

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR35/DR494/2010. Case Reference No: DR494/2009

Appellant Tenants: Edgar Bohol and Annalee Pelaez

Respondent Landlord: Edward Butler

Address of Rented Dwelling: 74, Glenmalure Square, Milltown, Dublin 6
("the Dwelling")

Tribunal: Aileen Hayden (Chairperson)
Charles Corcoran
Vincent P. Martin

Venue: PRTB, Floor 2, O'Connell Bridge House,
D'Olier Street, Dublin 2.

Date of Hearing: 5 March 2010 at 10.30 am.

Attendees:

For the Appellant: Edgar Bohol and Annalee Pelaez (Tenants)

For the Respondent: Edward Butler (Landlord)
David McMahon, David F. McMahon & Co.
Solicitors (Landlord's Representative)

In Attendance: Carla Reynolds – PRTB Representative
Gwen Malone Stenographers Ltd.

1. Background:

On 7 April 2009, the Tenants made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act alleging deposit retention, breach of Landlord’s obligations, deterioration of the standard and maintenance of the dwelling and rent in excess of the market rate. On 20 May 2009 the Landlord also made an application for dispute resolution for breach of tenants’ obligations. The matter was referred to an adjudication which took place on 20 October 2009. The Adjudicator found no evidence that the Landlord had failed to maintain the property or in any other way breached his obligations and determined that the Landlord should retain the Tenant’s deposit in the amount of €1,250 and in addition that the tenants should pay the Landlord the sum of €420, being damages in excess of normal wear and tear; said amount to be paid within fourteen days of the making of a Determination Order by the Board in the matter. Subsequently a valid appeal was received from the Tenants by the PRTB on 8 December 2009 seeking the return of their deposit.

1. On 27 January 2010 the PRTB constituted a Tenancy Tribunal and appointed Aideen Hayden, Charles Corcoran and Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Aideen Hayden to be the chairperson of the Tribunal (“the Chairperson”).
2. On 8 Feb 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.
3. On 5 March 2010, the Tribunal convened a hearing at 10.30 am at the offices of the PRTB, Floor 2, O’Connell Bridge House, D’Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

- PRTB file

Documents Submitted at the Hearing Included:

- No additional documents were submitted

3. Procedure:

The Chairperson asked the Parties present (and their representative) to identify themselves and to identify in what capacity they were attending the Tribunal. She 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”.

She 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; that there would be an opportunity for cross-examination by the Respondent; that the Respondents would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant. She said that members of the Tribunal might ask questions of both Parties from time to time. The Chairperson explained that following this both Parties would be given an opportunity to make a final submission, should they wish to do so.

She stressed that all evidence would be taken on oath and be recorded by the official stenographer present and she 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.

She 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.

She asked the Parties if they had any queries about the procedure, there were none. The Chair requested that all of those persons giving evidence be sworn and Edgar Bohol, Annalee Pelaez and Edward Butler were duly sworn.

The hearing commenced with the Appellant's case.

4. Submissions of the Parties:

Appellant Tenants' Case:

Ms Pelaez gave evidence that she had rented the dwelling for three and a half years from 1 September 2005 until 8 March 2009. During this time she had made a number of complaints to the Landlord but he had failed to address them. She claimed that the dwelling was cold and damp, the carpets were old and dirty and the curtains were stained. When she vacated the dwelling she understood from her Landlord who had visited about a week beforehand that he intended to return her deposit. Mr Butler had not inspected the dwelling at that stage, she acknowledged. The dwelling was as clean as she could get it given the problem with the mould and any damage to the items of furniture in the dwelling were a result of normal wear and tear. Her husband Mr Bohol had met with the Landlord approximately two days after they had vacated to return the keys. She had subsequently received correspondence from Mr Butler's Solicitor within a week or so advising that the deposit would not be returned as there was damage to the dwelling above reasonable wear and tear. Mr Butler had subsequently responded to her text advising that all further dealings were to be through his Solicitor.

Ms Pelaez acknowledged that she had renewed the lease on three occasions although she stated Mr Butler had not carried out the repairs she had requested. Initially she had renewed because she believed the repairs would be carried and later she stated she stayed because the property suited her husband and children.

