

RESIDENTIAL TENANCIES ACT 2004 (the ‘Act’)

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR39/DR284/2010.Case Ref. No: DR284/2009

Appellant Tenant: Abdellatif Hassan

Respondent Landlord: Y

Address of Rented Dwelling: Z
(the ‘dwelling’)

Tribunal: Finian Matthews (Chairperson)
Gus Cummins
Mary H. Morris

Venue: O’ Loughlin’s Hotel, Main Street, Portlaoise, Co.
Laois

Date of Hearing: 23 April 2010

Attendees:

For the Appellant: Abdellatif Hassan (Tenant)
Abir Mohamed Hassan (Tenant)

For the Respondent: Y (Landlord)
X - Wife of landlord
Brendan McDonald (Solicitor)

Also in Attendance: Gwen Malone Stenographers.

1. Background:

On the 27th February, 2009 the Appellant Tenant made an application for dispute resolution services to the Private Residential Tenancies Board (“the PRTB”).

Pursuant to section 78 of the Act an Adjudicator was appointed by the PRTB and a paper based adjudication was held on 13th July, 2009. The Adjudicator’s report dated 13th July, 2009 including his Findings of Fact and Determination in relation to the dispute, was sent to both parties. The Adjudicator determined that the Appellant Tenant’s application for the return of his security deposit in respect of the tenancy of the dwelling was not upheld. The Adjudicator also determined that the Appellant Tenant shall pay the sum of €855 to the Respondent Landlord within 7 days of the date of issue of the Determination Order by the PRTB, being compensation for the loss of one month’s rent arising from the failure by the Appellant Tenant to give sufficient notice of his intention to vacate the dwelling that was the subject of the tenancy between the parties.

Subsequently a valid notice of appeal was received by the PRTB from the Appellant Tenant on the 15th December 2009.

The PRTB approved the appeal of the Appellant Tenant, and, in accordance with Sections 102 and 103 of the Act, constituted a Tenancy Tribunal and appointed Finian Matthews, Gus Cummins and Mary H. Morris as Tribunal members. The Board appointed Finian Matthews to be the Chairperson of the Tribunal (“the Chairperson”). On 30th March 2010 the parties were notified of the constitution of the Tribunal, were provided with details of the date and venue set for the hearing and were provided with a copy of the Tenancy Tribunal Hearing Procedures.

The grounds for the appeal before the Tribunal as submitted by the Appellant Tenant were that; the Respondent Landlord had allegedly breached the contract between the parties by not fixing leaking pipes for 5 months leading to damage to ceilings in 3 rooms; psychological trauma had been caused to the Appellant Tenant’s children when the plumber sent by the Respondent Landlord mentioned that the ceilings might fall; he (the Tenant) had incurred costs because of the need to re-locate to alternative accommodation. The Appellant Tenant also questioned the acceptance of photographs and information given in his absence as evidence and maintained that it was not possible in his absence to prove that he was the cause of any damage to the dwelling.

2. Documents Submitted prior to the Tribunal Hearing Included:

The PRTB case file.

3. Documents Submitted at the Hearing Included:

None

4. Tribunal Procedures

The Chairman welcomed the Parties to the Tribunal and stated that it had been established to hear an appeal by the Appellant Tenant against a determination made following a paper based adjudication held on 13th July 2009 in the case of a dispute between the Appellant Tenant and the Respondent Landlord in respect of a tenancy at Z. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves for the record. He confirmed with the Parties that they had received and understood the PRTB document entitled “Tribunal Procedures”. Both Parties confirmed that they had done so. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal.

The Chairperson then explained that the Tribunal, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation and would be recorded by the stenographer present, who would be producing a transcript of the proceedings. The Chairman also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He added that the person/s who appealed (the Appellant/s) would be invited first to present their case, including the evidence of any witness; this would be followed by an opportunity for cross-examination by the Respondent/s; that the Respondent/s would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant/s. He said that members of the Tribunal might ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellants and the Respondent would be given the opportunity to summarise their evidence.

All persons giving evidence to the Tribunal were then sworn in.

The Appellant Tenant was then invited to open his case.

5. Submissions of the Parties:

Appellant Tenant's Case:

On moving into the dwelling in June 2006, the Appellant Tenants, over the first few months of the tenancy, raised concerns with the Respondent Landlords in relation to provision of carpeting on the stairs, a water softener and a shed for storage at the back of the dwelling, which the Respondent Landlords said they would look at. They also raised the issue of a shower screen, but said to the Respondent Landlords that this could be put on hold while the other matters were being attended to. Neither the carpet nor the shed were provided, while only a small water filter was fitted to one of the pipes in the kitchen. The Respondent Landlords had also promised to provide a grass-cutting machine and to show the Tenants how to use it but this had never happened.

