

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR36/DR1460/DR681/2010.

Case Reference No: DR1460/2008 & DR681/2009

Appellant Landlord:	Niall Hoey
Respondent Tenant:	Conor Kavanagh
Address of Rented Dwelling:	43, Coldwell Street, Glasthule, Co. Dublin, ("the Dwelling")
Tribunal:	Aideen Hayden (Chairperson) Charles Corcoran Vincent P. Martin
Venue:	PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.
Date of Hearing:	26 March 2010 at 10.30 am.
Attendees:	
For the Appellant:	Niall Hoey (Landlord) Kelly Lynch (Witness)
For the Respondent:	Conor Kavanagh (Tenant)
In Attendance:	Carla Reynolds – PRTB Representative Gwen Malone Stenographers

1. Background:

1. On 25 November 2008, the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act alleging deposit retention and breach of Landlord’s obligations. The matter was referred to an adjudication which took place on 8 June 2009. The Adjudicator found that the sum of €1,204.99 should be repaid to the Tenant in respect of the unjustifiably retained deposit and overpayment of rent. Subsequently a valid appeal was received from the Landlord by the PRTB on 3 December 2009 on the grounds that the Tenant had vacated on foot of a Notice of Termination for anti-social behaviour and that the Tenant’s obligation to return the property in good and substantial repair had not been complied with. An application for dispute resolution had also been received from the Landlord (DR681/2009) in respect of breach of the Tenant’s obligations and the PRTB resolved that both matters should be referred to a Tribunal hearing as they concerned substantially similar matters.
2. 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”).
3. On 8 February 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. A hearing scheduled for 5 March was adjourned at the Tenant’s request and on 23 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

3. Documents Submitted at the Hearing Included:

- No additional documents were submitted

4. Procedure:

The Chairperson asked the Parties present (and their witnesses) to identify themselves and to state 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 and understood 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 Respondent 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 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 Niall Hoey, Kelly Lynch and Conor Kavanagh were duly sworn.

The hearing commenced with the Appellant’s case.

5. Submissions of the Parties:

Appellant Landlord’s Case:

Mr Niall Hoey gave evidence that he had rented the property to Conor Kavanagh but the dwelling was used by Mr Kavanagh’s son Darren. The dwelling was managed by Breslin Auctioneers. Mr Hoey stated that the tenancy was terminated by Breslin auctioneers on his behalf because of anti social behaviour at the dwelling. The dwelling had been left in very poor condition, he himself had viewed the property on the day the occupier vacated and had been shocked at the condition of the property. Mr Hoey did acknowledge however that the dwelling had been his own home prior to his renting it as he was working outside the jurisdiction and he may have been more personally invested in the situation. The dwelling was in a very dirty condition and required professional cleaning. There was damage to sofas, chairs, a stereo system, a dining room table and chairs and the dwelling needed repainting. There was also other miscellaneous damage to grouting, window seals, blinds, plates, glasses and cutlery, throws and cushions needed to be replaced.

A number of invoices had been submitted which he requested the Tribunal consider and he acknowledged that these were not submitted to the adjudication hearing. All in all damage in excess of €3,000 was caused by the occupier of the property, which exceeded the Tenant's deposit and any rent paid. Mr Hoey acknowledged that although he understood his Agent had conducted an inspection when Darren Kavanagh left, he had not followed the provisions laid down in the lease which required that damage be notified to the Tenant in writing and an opportunity be afforded to effect repairs. He stated that his agent had a verbal agreement with Mr Darren Kavanagh. Mr Hoey further stated that he needed the property to be reinstated as soon as possible in order to let it again and proceeded to carry out repairs to limit his losses. He also said that he did a fair amount of the work himself to limit his losses. He acknowledged that a number of matters had been dealt with by his agents, who no longer represented him and who were not available to the Tribunal or the Respondent for questioning.

Respondent Tenant's Case:

Mr Kavanagh stated that he did not dispute the notice given or the reason advanced for the termination of the tenancy. Furthermore it was not his intention to see anyone out of pocket when sums for repair were properly due. However he was not afforded an opportunity to view the alleged damage or an opportunity to put it right. He referred the Tribunal to Clause 5 (d) of the lease agreement between the parties which stated that:

The security deposit shall not at anytime during the Tenancy be used as a rent payment, its only use to reimburse the Landlord for damages to the said premises and if repairs are not carried out following the service of notice in writing from the Landlord or his agent.

