

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR 29/DR624/2010. Case Ref No: DR624/2009

Appellant Landlord:	Charles Hinde
Respondent Tenant:	Sebastian Portier & Dana Keren
Address of Rented Dwelling:	54 The Drive, Dunboyne Castle, Dunboyne, Co. Meath ("The Dwelling")
Tribunal:	Fintan McNamara (Chairperson) James Bridgeman Nesta Kelly
Venue:	PRTB Tribunal Room, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.
Date of Hearing:	16 th April 2010 at 11.00 a.m.
Attendees:	
For the Appellant:	Charles Hinde (Landlord) Sylvia Majszyk (Mr Hinde's Secretary)
For the Respondent	Dana Keren (Tenant)
In Attendance:	Carla Reynolds PRTB Representative Gwen Malone Stenographers

1. Background:

1. On 13th May 2009, the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act. The matter was referred to an adjudication which took place on the 19th October 2009. The Adjudicator determined that the Landlord return the €1000 of the €1350 deposit to the Tenant. Subsequently a valid appeal was received from the Landlord by the PRTB on the 7th December 2009
2. On 27th January 2010 the PRTB constituted a Tenancy Tribunal and appointed Fintan McNamara, James Bridgeman and Nesta Kelly as Tribunal members pursuant to Section 102 and 103 of the Act, and appointed Fintan McNamara to be the chairperson of the Tribunal (“the Chairperson”).
3. On the 24th March 2010 the Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.
4. On the 16th April 2010, the Tribunal convened a hearing at 11.00 a.m. at the offices of the PRTB, Floor 2, O’Connell Bridge House, and D’Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

- Documentary evidence supplied by the Landlord that included photographs
- Documentary evidence supplied by the Tenant that included photographs, letting agreement and receipt
- PRTB file

3. Procedure:

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. He confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received the PRTB document entitled “Tribunal Procedures”.

He explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be as informal as was possible; that the person who appealed the Appellant would be invited to present their case first including her witness, that there would be an opportunity for cross-examination by the Respondent, that the Respondent would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant. He said that members of the Tribunal might ask questions of both Parties from time to time.

The Chairperson explained that following this, the Appellant would be given an opportunity to make final a submission.

He stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €3,000 or up to 6 months imprisonment or both.

He also reminded the Parties that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only.

He asked the Parties if they had any queries about the procedure. There were no queries from either party.

The hearing commenced with the Appellant's case at 11 a.m and concluded at 12.15pm

4. Submissions of the Parties:

Appellant Landlord's Case:

The Appellant Landlord, Mr Hinde, claimed that the Tenants had failed to dispose of their rubbish on vacating and notwithstanding an undertaking they had given to return to dispose of the rubbish the following day, it was still there a week later He gave details of damage he claimed was done to the dwelling. He said that the living room ceiling was holed, the glass cabinet was damaged and the leather sofa left in very poor order as if it had been used as a trampoline or continually slept on.

He said that one of the chairs in the dining room was damaged and he was assuming it was chewed by a dog. He claimed that the main bedroom upstairs had been damaged by a pellet gun which holed the wall, that the light over the bathroom mirror was broken, that the shower was left in a dreadful condition which he had to clear up himself.

He pointed out that as well as clearing rubbish left in the back garden, he had to employ Rent-o-Kill to get rid of a rodent and that he resented having to clear up other people's rubbish. He claimed that the covenants in the tenancy agreement were broken.

He said that the Tenants had sublet without his permission and that Fisher Management Company had complained of noise caused by his Tenants and he had brought this complaint to their attention .He said that three months into the tenancy he discovered, there was a dog in residence in clear breach of the tenancy agreement. He said he loved dogs but told the tenants they would have to make good any damage done by the dog.

He claimed there were dog faeces in the decking, that the dog was responsible for some damage to the decking and the dining room suite of furniture.

He acknowledged that this was an assumption but said he was shocked that the letting agent had allowed the dog in. The Chairperson asked Mr Hinde to talk the Tribunal through the photographic evidence and expenses listed for damages which he duly did.

