

**RESIDENTIAL TENANCIES ACT 2004**

**Private Residential Tenancies Board Tribunal**

**Report Reference No: TR02/DR1056/2011. Case Reference No: DR1056/2010**

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|------------------------------------|--|
| <b>Appellant Tenants:</b>          | Jamie Kavanagh<br>Julie Stringer   |
| <b>Respondent Landlord:</b>        | Murali Krishna Sayana  |
| <b>Address of Rented Dwelling:</b> | 8 Belarmine Way,<br>Newtownlittle,<br>Stepaside,<br>Dublin 18<br>("the Dwelling")                    |
| <b>Tribunal:</b>                   | Aideen Hayden (Chairperson)<br>Gene Feighery<br>Liam Nolan   |
| <b>Venue:</b>                      | Private Residential Tenancies Board,<br>Floor 2, O'Connell Bridge House,<br>D'Olier Street, Dublin 2 |
| <b>Date of Hearing:</b>            | 22 February 2011 at 10.30am.   |
| <b>Attendees:</b>                  |  |
| <b>For the Appellant:</b>          | Jamie Kavanagh   |
| <b>For the Respondent:</b>         | Murali Krishna Sayana  |
| <b>In Attendance:</b>              | Gwen Malone Stenographers  |

## **1. Background:**

1. On 26 May 2010, 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 26 October 2010. The Adjudicator determined that the Respondent Tenant should within twenty-one days of the issue of the Determination Order pay to the Applicant Landlord the sum of €1,247.77 comprising rent arrears in the sum of €2,400 less the Tenant’s deposit in the amount of €1,250 together with a sum in respect of replacement of bulbs in the amount of €77.77. Subsequently, a valid appeal was received from the Tenant by the PRTB on 17 December 2010 on the grounds that he did not believe he owed the amount of rent arrears claimed.

2. The Board at its meeting on 12 January 2011 approved the referral to a Tenancy Tribunal of the Appeal. The PRTB constituted a Tenancy Tribunal and appointed Aideen Hayden, Gene Feighery and Liam Nolan as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Aideen Hayden to be the chairperson of the Tribunal (“the Chairperson”).

3. On 20 January 2011 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 22 February 2011 the Tribunal convened a hearing at 10.30am 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:**

There were no documents submitted at the Hearing.

## **4. Procedure:**

The Chairperson asked those present 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 Jamie Kavanagh and Murali Krishna Sayana were duly sworn.

The hearing commenced with the Appellant's case.

## **5. Submissions of the Parties:**

The Parties agreed that the Tenancy was subject to a Lease Agreement dated 9 June 2009 for a period of one year from 1 July 2009 to 1 July 2010 at a rent of €1,250 per month. The rent payable was subsequently reduced to €1,200 per month from January 2010. A Deposit was paid in respect of the Tenancy in the sum of €1,250. It was agreed that the Tenant vacated the Dwelling on 9 May 2010. The Chairperson confirmed with both Parties that the Lease Agreement was executed by Murali K Sayana as Landlord and Jamie Kavanagh as Tenant and that Julie Stringer was not party to the Lease Agreement although she lived for a time with the Tenant in the Dwelling. The Landlord accepted that while he had intended to bind Julie Stringer as a Party to the Lease he had overlooked the matter and she was not a party to the Lease.

### **Appellant Tenant's Case:**

The Appellant Tenant gave evidence that he accepted he was in arrears of rent, he explained to the Tribunal that he had experienced very difficult personal circumstances and that he was forced to move out of the Dwelling because he could no longer afford to pay the rent. He stated that he could also no longer afford to heat the Dwelling and found himself getting deeper into debt. He said that he texted the Landlord on 7 May 2010 that he was leaving and handed over the keys on 9 May 2010.

When he had spoken to the Landlord about the situation he had been given the impression that the Landlord was not worried about the money and the Tenant had taken this to mean that his Deposit would be used as rent for the month of May and that he would not be held liable for rent for the month of June, the final month of the fixed term Lease agreement.

The Appellant Tenant said that the Landlord had conducted an inspection of the Dwelling when the Tenant had vacated and nothing had been said in relation to the arrears of rent. The Tenant confirmed that he did not expect to have his Deposit returned to him. With regard to the light bulbs in the Dwelling, the Tenant stated that they were expensive energy-saving bulbs and he could not afford to replace them when they stopped working. He asked the Tribunal to take into account his current circumstances and if making an award in relation to arrears of rent to permit him to pay by instalments of €30 per month.