In response to the photographs submitted by the Landlord, Mr Butler, she stated that most of the photographs in question were of the bedroom where her children were sleeping and that she had taped over the vents with masking tape because the bedroom was cold. She had been forced to buy an extra heater because of the cold. In response to questioning she stated that she had not dried clothes indoors but had used the drier which Mr Butler had provided or used a local launderette. She also acknowledged that Mr Butler had arranged for various repairs to be carried out to the cooker and the water heater and had supplied a drier. Ms Pelaez also acknowledged that the two tables were not marked at the beginning of the tenancy but stated that they were old as were two chairs which were damaged also. With regards to allegations that the property was occupied by persons other than the Tenants, Ms Pelaez stated that her sister and brother in law had stayed from time to time.

Respondent Landlord's Case:

Mr Butler, assisted by Mr Mc Mahon, gave evidence that the dwelling was built around 1991 and he had owned it for approximately ten years. The dwelling had been newly painted and decorated before the tenancy commenced. There had been new carpets installed and the sitting room carpet had been cleaned. Any request for repairs or replacements had been complied with immediately. Mr Butler had been very surprised when he had seen the state of the apartment after the tenants had vacated. The letting agent he contacted to re-let the property indicated that a lot of work was required to bring the dwelling up to a standard suitable for letting. Photographs supplied indicated extensive damp and mould around one of the bedroom window surrounds together with damage to woodwork, carpets and paintwork. There was also extensive damage to items of furniture. Receipts and a schedule of works were submitted in support of the level of damage.

Mr Butler had been in regular contact with Ms Pelaez and her husband while they were tenants in the dwelling but had not conducted an inspection on the occasions when the lease had been renewed. On the occasions he visited the dwelling he had not gone beyond the sitting room. In particular he had not been in the bedrooms of the dwelling during the course of the tenancy as Mr Bohol worked nights. He had not thought to inspect the dwelling before the Tenants vacated as he did not want to intrude on the Tenants' privacy.

After the Tenants had vacated he had been shocked by the damage which in his view had been caused because the Tenants had covered up vents to the dwelling with tape while at the same time drying clothes in the dwelling. In response to questioning he stated that he had seen clothes drying in the dwelling on a number of occasions when he had visited. He also stated that there were other persons resident in the dwelling which he believed contributed to the damage beyond normal wear and tear. There had been no issues of damp before or since with any tenancies of the dwelling. Mr Butler advised that Ms Pelaez and her husband had been good tenants and had always paid rent on time.

He had advised them that he was willing to forego the amount awarded by the adjudicator over the retained deposit but he was not prepared to return the deposit given the extensive damage to the dwelling.

5. Findings of the Tribunal and Reasons Therefor:

1. The Tenants acknowledged that they were happy with the condition of the dwelling when they moved in.
2. From the evidence presented to the Tribunal the dwelling was damaged beyond normal wear and tear given the length of tenancy and the evidence given to the Tribunal by both parties as to the condition of the dwelling at the commencement of the tenancy.
3. The Tenants had renewed their lease on a number of occasions in spite of stating that they were dissatisfied with the state of repair of the dwelling.
4. It was unclear to the Tribunal the extent of the necessary repairs which the Tenants claim were required, moreover the Tribunal accepts that the Landlord carried out any repairs notified to him expeditiously.
5. The Tribunal considers that in the circumstances of this case and on the basis of the evidence presented by both parties the Tenants were responsible for the damage as outlined by the Landlord. In particular it was noted that the Tenants acknowledged that they had blocked vents to the dwelling.
6. On the basis of the receipts presented and the direct evidence given to the Tribunal the Landlord shall be entitled to retain the entire of the Tenants deposit of €1,250.
7. The Tribunal notes the Landlords offer to the Tenants to confine his claim against them to the amount of their deposit.

6. Determination:

Ref: TR35/DR494/2010

In the matter of Edgar Bohol and Annalee Pelaez (Appellant Tenants) and Edward Butler (Respondent Landlord) the Tribunal in accordance with Section 108 (1) of the Residential Tenancies Act 2004, determines that:

- The Respondent Landlord shall retain the security deposit in the sum of €1,250 for damage in excess of normal wear and tear in respect of the tenancy of the dwelling at, 74 Glenmalure Square, Milltown, Dublin 6.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 19th day of March 2010.

Signed:

Aideen Hayden, Chairperson.

For and on behalf of the Tribunal