About 18 months in to the tenancy the existing mixer shower in the bathroom became very noisy. A plumber called to replace the shower and also removed the side panel on the bath to adjust piping. The Appellant Tenants believe that this is when the leak from the upstairs bathroom into the sitting room downstairs started. They also maintained that in the absence of the shower screen they had always put towels around the bath to prevent water that splashed from the bath from accumulating on the floor. The Appellant Tenants confirmed that the leak in the downstairs area took the form of staining on the ceiling which gradually spread in to other rooms. No water leakage into the downstairs area occurred.

In early June 2008 the Appellant Tenants called the Respondent Landlords about the leak. About 2 weeks later, Y came to the house with a plumber. The plumber examined the ceilings and said to Abir Mohamed Hassan, in front of their children, that the leak was serious and the ceiling could collapse. The Respondents' solicitor objected to this evidence on the grounds that it was hearsay, in the absence of the plumber to give direct evidence. Although what the plumber said caused a lot of stress for their children in particular, the Appellant Tenants were about to leave for a two month break in Sudan and re-assured the children that everything would be fixed when they got back to Ireland.

When they came back from Sudan in September, they found that nothing had been done and the water staining had spread. The Respondent Landlords brought another plumber to the dwelling then and tried to re-assure the Tenants that the ceiling was not dangerous. However, the Appellant Tenants told the Landlords that they had no choice but to leave the dwelling as soon as they could. They were told by the Landlords that they would have to serve notice of termination and did so on 9th September 2008. They left the dwelling on 28th or 30th September or possibly some 3 or 4 days before that.

In early October the Respondent Landlords asked the Appellant Tenants to meet them at the dwelling to hand over the keys. The Landlords thanked the Tenants for keeping the

house clean and tidy, but advised them that they would not be getting their deposit back because of their failure to give the requisite two months notice.

In response to questions from the Tribunal the Appellant Tenants said that when their first 12 month fixed term lease they signed a second lease, even though they had issues with the tenancy, because they felt that there were still prospects at that stage that these issues would be addressed. They had declined to sign a third lease in June 2008, however, because it was clear by then that nothing more was going to be done to address their concerns.

In cross-examination by the Respondent Landlords, the Appellant Tenants agreed that they had signed their first lease freely, having previous experience of letting arrangements in Ireland. The Appellant Tenants did not agree that there was a requirement in the lease to keep the garden tidy and well-tended included grass-cutting. They agreed that neither the first or second lease they signed required that any specific issues in relation to the dwelling be addressed. They also had not considered finding alternative accommodation when they signed the second lease. After the first 12 month lease, they had agreed to stay on for a further period in the dwelling because the issues up to then had not been serious enough to warrant their ending the tenancy. They also agreed that they had not referred any issue to the PRTB during the course of the tenancy. The Appellant Tenants also said that after the leak occurred in June 2008, they stayed in the house for a further two weeks because they did not have sufficient time at that stage to find alternative accommodation. When they came back from holidays in September they stayed for a further month because this was the time it took to arrange alternative accommodation. The Appellant Tenants added that they could not afford to move to a hotel as an emergency measure. They also said that the second plumber arranged by the Respondent Landlords had not allayed their fears arising from what the first plumber had said. They added that they had done everything they could to prevent overspills of water from the bath accumulating on the bathroom floor. They denied that either they or anyone known to them had partially painted over water stains on the ceiling or had used grout to cover up other marks elsewhere in the house.

Respondent Landlords' Case

The Respondent Landlords stated that the first call they received from the Tenants about the leak from the bathroom was around 18th or 20th June 2008. Y found a plumber in the Yellow Pages and brought him to the house that same day. She emphasised that she had not waited two weeks before acting on the matter. The plumber examined the bathroom superficially and turned on all the taps, but there was no sign of any leakage from the pipes or blockages in the outflows. There was a little dampness in one corner of the bathroom floor. The ceilings in the rooms below the bathroom were dry to touch. Y felt that the plumber was scare-mongering in the circumstances, and she was particularly unhappy that he had done this in front of the Tenants' children.