Respondent Tenants Case:

Ms Dana Keren, the Tenant, in her evidence said that from the outset they had agreed with the letting agent to allow the dog in the premises and that when the Landlord became aware of this, he said it was ok. She pointed out that they had used a machine to clean the decking but because it was not properly sealed it became damaged after rainfall.

She claimed that there was garbage lying around when they moved in and that on departure they could not accommodate everything in the car. She said that because they were working they could not come back the following week to clear it away.

Ms Keren said that on their departure Mr Hinde had said that the house was fine and at that point made no reference to damage Mr Hinde said it was his practice to inspect post departure of tenants.

Ms Keren said that repeated attempts to contact Mr Hinde by text and phone subsequent to their departure were unsuccessful and the Landlord acknowledged that he was extremely annoyed at having to clear up the rubbish and had not taken calls. He pointed out that he had fifteen houses and none were left in so bad a state as the dwelling in question.

Ms Keren referred to damage done to the wall in photograph/exhibit TS 25 and said it would not cost €250 to repair this damage. She said she was unaware of the other damages but acknowledged that her nephew, when he visited at Christmas time, did have a pellet gun which may have damaged the bedroom wall.

In relation to a claim for damages of €50 in the installation of a satellite dish, Ms Keren did not dispute that it required removing or tidying up as it was unsightly. In relation to the Landlord's claim of €20 to replace four light bulbs she said she was not aware of this obligation particularly in view of the amount of rent they had paid over the eighteen month period of the tenancy. She also claimed that the carpets were clean and in good condition despite the Landlord's claim of €250 for professional cleaning

In relation to the subletting Ms Keren pointed out that at the outset it was agreed there could be one other person included in the tenancy and there were never more than three people in occupation apart from the odd visitor. She said that the alarm was switched off because it was emitting signals.

Mr Hinde claimed that because of the damage done to the walls he had to fully repaint the dwelling. On being questioned by the Tribunal if he generally freshened up a premises in advance of new tenants moving in he replied that they did so as the need arose and he acknowledged that in this instance although there were two sets of tenants over a five year period the dwelling had been painted for the first time since the lettings commenced.

Mr Hinde acknowledged that he had no receipts as he thought that the photographic evidence would suffice. He conceded that charging €250 for the emptying of two rubbish bins might be somewhat high

5. Findings of the Tribunal and Reasons Therefor:

1. There was a twelve month fixed tenancy agreement between Mr Charles Hinde, the Landlord, and Mr Portier and Ms Keren, the Tenants, at 54 The Drive,,Dunboyne Castle, Dunboyne, Co Meath for a monthly rental €1350 per month. The Tenants vacated on the 29th January, 2009
2. There was a security deposit of €1350 which the Landlord withheld because of what he claimed was extensive damage to premises above ordinary wear and tear but which he was unable to substantiate in full or convincingly.
3. Some damage beyond ordinary wear and tear was done to a glass cabinet and the Tribunal is allowing the Landlord's claim for this notwithstanding that he produced no receipts for any of the claims for damages.
4. The Tribunal is also allowing €50 to tidy up cableTV wires but considers €250 for emptying waste products as excessive and allows the €8 standard local authority charge for emptying two rubbish bins. The entire deductions allowed from the security deposit amount to €258.

6. Determination:

Ref: TR29/DR624/2010

In the matter of Charles Hinde (Appellant Landlord) and Sebastian Portier and Dana Keren (Respondent Tenants) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

- The Appellant Landlord shall pay the sum of €1,092 to the Respondent Tenants within seven days of the date of issue of the Order made by the Board, being the entire of the unjustifiably retained security deposit of €1,350, having deducted damages of €258, in respect of the tenancy of the dwelling at 54 The Drive, Dunboyne Castle, Dunboyne, Co.Meath.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 27th day of April 2010.

Signed:

Fintan McNamara (Chairperson)

For and on behalf of the Tribunal.