Mr Kavanagh queried some of the amounts claimed and added that had he been afforded an opportunity to make good himself he could have done it more cost effectively as he was in a business where he had access to labour. There were items claimed as missing or damaged the truth of which could not now be established. He had been informed some fifteen days after his son vacated that the property had been returned to its original condition and he could not therefore verify any matters alleged or costs involved. Mr Kavanagh did acknowledge that he had visited his son some days before he vacated and noticed that the property was in an unclean state. Mr Kavanagh was asked to offer the Tribunal his estimation of the cost of the damage and he offered the opinion that with the exception of the sofa with the burn marks, which he could arrange to have repaired a sum of around €700, would be more accurate. Mr Kavanagh also accepted that the absence of his son as a witness meant that certain matters which transpired between his son and the Landlord's agent could not be ascertained or evidence given as to the extent of damage to the dwelling

6. Findings of the Tribunal and Reasons Therefor:

Having considered all of the documentation before it and having considered the evidence presented to it by the parties, the Tribunal's findings and reasons therefor are set out hereunder.

1. The parties entered a lease agreement dated 16 May 2008 for duration of 364 days. A deposit of €1,300 was paid in respect of the tenancy and rent levied at the rate of €1,300 per month. The tenancy was subsequently terminated on 30 September 2008 following notice given on behalf of the Landlord to the Tenant for anti-social behaviour. All rent was paid up to date and there is no dispute as to the validity of the Notice of Termination. It is accepted that the Tenant's son was in occupation of the dwelling and no case was made to the Tribunal as to the lawfulness or otherwise of this arrangement.
2. It was agreed between the parties that there was damage to the dwelling following the vacation of the dwelling by Darren Kavanagh; however the parties dispute the amount and the extent of this damage. The Landlord has claimed in the region of €3,300 in respect of damage but has also accepted that some of this relates to sums which are not appropriately vouched. However, he also claims that as some of the work was carried out by him personally, he has acted to mitigate his losses. He also stated that he acted quickly to repair the premises in order to rent it again as soon as possible. The property was re-let on 4 November 2008 and rent was paid by the Tenant to the 15 October 2008, therefore a loss was incurred by him. The Tenant does not dispute that damage was caused but states that contrary to the lease agreement between the parties he was not notified of the damage in writing and afforded the possibility to make good the damage caused to the dwelling. He believes a more appropriate sum in respect of damage to be €700 (excluding damage to the sofa which he is prepared to negotiate with the Landlord as this work has not yet been done). He stated that it was never his intention to evade his responsibility in the matter.
3. The Tribunal finds that both parties came to the hearing with good will towards the other and acknowledges that both parties were placed in an unfortunate position in not being the parties immediately proximate to the events in question.
4. The Tribunal finds that while the terms of the lease agreement indicate that a notice in writing should be served on the Tenant and an opportunity given to make good any damage, Clause 3 (v) of the same lease requires the Tenant to surrender the tenancy with the furniture and fittings *in good substantial and reasonable repair*. The failure to give appropriate notice can operate however to mitigate the costs to the Tenant if it can reasonably be held that costs were excessive or works could in certain circumstances be more cheaply or efficiently executed by the Tenant.

5. While the Tribunal accepts that in this instance the Tenant may have been in a position to mitigate the cost of the damage, the Tribunal is also mindful that the dwelling was not re-let for a number of weeks after the Tenants son departed. The Tribunal also accepts that the Landlord made his best efforts to have the property suitable for re-letting at the earliest possible opportunity and did attempt to carry out some of the works himself to lower costs.
6. The Tribunal does not find that there was an overpayment of rent due to the termination of the Lease by the Landlord. The circumstances of the termination were not contested and as the lease was for one year certain it would be unreasonable to reward a tenant whose actions led to the early termination of the lease agreement. Moreover the Landlord incurred loss of rent in the period to the re-letting of the property.
7. On the basis of the evidence presented to it the Tribunal finds that a sum of €2,700 should be allowed in respect of damage to the dwelling. This amount is reduced by €1,000 for failure to permit the Tenant to mitigate his loss in accordance with the provisions of the lease agreement entered into between the parties. The Landlord shall be entitled to retain the Tenant's deposit of €1,300 as against this sum and the balance of €400 shall be paid by the Tenant to Landlord within fourteen days from the making of a Determination Order by the PRTB in this matter.

7. Determination:

Ref: TR36/DR1460 & DR681/2010

In the matter of Niall Hoey (Appellant Landlord) and Conor Kavanagh (Respondent Tenant) the Tribunal in accordance with Section 108 (1) of the Residential Tenancies Act 2004, determines in respect of the tenancy of the dwelling at 43, Coldwell Street, Glasthule, Co. Dublin that:

- The Respondent Tenant shall pay to the Appellant Landlord the sum of €400, being €2,700 in respect of damage to the dwelling in excess of ordinary wear and tear, said sum to be reduced by €1,000 for failure to permit the Tenant to mitigate this loss in accordance with the terms of a lease agreement between the parties and by a further €1,300 being the justifiably retained security deposit paid in respect of the tenancy of the dwelling. The balance in the sum of €400 to be paid by the Tenant to the Landlord within fourteen days of the issue of a Determination Order by the PRTB in this matter.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 7th day of May 2010.

Signed:

Aideen Hayden, Chairperson.

For and on behalf of the Tribunal.