Having considered the matter further, the Respondent Landlords decided to get a second opinion and arranged for another plumber to call to the house either on 23rd or 24th June. The second plumber assured the Appellant Tenants that there was no leak in the water system, that the staining in the downstairs ceilings was being caused by water seeping down from the upper bathroom floor and that there was no structural damage to the ceiling. During the inspection by the second plumber some water had been seen on the bathroom floor. The Respondent Landlords added that at the outset of the tenancy the Tenants had specifically requested them not to put in a shower screen, so that they could remain close to their children when bathing them.

The Respondent Landlords also stated that the first indication the Appellant Tenants had given them of the distress caused to their children as a result of the first plumber's visit was when the Tenants told the Landlords in September that they were leaving. At that point the Landlords said that the Tenants would have to put their decision to terminate the tenancy in writing. When the Tenants did so they gave the Landlords 20 or 21 days notice rather than the 56 days they were entitled to.

The Respondent Landlords said that they had decided to retain the Tenants' security deposit because of the inadequate notice of termination and because of damage that had been caused to the dwelling beyond normal wear and tear. That damage included a dent in a newly purchased fridge door, a number of electrical sockets had been damaged as a result of using two pin plugs in three pin sockets, a number of dining room chairs had been heavily stained and had to be re-upholstered, stains on the walls had been covered with grout and the walls had to be sanded in preparation for painting. A number of items also had to be installed or replaced including a shower screen, shower head and mattress. Paint and related accessories were also required as well as tiles, grout and bath sealant for the bathroom and utility room. A number of kitchen and bathroom items were also missing. The Appellant Landlords stated that the total costs they were claiming for repairs, decoration and replacement, above normal wear and tear came to €965. They were not claiming for labour, as Y took two weeks off work to carry out the necessary remedial works himself. They also confirmed that no structural works to the downstairs ceilings were necessary.

After the remedial works had been carried out the house was advertised for re-letting but was not re-let until January 2009.

On cross-examination by the Appellant Tenants, the Respondent Landlords agreed that there was no seal to the side of the bath, that there was no glass screen, but stated that the bathroom was still fit for purpose, if the shower curtain was used properly. They stated that when the mixer shower was replaced, the side panel was not sealed but this was not relevant as it was only there for cosmetic purposes.

Asked why they had not invited the Appellant Tenants to attend when they inspected the dwelling in detail for damage and took photographs of various items, the Respondent

Landlords, stated that they were reluctant to do so following heated exchanges that had taken place when the parties met previously to hand over the keys.

The Chair thanked both parties for attending and advised them that following the hearing the Tribunal would make its Determination in relation the dispute and would notify the PRTB of that Determination. He added that the Determination Order of the PRTB would decide the issue between the parties and could be appealed to the High Court on a point of law only.

The hearing concluded at 1.30 p.m. approximately.

6. Findings of the Tribunal and reasons therefor,

Having considered all of the documentation before it, including the Report of the Adjudication dated 13th July 2009 and having considered the evidence presented to it by the parties, the Tribunal's findings and reasons therefor are set out hereunder.

The Appellant Tenants and the Respondent Landlords entered into a 12 month fixed term tenancy on 2nd June 2006.

The rent payable was €820 per month and the Appellant Tenants paid a security deposit of €820.

The contractual conditions under which the lease was entered into did not require the Respondent Landlords to provide a stairs carpet, an outside storage shed, a water softener or any other items requested by the Appellant Tenants after the tenancy commenced.

There was a direct conflict of evidence between the parties on the issue of providing a screen for the shower over the bath in the upstairs bathroom. The Appellant Tenants stated that they specifically requested this, although they agreed it could be delayed until the other issues they had raised were addressed. The Respondent Landlords said that the Appellant Tenants told them in strong terms that they did not want a shower screen fitted.

The tenancy was a Part 4 tenancy in accordance with the provisions of the Act.

The Appellant Tenants and the Respondent Landlord entered into a second Lease on 2nd June 2007 at an increased rent of €855 per month. The term specified in the second Lease was 6 months, although the Respondent Landlords were under the impression that the specified term in this second lease was 12 months.

The second lease did not require the Respondent Landlords to provide any specific items in the dwelling.

In June 2008 the Appellant Tenants were offered a third Lease for a fixed term of six months which they refused to sign.

The Tribunal finds that water damage in a downstairs room was reported by the Appellant Tenants to the Respondent Landlords in the third week of June 2008 and that the Respondent Landlords responded to this report as a matter of urgency, arranging for a plumber to visit the property on the same day, and for a visit by a second plumber a few days later on 23rd or 24th June.

While neither plumber attended to give evidence, the Tribunal finds on the evidence before it that there was no leak in the upstairs water system and that the most likely cause of the water damage on the downstairs ceilings was seepage of water resulting from overflows on the floor when the upstairs bath was in use.

