

**RESIDENTIAL TENANCIES ACT 2004**

**Private Residential Tenancies Board Tribunal**

**Report of Tribunal Reference No: TR05 /DR1006/2009 Case Ref No: DR1006/2008**

<b>Appellant Tenant:</b>	John Hope
<b>Respondent Landlord:</b>	Seamus Regan
<b>Address of Rented Dwelling:</b>	Top Floor, Burleigh House, Castlebar,  Co. Mayo.
<b>Tribunal:</b>	Eoin O'Sullivan (Chairperson) Anne Colley Liam O'Donnell
<b>Venue:</b>	Executive Lounge, Floor 5, Hotel Meyrick, Eyre Square, Galway.
<b>Date of Hearing:</b>	14 December 2010 at 10.00 a.m.
<b>Attendees:</b>	
For the Appellant:	John Hope (Tenant) Roisin McCluskey (FitzGibbon & Company Solicitors) Michael Dillon, B.L.
For the Respondent:	Seamus Regan (Landlord) Val Jennings (Witness) Kevin M. Burke (Solicitor)
<b>In Attendance:</b>	Gwen Malone Stenographers

## **1. Background:**

On 10 September 2008, the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act seeking compensation for alleged damage to his personal property; damages for an alleged illegal eviction; compensation for losses being suffered in respect of increased rents and compensation for stress, trauma and other medical sequelae and defamation. The matter was referred to an Adjudication, which took place on 2 October 2008. The Adjudicator found that a rental agreement was entered into and dated 18 July 2008 for a minimum period of four months at a weekly rent of €130; that the Tenant had paid to the Landlord a security deposit of €400 which had been returned to the Tenant. The Adjudicator determined that there was an illegal eviction by the Landlord of the Tenant; that the claim by the Tenant for damage to clothing and personal effects was realistic and made no award for compensation for stress or trauma. The Adjudicator awarded the Tenant the sum of €1,880 in compensation for damages to his clothing and personal belongings.

Subsequently a valid appeal was received from the Tenant by the PRTB on 25 November 2008. The grounds of the appeal were that:

- (1) The Adjudicator erred in fact and in law by failing to award compensation / damages for an illegal eviction despite making a finding of fact that there was an illegal eviction from a rental agreement entered on 18 July 2008.
- (2) The Adjudicator erred in fact and in law by failing to award compensation / damages for an illegal eviction in circumstances where the adjudicator awarded compensation / damages for a ‘valid claim’ of ‘unwarranted damage to clothes / personal effects’ which said unwarranted damage occurred subsequent to the illegal eviction.
- (3) The Adjudicator acted in breach of the rules of natural and constitutional justice and / or in breach of fair procedures by refusing on several occasions to hear any or adequate evidence from the Applicant and insisting that the applicant’s nominee spoke instead of the Applicant at all times.
- (4) The Adjudicator acted in breach of natural and constitutional justice and / or in breach of fair procedures by refusing on several occasions to allow the Applicant’s nominee open case-law including case-law on damages for illegal eviction.
- (5) The Adjudicator acted in breach of natural and constitutional justice and / or in breach of fair procedures by refusing to allow the Applicant’s nominee open PRTB precedents detailing levels of compensation / damages for illegal evictions.

- (6) The Adjudicator acted in breach of natural and constitutional justice and/or in breach of fair procedures by denying the applicant the right to cross-examine the respondent.
- (7) The Adjudicator erred by failing to be consistent with previous determinations of the Tribunal in relation to disputes of a similar nature to the dispute concerned in that no compensation / damages was awarded for an illegal eviction.

Prior to the hearing of the Tenancy Tribunal established by the PRTB to hear the valid appeal, Judicial Review proceedings were initiated by the Tenant. On 7 December 2009, the High Court granted an Order of Certiorari in respect of the determination in relation to the tenancy agreement by the Tenant and the Landlord and ordered that the matter be remitted to an Adjudicator to be appointed by the PRTB and to be an Adjudicator other than the Adjudicator who made the determination on 8 October 2008, for the sole purpose of considering the compensation to be paid to the Tenant. The High Court further ordered that the PRTB pay the Tenant his costs in the proceedings. The matter was referred to an Adjudication, which took place on 9 February 2010. The Adjudicator determined that the Landlord pay the Tenant the sum of €2,539, being €1,000 for damages for trespass to the Tenants personal property; €39 for damages for the illegal eviction (€14 for a taxi and the dispute resolution fee of €25) and €1,500 for damages for stress and trauma. Subsequently a valid appeal was received from the Tenant by the PRTB on 30 April 2010. The grounds of the appeal were that:

