tenant, X, within 14 days of the date of issue of the Order, the sum of €7,500 being an unlawful termination in respect of the tenancy at Y.

The Tribunal hereby notifies the Private Residential Tenancies Board of the Determination made on 13 August 2009.

Signed:

Eoin O'Sullivan, Chairperson
For and on behalf of the Tribunal