

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Tribunal

Report of Tribunal Reference No: TR03/DR1068/2011 Case Reference No: DR1068/2010

Appellant Landlord: Tyrone Falls

Respondent Tenants: Louisa Hayes
Tim Van Buchem

Address of Rented Dwelling: 1 Mount Drummond Square,
Harold's Cross, Dublin 6.
(referred to as the 'dwelling' throughout this report)

Tribunal: Eoin O'Sullivan (Chairperson)
Dervla Quinn
Maurice O'Donoghue

Venue: Tribunal Room, Private Residential Tenancies
Board, Floor 2, O'Connell Bridge House, Dublin 2.

Date & Time of Hearing: 24 February 2011 at 10.30 a.m.

Attendees:

For the Appellant: Tyrone Falls
Patricia Falls

For the Respondent: Tim Van Buchem
Louisa Hayes
Rena Fitzgerald (Witness)
Claire Lane (Threshold)

Also in Attendance: Gwen Malone Stenographers

1. Background:

On 9 July 2010, the Tenants made an application for dispute resolution services to the Private Residential Tenancies Board (referred to as “the PRTB” throughout this report).

Pursuant to section 78 of the Residential Tenancies Act, 2004 (referred to as “the Act” throughout this report) an Adjudicator was appointed by the PRTB, and an Adjudication was held on 15 November 2010. The Adjudicator’s report, dated 19 November 2010, including his Findings of Fact and Determination in relation to the dispute was sent to both parties. The Adjudicator found as a matter of fact that the complaint by the Tenants, that their entitlement to quiet enjoyment of the dwelling had been interfered with, was justified and that the Landlord was in breach of section 12 (1) (a) and (b) of the Act. The Adjudicator further found that the Notice of Termination, dated 9 July 2010, served by the Landlord on the Tenants was invalid as it did not fully comply with Paragraph 5 of Table A to Section 34 of the Act.

The Adjudicator determined that the Landlord pay the sum of €1,000 to the Tenants, for interference with their quiet possession of the dwelling and for breach of Landlord’s obligations.

Subsequently a notice of appeal was received by the PRTB from the Landlord on 16 December 2010 and the appeal was granted, the grounds of the appeal being that the Landlord only ever entered the dwelling with the consent of the Tenants.

The PRTB approved the referral of the appeal of the Landlord to a tenancy tribunal. In accordance with Sections 102 and 103 of the Act, the PRTB constituted a Tenancy Tribunal and appointed Eoin O’Sullivan, Anne Colley and Maurice O’Donoghue as Tribunal members. The Board appointed Eoin O’Sullivan to be the Chairperson of the Tribunal (“the Chairperson”). Anne Colley was later substituted by Dervla Quinn. On 24 January, 2011, 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.

2. Documents Submitted prior to the Tribunal Hearing:

The PRTB file.

3. Documents Submitted at the Hearing:

No documents were submitted.

4. Procedure:

Having received notification that the Threshold representative for the Tenants was delayed, the Tribunal did not commence until 11.00 a.m. Having opened the Tribunal, the Chairperson asked the Parties present to identify themselves and to identify 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 held in as informal a manner as was possible and that the person who appealed (the Appellant) would be invited to present their case initially, followed the Respondents case, with parties entitled to cross-examine. The Chairperson also informed the parties that members of the Tribunal might ask questions of both Parties from time to time.

He stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he 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.

He 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 [reference section 123(3) of the 2004 Act]. The hearing commenced with the Appellant's case.

5. Submissions of the Parties:

Appellant Landlords Case:

The Appellant Landlord opened his case by stating that from the commencement of the tenancy on 11 June 2008 until 12 June 2010, both parties enjoyed an amicable relationship. The rent was collected from the dwelling on a monthly basis, and any request for repairs, replacements or alterations in relation to the dwelling were carried out promptly, with entry to the dwelling only with the consent of the tenants. On 12 June 2010, the Appellant Landlord stated that he and another workman arrived at the dwelling to install double-glazed-windows, following a request from the tenants. These

windows were installed and the Appellant was in the process of installing a frosted glass pane in the spare bedroom of the dwelling, when he claimed that Lousia Hayes became verbally abusive when she noticed that the pane of glass was frosted. The Appellant Landlord said that he and his workman left the dwelling, with the work incomplete due to the alleged aggressive behaviour of Louisa Hayes. On 16 June 2010, the Appellant Landlord said that he served a Notice of Termination of Tenancy as his workman refused to return to the dwelling due to the alleged behaviour of Louisa Hayes.