- (1) The adjudicator erred in fact and in law by re-opening the issue of damages for trespass to chattels when same was not open to him in circumstances where there was an order of the High Court confining the jurisdiction of the Adjudicator to determine damages for an illegal eviction and not for damages for trespass to chattels.
- (2) The Adjudicator erred in fact and in law by reducing the quantum for trespass to chattels when he lacked the jurisdiction to make such an award and he thereby acted in violation of an Order of the High Court restricting this jurisdiction.
- (3) The damages awarded do not reflect the egregious nature of the illegal eviction of the Tenant where it was admitted by the Landlord that he violated the sanctity of the Tenant's property by entering all rooms including the bedroom and personally removing the belongings of the Tenant and placing them outside the property where they were covered in bleach.
- (4) In all the circumstances the sum of damages awarded for the illegal eviction, stress and anxiety was too small in light of the legal authorities and past precedents of the PRTB opened to the Adjudicator.
- (5) The Adjudicator failed to inform the Tenant of the essential rationale for his decision.
- (6) The Adjudicator failed to have due regard to the legal authorities opened to him including the past precedents of the PRTB.

On 12 May 2010 the PRTB constituted a Tenancy Tribunal and appointed Eoin O’Sullivan, Anne Colley and Liam O’Donnell as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Eoin O’Sullivan to be the chairperson of the Tribunal (“the Chairperson”). On 2 June 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. On 14 December 2010 the Tribunal convened a hearing at 10.00 a.m. at the Executive Lounge, Floor 5, Hotel Meyrick, Eyre Square, Galway.

## **2. Documents Submitted Prior to the Hearing Included:**

- PRTB file

## **3. Documents Submitted at the Hearing Included:**

- Book of Precedent cases on compensation for illegal eviction.

## **4. Procedure:**

The Chairperson asked the Parties present (and their witnesses) 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; 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 his case, including the evidence of his witness, and that there would be an opportunity for cross-examination by the Appellant. He 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 final a submission.

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].

He asked the Parties if they had any queries about the procedure and confirmed, following questions from Counsel for the Appellant that the Tribunal would allow the Appellant to give direct evidence to the Tribunal and to allow the cross examination of the Respondent Landlord. The hearing commenced with the Appellant's case.

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

Prior to commencing formal proceedings, the Tribunal facilitated an opportunity for the parties to come to a settlement of the matter by adjourning the Tribunal, but the Parties did not reach agreement.

After hearing initial submissions for the Parties, the Tribunal sought submissions from the Parties on whether or not a valid Tenancy had subsisted. The Respondent Landlord submitted that a tenancy was not in existence in that (1) the Tenant did not sign the letting agreement as required; (2) the letting agreement was subject to the Tenant being in receipt of a rent allowance and that was not complied with; (3) the agreement was subject to the Tenant paying one week's rent and a security deposit, and only the security deposit was paid to the landlord; and (4) the tenancy was subject to the Tenant supplying to the landlord a reference, which he did not supply. Moreover, the Tenant, having inspected the dwelling on 18 July 2008 with an employee of the Landlord, returned to the Landlords office on 23 July 2008 and sought to inspect the dwelling for a second time. As the office was short-staffed, the keys were given to the Tenant who did not return them. While a deposit of €400 was received from the Tenant, this was understood to be a booking deposit, which was subject to various conditions, and not a security deposit. On this basis, the Landlord was of the view that a valid tenancy was not created in respect of the dwelling.

The Tenant gave evidence to the Tribunal that in response to an advertisement for the dwelling in a local newspaper, he visited the offices of the Landlord and having inspected the dwelling in the company of an employee from the Landlord's Office, paid a security deposit of €400 and was given a receipt for this sum, which was presented at the Tribunal. He received a key to the dwelling from the Landlord's employee and took up occupancy on the 18 July 2008. He subsequently sought to obtain a rent allowance and presented documentation to the Tribunal to support this claim.

Having heard submissions from the parties, the Tribunal adjourned to consider if a valid tenancy was created and if the Tribunal had jurisdiction in the matter. The events of the 18 July 2008 and subsequent days were shrouded in some confusion with conflicting evidence before the Tribunal that it found difficult to reconcile. Having considered the evidence before it, the Tribunal determined that a valid tenancy was created and that the payment of a security deposit of €400 by the Tenant to the Landlord's employee and handing over to the Tenant of a lease agreement with the address of the dwelling, indicated the creation of a tenancy. The Tribunal then moved to hear evidence on the substantive issue before it.

