

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal No: TR04/DR358/2011 Case Ref No: DR358/2010

Appellant Tenant:	X
Respondent Landlord:	Timothy Scott
Address of Rented Dwelling:	Z ("The Dwelling")
Tribunal:	James Bridgeman (Chairperson) Louise Moloney Henry Murdoch
Venue:	Tribunal Room, Private Residential Tenancies Board, 2 nd Floor, O'Connell Bridge House, D'Olier Street Dublin 2
Date of Hearing:	7 March 2011 at 2.30 p.m.
Attendees:	
For the Appellant:	X (Tenant)
For the Respondent	Timothy Scott (Landlord)
In Attendance:	Gwen Malone Stenographers

1. Background

On 3 March 2010, the Private Residential Tenancies Board (“the PRTB”) received an application dated 1 March 2010 from the Landlord pursuant to Section 78 of the Residential Tenancies Act 2004. The dispute related to the Landlord’s claim for arrears of rent.

The matter was referred to adjudication which took place on 9 November 2010. The Adjudicator determined that the Tenant was obliged to pay the sum of €3,200 to the Landlord within 48 days of the date of issue of the determination order being rent arrears of €3,900 having deducted the entire of the justifiably retained security deposit of €700 in respect of the tenancy of the Dwelling.

A Notice of Appeal dated 17 December 2010 was received by the PRTB from the Appellant Tenant on 20 December 2010.

The grounds for appeal being:

That the Tenant is not in a position to pay the full amount owing in one lump sum due to her personal circumstances.

On 12 January 2011 the PRTB constituted a Tenancy Tribunal and appointed James Bridgeman, Louise Moloney and Henry Murdoch as Tribunal members pursuant to Section 102 and 103 of the Act, and appointed James Bridgeman to be the chairperson of the Tribunal (“the Chairperson”).

On 31 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. The Tribunal was scheduled for 7 March 2011.

On 7 March 2011, the Tribunal convened a hearing at 2.30 p.m. at the Private Residential Tenancies Board, D’Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB file
2. A document setting out the Appellant Tenant's financial position prepared by the Money Advice and Budgeting Service (MABS) was admitted in evidence with the consent of the Respondent Landlord.

3. Procedure:

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson 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”.

The Chairperson 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 her case first; 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 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.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the Parties that it is an offence to knowingly provide false or misleading statements or information to the Tribunal is an offence.

The Chairperson 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 Chairperson asked the Parties if they had any queries about the procedure. There were none. The parties giving evidence were then sworn in.

4. Submissions of the Parties:

Appellant Tenant's Submissions

The Appellant Tenant indicated that she accepted that the sum of €3,200 as determined by the Adjudicator was due and owing but explained to the Tribunal that she was not in a financial position to pay the arrears of rent.

She accepted that she had entered into an agreement with the Respondent Landlord on 4 December 2009 in which she agreed to repay arrears of rent then due in instalments of €50 per week over a period extending from 6 December 2009 to 11 April 2011. She accepted that she had not complied with that agreement.

At hearing, the Tribunal offered the Parties the opportunity to discuss the dispute with the view of reaching an amicable settlement and adjourned briefly.

When the Hearing re-convened the Parties advised the Tribunal that they had reached an amicable settlement.

The Tribunal adjourned again briefly to allow the Appellant Tenant to contact MABS. When the Hearing re-convened, the Appellant Tenant confirmed to the Tribunal that she agreed to the settlement agreement having taken advice on the telephone from MABS.

Respondent Landlord's Submissions

The Respondent Landlord requested that the settlement agreement should be reflected in a Determination Order of the Board and the Appellant Tenant agreed to such a course.

The Respondent Landlord stated that he required that simple interest should be payable on the outstanding balance as an incentive to the Appellant Tenant to endeavour to discharge the debt more quickly that she was obliged to do under the agreement reached.

5. Findings of the Tribunal and Reasons

Having considered all of the documentation before it, including the Report of the Adjudication, and having considered the submissions of the Parties, the Tribunal's findings and reasons therefore are set out hereunder.

5.1 Finding:

This Tribunal finds that the agreement entered into by the Parties at hearing should be reflected in a Determination Order in the following terms:

The Appellant Tenant shall pay to the Respondent Landlord the sum of €3,200 at a rate of €32 per month commencing on 30 April 2011. The Appellant Tenant shall in addition pay to the Respondent Landlord simple interest @ 3% per annum on the outstanding balance of said sum. Said interest shall be payable as and from 30 April 2011 and shall apply to and be payable on the reducing balance as of the last day of each month thereafter.

Reasons:

The Appellant Tenant accepted that the sum of €3,200 was due and payable by her to the Respondent Landlord in respect of arrears of rent.

The Tribunal was of the view that the agreement was fair and reasonable. The Appellant Tenant had accepted that the sum of €3,200 was due and owing by her in respect of arrears of rent. She therefore had no defence to the Respondent Landlord's claim and the agreement. Said agreement dated 4 December 2009 provided that the Appellant Tenant was obliged to pay the outstanding balance of the arrears of rent over a period extending to 11 April 2011. It follows that as of the date of making the Determination Order if the agreement were to be enforced the full sum would become due and owing immediately. The Tribunal and the Landlord accepted that the Respondent Tenant was in extremely difficult financial circumstances and so the agreement reached at Hearing was of benefit to her.

The Tribunal considered the provision in the agreement requiring the Tenant to pay 3% simple interest on the outstanding balance and the Tribunal was of the view that this was not an unreasonable demand by the Landlord and accepted his explanation that the purpose of the provision was to encourage early payment of the balance due if the Appellant Tenant's financial circumstances improve during the payment period.

6. Determination:

Ref: TR 04/DR358/2011.

In the matter of X Appellant Tenant and Timothy Scott Respondent Landlord this Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Tenant shall pay to the Respondent Landlord the sum of €3,200 at a rate of €32 per month commencing on 30 April 2011 and said sum shall be payable on the last day of each month thereafter. The Appellant Tenant shall in addition pay to the Respondent Landlord simple interest @ 3% per annum on the outstanding balance of said sum. Said interest shall be payable as and from 30 April 2011 and shall apply to and be payable on the reducing balance as of the last day of each month thereafter.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 28 day of March 2011.

Signed:

James Bridgeman Chairperson

For and on behalf of the Tribunal.