Following a conversation with Tim Van Buchem, it was agreed that the Appellant Landlord and his workman would continue the work in the dwelling on 17 June 2010. Having completed further work on replacing the windows, the Appellant Landlord left a second Notice of Termination, as he believed that the first notice served was invalid. Following cross-examination by Clare Lane, the Appellant Landlord stated that he never entered the dwelling without the consent of the tenants and on only two occasions was he in the dwelling when the Tenants were not present. The Appellant Landlord also confirmed to the Tribunal that he had yet to fully complete the replacement of the windows in the dwelling, as his workman was unwilling to return to the dwelling due to the verbal altercation with Louisa Hayes on 12 June 2010.

Respondent Tenants Case:

The Respondent Tenants confirmed that they had a good relationship with the Landlord, but that over time they became increasingly concerned about the frequency of his visits to the dwelling. Under cross-examination from the Tribunal, the Respondent Tenants acknowledged that they had not confronted the Landlord directly about their concerns as they wished to remain diplomatic and not to cause offence. They stated that these ongoing concerns and tensions manifested themselves in a heated exchange with the Landlord on 12 June 2010. A lack of clarity between the Respondent Tenants and the Appellant Landlord on the arrangements to finish the installation of the windows and to remove some broken panes of glass further contributed to the deterioration of the relationship between the Tenants and the Landlord. The Respondent Tenants gave further evidence to the Tribunal that they had served a Notice of Termination on the Appellant Landlord, which will expire on 7 March and no rent is outstanding, a fact confirmed by the Landlord.

The Tribunal recessed at this stage to allow the parties to negotiate a settlement of the issues, but as a settlement could not be agreed on, the Tribunal proceeded to hear final submissions from the parties.

6. Findings of the Tribunal and reasons therefore:

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:

Finding: The Tribunal does not find that the Appellant Landlord was in breach of Section 12 (1) (a) of the Act, that is that he did not allow the Respondent Tenants to enjoy peaceful and exclusive occupation of the dwelling.

Reasons: The evidence before the Tribunal was that the Landlord only entered the dwelling with the consent of the Tenants. While the Tenants became increasingly concerned at the frequency of the visits to the dwelling by the Landlord, at no stage prior to 12 June 2010 was this concern formally communicated to the Landlord.

Finding: The Tribunal finds that the Landlord is in breach of section 12 (1) (b) (i) and (ii) in that he did not complete the replacement of the windows in the dwelling, causing discomfort and distress to the Tenants.

Reasons: The reasons given to the Tribunal why the Landlord and his workman were unwilling to return to the dwelling to complete the repairs to the dwelling were not accepted by the Tribunal. The Landlord has a legal obligation to carry out the replacement of fittings from time to time and crucially to complete such repairs. The deterioration of the relationship between the parties does not allow the Landlord to evade such responsibilities.

Finding: The Tribunal determines that the Appellant Landlord pay the Respondent Tenants the sum of €1,350, being €150 a month for each of the 9 months they occupied the dwelling where the replacement of the windows was not completed by the Landlord.

Reasons: From 12 June 2010, to when the tenants vacated the dwelling on 7 March 2011, a period of approximately 9 months, due to the fact the work on replacing the windows was not fully completed resulted in numerous draughts in the dwelling leading to much discomfort and inconvenience.

7. Determination

REF: TR03/DR1068/2011

In the matter of Tyrone Falls (Appellant Landlord) and Louisa Hayes and Tim Van Buchem (Respondent Tenants), the Tribunal in accordance with section 108(1) of the Act, determines that:

The Appellant Landlord shall pay the Respondent Tenants, within 28 days of the date of issue of this Determination Order, the sum of €1,350, being €150 a month for each of the 9 months they occupied the dwelling, where the Landlord was in breach of section 12 (1) (b) (i) and (ii) of the Act, in respect of the tenancy of the dwelling at 1 Mount Drummond Square, Harold's Cross, Dublin 6.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 8 day of March, 2011.

Signed:

**Eoin O'Sullivan, Chairperson
For and on behalf of the Tribunal.**