**Appellant Tenant's Case:**

The Tenant gave evidence to the Tribunal that he took up occupancy of the dwelling on 18 July 2008 and subsequently moved in his goods. On 28 July 2008, he stated that he returned at approximately 8.00 pm and found that the locks to his dwelling were changed and his goods were in refuse bags in the hallway outside his dwelling. His clothes and other household items were in these refuse bags and his clothes were damaged by bleach. A Schedule of clothing items damaged / destroyed was submitted to the Tribunal, which had a replacement value totalling €1,880. The Tenant said that he contacted the Landlord, who informed the Tenant that he had granted some former tenants re-possession of the dwelling and that these tenants had removed his goods. The Tenant went by Taxi to a friend's house where he remained for some weeks until he obtained alternative accommodation of his own. On the morning of 29 July 2008 he called to the offices of the Landlord, where the Landlord returned to him his security deposit of €400.

Counsel for the Tenant submitted to the Tribunal that the events of 28 July 2008 amounted to an egregious breach of Landlord's obligations by illegally evicting the Tenant and violating the integrity of the dwelling place; by removing his clothes and belongings and placing them outside the dwelling where some of them were ultimately damaged. Counsel for the Tenant provided the Tribunal with various determinations from PRTB Tribunals and Adjudications which dealt with awarded costs in the case of illegal evictions, in addition to various judgments of the Irish and English Courts on the matter of compensation for illegal evictions. Further submissions were made in respect of damages for the stress and anxiety suffered by the Tenant following the eviction, which were especially serious given the poor medical history of the tenant, and for special damages for the damage to the Tenant's goods as a consequence of their removal from the dwelling. Finally, submissions were made in respect of the legal costs incurred by the Tenant, whereby it was submitted that the Tribunal had jurisdiction to award costs in this particular case. Based on the legal precedents submitted to the Tribunal and the aggravated nature of the eviction, damages in the region of €17,000 were sought.

**Respondent Landlords Case:**

The Landlord did not contest the fact that he changed the lock on the dwelling on 28 July 2008, but submitted to the Tribunal that the sequence of events from 18 July 2008 to 23 July 2008 led him to believe that a valid tenancy was not created. While the Landlord acknowledged removing the Tenant's goods from the dwelling, he denied putting bleach on them. The Tenant occupied the dwelling for a short period of time only, found accommodation the night of the termination of the tenancy with a friend and was therefore not substantially inconvenienced. Submissions were made in respect of previous determinations by PRTB Tribunals when dealing with unlawful termination of Tenancies, and it was submitted that the cases cited by Counsel for the Tenant were not applicable in this particular case.

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

Having considered all of the documentation before it, and having considered the evidence presented to it by the parties, the Tribunal's findings and reasons therefor are set out hereunder.

1. The Tribunal determines, that a tenancy in respect of the dwelling was established, and therefore the actions of the Landlord on 28 July 2008, which involved changing the locks on the dwelling and removing the Tenant's goods, amounted to an unlawful termination of Tenancy contrary to Section 58 of the Act. The Landlord shall pay the Appellant Tenant the sum of €3,000 damages for unlawful termination of tenancy pursuant to Section 115 (2) (d) of the Act.
2. While the Landlord denied putting bleach on the tenant's clothes, his removal of the clothes and leaving them outside the dwelling resulted in the clothes being damaged, and the Tenant is entitled to compensation in the amount of €1,800 for the damage to his goods.
3. In respect of legal costs, the Tribunal finds that in the case of the costs incurred in preparing for the initial application for adjudication and subsequent High Court appeal, it was determined by the High Court that the PRTB pay the Tenant his costs in the proceedings. In relation to additional legal and other costs incurred, Section 5 (3) of the Act sets out that:

Subject to subsection (4), in this Act "costs", in relation to a matter being dealt with by the Board, a mediator, an adjudicator or the Tribunal or a determination or direction made or given by it or him or her, does not include (a) legal costs or expenses.

Section 5 (4) 4 states that "Despite subsection (3), the Board or, with the consent of the Board, a mediator, an adjudicator or the Tribunal may if, in its or his or her opinion the exceptional circumstances of the matter so warrant, determine that any element of costs the subject of a determination or direction made or given by it or him or her shall include costs referred to in paragraph (a).

In the case, the Tribunal does not find any exceptional circumstances that would warrant a direction that costs be awarded as the Adjudication hearing on 9 February 2010, and subsequent appeal to a Tenancy Tribunal are the standard and routine mechanisms for dispute resolution between Landlord and Tenant.

## **7. Determination:**

Ref: TR05 /DR1006/2009

In the matter of John Hope (Appellant Tenant) and Seamus Regan (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall pay the sum of €4,800 to the Appellant Tenant within 14 days of the date of issue of the Order made by the Board, being €3,000 as damages for the unlawful termination of his tenancy pursuant to Section 115 (2) (d) of the Act, and €1,800 in respect of damages to clothing items in respect of the tenancy of the dwelling at Top Floor, Burleigh House, Castlebar, Co. Mayo.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 3 January 2011.

**Signed:**

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