

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR42/DR1623/2010. Case Ref No: DR1623/2009

Appellant Landlord:	X
Respondent Tenant:	Equality Travel Solutions Limited, T/A Globetrack
Address of Rented Dwelling:	Z
Tribunal:	Liam Nolan (Chairperson) Dervla Quinn Tom Dunne
Venue:	PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.
Dates of Hearing:	23 April 2010 at 2.30 a.m.
Attendees:	
For the Appellant:	X (Landlord) Ms. K.
For the Respondent:	Sean McCann
In Attendance:	PRTB Representative – Carla Reynolds Gwen Malone Stenographers

1. Background:

1. On 22 December 2008 the Landlord 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 16 June 2009. The Adjudicator determined that the Tenant should pay the Landlord the sum of €1330 being the cost incurred by the Landlord in replacing two double beds in the dwelling, and that the Landlord should return to the Tenant four single beds left in the dwelling at the end of the tenancy. Subsequently a valid appeal was received from the Landlord by the PRTB on 15 December 2009.
2. On 30 March 2010 the PRTB constituted a Tenancy Tribunal and appointed Liam Nolan, Dervla Quinn and Tom Dunne as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Liam Nolan to be the chairperson of the Tribunal (“the Chairperson”).
3. On 30 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 23 April 2010 the Tribunal convened a hearing at 2.30 p. m. 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. Procedure:

The Chairperson asked the Parties present and their witnesses to identify themselves and to state 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 circumstances and the parties allowed; and that the person who appealed (the Appellant) would be invited to present their case first. Also 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.

The Chairperson stressed that notwithstanding the informality of the proceedings all evidence would be taken on oath and be recorded by the official stenographer present. He reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence pursuant to section 113 of the Act.

He also reminded the Parties that following the Hearing, the Tribunal would deliberate on the matters raised and deliver its Report and Determination to the Board. The Board would then 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 [reference section 123(3) of the 2004 Act].

The Chairperson informed the Parties that he was happy to answer any queries that may arise about the procedure.

4. Submissions of the Parties:

At this point the Respondent Tenant's representative Sean McCann requested to make a statement which in his opinion could expedite matters at the hearing. The Appellant Landlord acceded to a request from the Chairperson to allow this statement to be made.

Sean McCann stated that on that morning (23 April 2010) a meeting of the Directors and Shareholders of the Respondent Tenant Company, Equality Travel Solutions Limited T/A Globetrack had been held and a resolution passed, to appoint a Liquidator to the Company forthwith.

The Chairperson stated that notwithstanding, the Hearing was now convened and the Tribunal would proceed to hear the evidence of the parties.

Appellant Landlord's Case:

The Landlord's evidence was that a letting agreement of 12 months' fixed term duration had been executed between the parties on 5 May 2007, signed by Sean McCann on behalf of the Tenant. Monthly rent was set at €1250, with Security Deposit €1250 paid at outset. On expiry of the letting agreement in May 2008, the parties agreed verbally to a month-by-month extension, subject to one month's notice of termination by either party. There were no arrears of rent as at May 2008 but on the Landlord's evidence no rent was received in respect of June, July or August 2008. A sum of €5000 was lodged to the Landlord's bank account on or about 11 August 2008, bringing rent up to date to 5 September 2008. No rent was paid subsequently and the Tenant vacated the dwelling on or about 9 December 2008. No Notice of Termination was served by the Tenant.

On inspection of the dwelling on or about 9 December 2008, the Landlord found that two double beds had been removed from the dwelling, which in the Landlord's evidence was also in an unacceptable condition. On or about 17 December 2008 the Landlord contacted the Tenant Company's office and spoke to a person identified as Debbie Nolan, who stated to the Landlord that the two double beds were stored in a utility space adjacent to the offices but were "damp and mouldy".

The Landlord's claim was for arrears of rent from 5 September 2008 to 9 December 2008, together with compensation for two double beds and for repairs and renewals to the dwelling, as represented by photographs submitted and dated at 9 December 2008.

Respondent Tenant's Case:

Sean McCann confirmed that the tenancy had been taken for the use and benefit of employees of the Tenant Company and that he had never personally occupied the dwelling. He stated that he had arranged for return of the keys to the Landlord's Agent at mid-December 2008 and he denied that the dwelling had been left in an unacceptable condition or that any liability for damage existed.

The Respondent Tenant Company's representative, Sean McCann, gave evidence that a cheque had been drawn on his personal bank account in the sum of €2500 for rent due, but that he now accepted that this payment had never been made to the Landlord. He indicated that these were matters of ongoing inquiry within the Tenant Company, concerning bookkeeping and financial management responsibilities.

The Chairperson noted Sean McCann's acceptance, on behalf of the Tenant Company, that no payments had been to the Landlord after the lump sum payment of €5000 made in August 2008.

Concluding statements

The Landlord re-stated his claim.

5. Findings of the Tribunal and Reasons Therefor:

1. The Tribunal finds that the Tenant Company, on the evidence of Sean McCann, is liable for arrears of rent from 5 September 2008 to 9 December 2008, i.e. three months and five days. As a consequence the Tenant Company is liable to the Landlord in the sum of €3955.48.
2. The Tribunal finds that the Landlord is entitled to compensation for a void period of one month as a result of invalid or no service of Notice of Termination where, by agreement of the parties, notice was subject to one month's notice by either party. As a consequence the Tenant Company is liable to the Landlord in the sum of €1250.
3. The Tribunal finds that the Tenant is liable for the non-return of two double beds, now deemed to be incapable of use due to deterioration in condition while stored by the Tenant Company. As a consequence the Tenant is liable to the Landlord in the sum of €1330.

4. The Tribunal finds that the Tenant Company is liable to the Landlord in respect of the unacceptable condition of the dwelling on surrender to the Landlord, as evidenced by photographs submitted and the Landlord's evidence. The Landlord is therefore entitled to retain the security deposit €1250 paid at the outset of tenancy in respect of standard and maintenance of the dwelling on surrender by the Tenant Company, said sum to include cost of keys and other items replaced by the Landlord.

6. Determination:

Ref: TR42/DR1623/2010

In the matter of X (Appellant Landlord) and Equality Travel Solutions Limited T/A Globetrack (Respondent Tenant), the Tribunal in accordance with section 108 (1) of the Residential Tenancies Act 2004, determines that:

1. The Respondent Tenant shall pay to the Appellant Landlord the sum of €6,535.48 being arrears of rent together with compensation for breaches by the Tenant of their obligations pursuant to section 16 (f) of the Act, and Part 5 chapter 3 of the Act regarding periods of Notice.
2. The Respondent Tenant shall pay the sum of €6,535.48 to the Appellant Landlord within 30 days of the date of issue of the Order made by the Board.

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

Signed:

Liam M. Nolan, Chairperson
For and on behalf of the Tribunal.