In response to questions from the Tribunal the Appellant Tenant confirmed that the Respondent Landlord had made no demand for the rent. He said that he believed that no money was owed by him in respect of rent and only became aware of the matter when he received notice of the PRTB Dispute Resolution Application.

### **Respondent Landlord's Case:**

The Respondent Landlord gave evidence that he believed that he was entitled to rent for the months of May and June 2010 as the Tenant had breached a fixed-term Letting Agreement without giving the appropriate notice. He accepted that he did not raise any issue with the Tenant when he received his notice to terminate the tenancy by text because he wished to have his property returned to him in good condition without dispute. He accepted that he did not raise the matter of the arrears of rent with the Tenant and further accepted that he had lodged an application for dispute resolution with the PRTB dated 26 May 2010 before the term of the fixed term lease agreement expired without having made any formal request for arrears of rent from the Tenant. With regard to the period between the time the Tenant vacated the Dwelling and the conclusion of the Lease, the Respondent Landlord stated that he had asked around to see if anybody wished to rent the property but had not formally advertised the Dwelling for rent as he intended to move back into the Dwelling himself on 1 July 2010.

### **6. Findings of the Tribunal and Reasons Therefor:**

Having considered all of the documentation before it, including the Report of the Adjudication, and having considered the evidence presented to it by the parties, the Tribunal's findings and reasons therefore are set out hereunder;

1. There was a fixed term letting agreement in place between the Parties. There was no breach of Landlord's obligations under the Residential Tenancies Act 2004 (the Act) such as would entitle the Appellant Tenant to terminate the tenancy in accordance with Section 34 and Section 68 of the Act. The notice of Termination served by text on the Respondent Landlord is not a valid Notice of Termination.

2. The Tribunal finds that the Respondent Landlord, on the basis of the evidence presented to it that he intended to reoccupy the property made no serious efforts to re let the Dwelling before or after the Tenant vacated. The Tribunal further notes that no formal request for payment of rent for the month of June was made by the Respondent Landlord and that the Tenant became aware of the matter of the claimed rent arrears after an application for Dispute Resolution had been received by the PRTB which was dated 26 May 2010 prior to the expiration of the Lease period. In light of the Landlord's failure to mitigate his losses and the absence of a formal request for the arrears of rent for the month of June 2010 the Tribunal considers that the Appellant Tenant should not be levied with the full amount of the rent for the remainder of the unexpired Lease period. The Tribunal considers that the Tenant should pay rent in respect of a period of thirty-five days in lieu of notice to the Landlord, said notice to run from 7 May 2010, the date on which the Tenant made the Landlord aware that he was leaving. In addition to rent in lieu of notice calculated in the sum of €1,380 the Tenant shall also pay a further sum of €276 in respect of arrears of rent from 1 May 2010 to 7 May 2010. This total sum of €1,656 shall be reduced by the Tenant's deposit in the amount of €1,250 justifiably retained by the Respondent Landlord, said balance of €406 to be discharged by the Appellant Tenant by way of three-monthly instalments of €100 and the fourth instalment of €106. The Tribunal does not award the cost of replacement bulbs as it considers it to be reasonable wear and tear associated with any Tenancy.

## **7. Determination:**

**Ref: TR02/DR1056/2011**

In the matter of Jamie Kavanagh (Appellant Tenant) and Murali Krishna Sayana (Respondent Landlord) the Tribunal in accordance with Section 108 (1) of the Residential Tenancies Act 2004, determines in respect of the Dwelling, 8 Belarmine Way, Newtownlittle, Stepside, Dublin 18, that:

1. The Appellant Tenant shall pay the sum of €406 to the Respondent Landlord within twenty eight days from the date of issue of a Determination Order by the PRTB being arrears of rent of €276 together with a sum of €1,380 being thirty-five days rent in lieu of a valid Notice of Termination, less the Tenant's deposit of €1,250 justifiably withheld.
2. The enforcement of this Determination Order shall be deferred and the Appellant Tenant shall pay the sum of €406 by way of three monthly payments of €100 and a fourth monthly payment of €106 each and every month, the first payment to be made within twenty eight days from the date of issue of a Determination Order by the PRTB until the sum outstanding of €406 has been

discharged.

3. For the avoidance of doubt, any default in the payment of the monthly instalments set out in paragraph 2 hereof shall act to cancel any further deferral and the balance due at the date of the default of the monthly payments shall immediately become due and owing to the Respondent Landlord.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 22 day of March 2011.

**Signed:**

**Aideen Hayden - Chairperson.**  
For and on behalf of the Tribunal.