

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR43/DR1173/2010. Case Ref No: DR1173/2008.

Appellant Tenant: Matthew Dalton

Respondent Landlord: Denis Carrigan

Address of Rented Dwelling: 4 The Old Burrin, Little Barrack Street, Co. Carlow ("the Dwelling")

Tribunal: Aileen Hayden (Chairperson)
John Lynch
Tony Taaffe

Venue: Members Room, Carlow County Council, Athy Road, Carlow.

Date of Hearing: 9 March 2010 at 2.30 pm.

Attendees:

For the Appellant: Matthew Dalton (Tenant)

For the Respondent: Denis Carrigan (Landlord)

In Attendance: Gwen Malone Stenographers Ltd.

1. Background:

1. On 30 September 2008 the Landlord made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act alleging rent arrears and breach of tenant obligations. The matter was referred to an adjudication which took place on 23 July 2009 and which was not attended by the Tenant. The Adjudicator determined that the Tenant pay the sum of €4,089 to the Landlord, being €3,480 in respect of rent arrears and €609 in respect of outstanding utility bills, within 28 days of a Determination Order being issued by the PRTB in the matter. Subsequently a valid appeal was received from the Tenant by the PRTB on 15 December 2009.
2. On 27 January 2010 the PRTB constituted a Tenancy Tribunal and appointed Aideen Hayden, Paul Good and Tony Taaffe 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”). Paul Good was substituted for by John Lynch in advance of the hearing.
3. On 9 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. On 9 March 2010, the Tribunal convened a hearing at 2.30 pm in the Members Room, Carlow County Council, Athy Road, Carlow.

2. Documents Submitted Prior to the Hearing Included:

- PRTB file

3. Documents Submitted at the Hearing Included:

- Schedule of text messages
- Tenant’s references

4. Procedure:

The Chairperson asked the Parties present, the Appellant Tenant, the Respondent Landlord, to identify themselves and to state, for the record, in what capacity they were attending the Tribunal. She confirmed with them 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 and could be appealed to the High Court on a point of law only pursuant to section 123(3) of the 2004 Act.

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 Matthew Dalton and Denis Carrigan were duly sworn.

The hearing commenced with the Appellant's case.

5. Submissions of the Parties:

Appellant Tenant's Case:

Matthew Dalton gave evidence that he had left the dwelling in late August 2008, that he did not believe he owed anything like the amount of rent and charges claimed by Denis Carrigan his former landlord and that he accepted that he owed a few weeks rent but believed that this was covered by his deposit of €290. Mr Dalton claimed that he and the other tenants regularly left their rent in cash in the dwelling which was picked up by Mr Carrigan when he called. The schedule of rent arrears furnished had been drafted by Mr Carrigan and made no mention of these cash payments, the only payments acknowledged were those he had made by direct debit or on occasions where he had gone personally to the bank with Mr Carrigan. No entries had been made in the rent book for the cash payments that had been left on the microwave for Mr Carrigan. Moreover he had always understood that the rent charged to the tenants included an amount for utilities. He also took issue with some of the utility bills furnished as they covered periods he didn't live in the dwelling at all. All utility bills were in the Landlord's name. When he became unemployed Mr Carrigan had signed a rent allowance form for him but at that stage, according to Mr Carrigan, he owed 34 weeks rent. He did not believe Mr Carrigan would have done so if the arrears of rent had been that significant.

Mr Carrigan had also inserted an amount of rent on the rent supplement claim form greater than that which he paid and aside from the €67 which he paid over for rent from his rent allowance, he paid a further €20 to cover utilities. The house was not in good condition and on one occasion Mr Dalton and the other tenants withheld rent until the washing machine was fixed but other than that rent was paid. If he owed anything he believed it could not be more than one month's rent as it was not credible that Mr Carrigan would let him live for such a long period rent free. He asked the Tribunal to accept references from current and previous Landlords and Agents as a testament to his character as a tenant.

In response to questions Mr Dalton stated that he had paid rent by direct debit in the beginning but after a number of weeks Mr Carrigan had told him the money was not coming into his account or coming in and going out again so he had offered to pay in cash. Mr Dalton also stated that in the 45 weeks he had rented from Mr Carrigan there had been no mention of money for utilities being owed. None of the other tenants paid for utilities either, he believed. Furthermore the price paid in rent reflected this as he could have got a house down the road cheaper and paid his own bills. Mr Dalton also acknowledged that he received his rent supplement in cash with his unemployment payment rather than a cheque being made out to his Landlord. He further acknowledged that this payment covered a period to the 21st October 2008 although his evidence had been that he vacated the dwelling on the 29th August in that year. He further acknowledged that he had not returned the balance to the Department of Family and Social Affairs. He also stated that he and Mr Carrigan had both signed and filled up the social welfare rent supplement form and inserted the figure of €80 per week for rent and not the €70 figure which was actually due. He also stated that Mr Carrigan had inserted the figure of €640 for the deposit but acknowledged that he had colluded with this as they had both agreed that this was a way to get more from the welfare if the higher figure was put in.