The Tribunal considers that the Appellant Tenants and Respondent Landlords must share the responsibility for the escape of a certain amount of water from the bathroom floor onto the downstairs ceilings. Aware that the Appellant Tenants had young children, the Respondent Landlords should have taken the precautionary approach of insisting on fitting a shower screen to the bath. The Appellant Tenants must also accept that a shower curtain as opposed to a screen meant that overflows of water were inevitable when the bath was used and that it was unlikely that the escape of water in to the ceilings below the bathroom could be avoided completely.

The Tribunal is satisfied on the evidence before it that the damage to the downstairs ceilings was relatively minor in nature and that there was no structural damage.

The Tribunal finds that the Appellant Tenants held the dwelling under a periodic month to month tenancy from the date of expiry of the second lease on 1st December 2007 until the date they vacated the dwelling.

For the avoidance of doubt the Appellant Tenants are deemed to have vacated the dwelling on 28th September 2008, with the rent paid up to and including 30th September, 2008.

The Appellant Tenants were in continuous occupation of the dwelling for a period of more than 2 but less than 3 years and were obliged under the provisions of section 66 of the Act to give 56 days to the Respondent Landlords of their intention to vacate the dwelling, unless the tenancy was being terminated by reason of the failure of the Landlords to comply with any obligations of the tenancy.

The Tribunal finds that there was no failure on the part of the Respondent Landlords to comply with the obligations of the tenancy in this case.

The Appellant Tenants wrote to the Respondent Landlords on 9th September 2008 stating that they had no option but to move out of the dwelling as soon as possible.

This was not a valid Notice of Termination in that it did not comply with Section 62 of the Act. The Appellant Tenants are deemed nevertheless to have given 21 days notice of termination i.e. from 9th September 2008 to the 30th September, up to which date the rent was paid.

If the Appellant Tenants had given the required 56 days notice on 9th September 2008, this would have expired on 4th November 2008.

As the dwelling was not re-let until January 2009, the Respondent Tenants are entitled to retain the deposit as it is less than the amount of rent foregone for the period from 1st October 2008 to 4th November 2008. They are also entitled to recover from the Appellant Tenants the balance of rent foregone for such period that is not covered by the deposit.

The rent foregone by the Respondent Landlords for the period 1st October to 4th November has been calculated by the Tribunal on the basis of 1 month and 4 days rent. On the basis of a monthly rent of €855, one day's rent has been calculated as €28.11. One month and 4 days rent amounts therefore to €855 + €112.44, which is equal to €967.44. Having deducted the deposit of €820, the Appellant Tenants must therefore pay the balance of €147.44 to the Respondent Landlords in respect of rent foregone for the required notice period of termination of the tenancy.

The Tribunal has reviewed the Respondent's claim for compensation to the value of €965 in respect of repairs, re-decoration or replacement of the fabric, fixtures and miscellaneous items in the dwelling and has determined that the Appellant Tenants shall pay €185 to the Respondent Landlords in respect of the replacement of broken electrical sockets (€80), contribution to replacement of mattress (€50) and contribution to replacement of missing kitchen and bathroom items (€55).

The Tribunal finds that the remaining matters for which the Respondent Landlords claimed compensation were either attributable to normal wear and tear in the circumstances of the particular tenancy or related to improvements to the dwelling for which the Appellant Tenants cannot be held liable.

7. Determination

Ref: TR39/DR284/2010

In the matter of Abdellatif Hassan (Appellant Tenant) and Y (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Act, determines that:

1. The Appellant Tenant's application for the return of his security deposit in respect of the tenancy of the dwelling at Z is not upheld.

2. The Appellant Tenant shall pay the sum of €147.44 to the Respondent Landlord within 14 days of the date of issue of the determination order by the PRTB, being compensation in the amount of €967.44 in respect of loss of rental income for the period for which statutory notice of the termination of the tenancy was required, less the deposit of €820 justifiably withheld by the Respondent Landlords.
3. The Appellant Tenant shall pay the sum of €185 to the Respondent Landlord within 14 days of the date of the determination order by the PRTB, being compensation for costs incurred by the Respondent Landlord for repairs and replacement of fixtures and contents of the dwelling either missing or damaged beyond normal wear and tear.
4. The total sum payable by the Appellant Tenant to the Respondent Landlord under 2 and 3 above shall be €332.44

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 10th day of May 2010.

Signed:

Finian Matthews – Chairperson
For and on behalf of the Tribunal.