Respondent Landlord's Case:

Denis Carrigan gave evidence that an amount of €3480 in respect of rent arrears and €609 in utilities was owed by Matthew Dalton. He did advise the Tribunal that these amounts did not take the deposit of €290 into account. When the tenancy commenced initially payment for rent was to be by direct debit to his bank account. Although the first few payments were made in this fashion by Mr Dalton he became aware, though not immediately, that payments were being credited to his account and later debited by his bank. He had raised the matter with Mr Dalton who had said he could not understand why this was occurring but said that he would make the payments directly. It was not his practice to take cash left for him from his tenants. His preference was for direct debits and it was his usual practice to give his tenants a rent book and to acknowledge payments made. Mr Dalton had a rent book but Mr Dalton had made very few payments during his tenancy. Mr Carrigan had submitted a rent schedule to the Tribunal and he went through the entries set out therein. He acknowledged that he had let the arrears of rent mount up before taking action but stated that he was clear on the payments made to him.

Mr Dalton had asked him to sign the rent supplement claim form which he did but he did not, he said, fill in the amounts claimed and believes he may have filled in a blank form. Although Mr Dalton was in arrears at the time, he had facilitated him in the hope that he would recoup some of his losses and at least get his rent in the future on a regular basis. This did not occur and he stated that Mr Dalton had asked him a number of times for his bank details which he furnished to him but rent was not forthcoming. There was a payment of €300 when he had accompanied Mr Dalton to a cashmachine but he had never received rent supplement payments from him. After a period he issued a notice of termination and succeeded in agreeing a payment schedule with Mr Dalton around the end of May 2008, he believed, where he would pay €110 per week in an effort to deal with the arrears but other than a number of intermittent payments this agreement was not honoured. Mr Dalton denied such an agreement was made.

With regard to the utilities Mr Carrigan explained that the number of tenants varied in the dwelling from time to time but that he had given Mr Dalton the benefit of the doubt and had averaged the utilities over a longer period of time to obtain a more accurate monthly reading and had divided the sums by four persons although there were only two tenants at times. He did not recall any time where the tenants threatened to retain rent because of the condition of the dwelling. It was always understood that utilities were a separate charge to rent, he stated, and submitted texts from his Blackberry exchanged between himself and Mr Dalton to support this contention. He also referred to a number of texts from Mr Dalton relating to his arrears of rent.

In response to questioning from the Tribunal Mr Carrigan acknowledged that he hadn't pursued the arrears of rent or utilities as diligently as he should have and stated that he was not a professional landlord. He had a room free in the house at the time which he couldn't rent and he believed Mr Dalton would receive arrears of rent supplement and make payment eventually.

6. Findings of the Tribunal and Reasons Therefor:

1. There was absolute conflict of evidence as to the matters which both parties claim transpired between them.
2. On the balance of probabilities and on the basis of the evidence presented by the parties to the Tribunal, the Tribunal concludes that the Landlord's evidence is more persuasive. Although the Landlord's management of the tenancy was less than professional, the sums of rent claimed are, on balance, accepted as owed by the Tenant. The Tribunal also accepts that the sums claimed for utilities are also due.
3. The Tribunal notes with concern that on the basis of the evidence presented to it, sums paid by the Department of Social and Family Affairs for the payment of rent were not used for this purpose by the tenant. The Tribunal further notes that on the

rent supplement form presented to the Tribunal in evidence, inaccurate amounts were entered in respect of the rent and deposit paid by the Tenant for the dwelling.

7. Determination:

Ref: TR43/DR1173/2010

In the matter of Matthew Dalton (Appellant Tenant) and Denis Carrigan (Respondent Landlord) the Tribunal in accordance with Section 108 (1) of the Residential Tenancies Act 2004, determines that:

- The Appellant Tenant shall pay the sum of €3,799 to the Respondent Landlord within 14 days from the date of issue of a Determination Order by the Board in this matter, being an amount of €3,480 in respect of arrears of rent, €609 in respect of outstanding utility bills less the Tenants deposit of €290, justifiably retained by the Landlord, in respect the tenancy of the dwelling at 4, The Old Burrin, Little Barrack Street, Co Carlow.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 16th day of April 2010.

Signed:

Aideen Hayden, Chairperson
For and on behalf of the Tribunal.