

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report Reference No: TR05/DR1269/2011 Case Reference No: DR1269/2010

Appellant Landlord: Anthony (Tony) Dunne

Respondent Tenants: Laura Dalton
Ann-Marie Dunne
Ann Williamson

Address of Rented Dwelling: 1 Bird Avenue,
Clonskeagh,
Dublin 14.
(the 'dwelling')

Tribunal: Gene Feighery (Chairperson)
Aideen Hayden
Liam Nolan

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

Date of Hearing: 22 February 2010

Attendees:

For the Appellant: Anthony Dunne failed to attend the Tribunal

For the Respondent: Ray Williamson (Tenant's Representative)

Also in Attendance: Gwen Malone Stenographers

1. Background:

On 26 July 2010 the Respondent Tenant's made an application for dispute resolution services to the Private Residential Tenancies Board ("the PRTB").

Pursuant to section 78 of the Residential Tenancies Act, 2004 ("the Act") an Adjudicator was appointed by the PRTB and an adjudication was held on 24 November 2010 in the presence of the Respondent Tenant's Representative. The Adjudicator's report dated 29 November 2010 including his Findings of Fact and Determination in relation to the dispute was sent to both parties. The Adjudicator determined that:

The Landlord shall pay the total sum of €2,000 to the Tenants within 7 days from the date of issue of the Determination Order by the Board, being the entire of the unjustifiably retained security deposit of €1,800 and damages of €200 for retaining the deposit.

Subsequently a valid notice of appeal was received by the PRTB from the Landlord on 22 December 2010 on the grounds that:

The Adjudicator in this case is known to the Landlord. Both the Adjudicator and the Landlord are in the same profession and they have had professional dealings with each other in the past.

The Adjudicator is conflicted and acted unprofessionally in adjudicating on this case when the Landlord is known to him.

The PRTB approved the appeal of the Appellant Landlord, and in accordance with Sections 102 and 103 of the Act, constituted a Tenancy Tribunal and appointed Gene Feighery, Aideen Hayden and Liam Nolan as Tribunal members. The Board appointed Gene Feighery to be the Chairperson of the Tribunal ("the Chairperson"). On 21 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 Included:

The PRTB case file

3. Documents Submitted at the Hearing:

Handwritten Gas and ESB Readings taken on 2 September 2009 on Tony Dunne Auctioneers Valuers & Estate Agents Headed Paper.

4. Tribunal Procedures

The Chairperson welcomed the sole attending Party to the Tribunal introduced him to the members of the Tribunal. She stated that it had been established to hear an appeal by the Appellant Landlord against a determination made following an adjudication held on 24 November 2010 in the case of a dispute between the Landlord and the Tenants in respect of a tenancy at 1 Bird Avenue, Clonskeagh, Dublin 14.

The sole party introduced himself as Ray Williamson, Tenant's Representative and father of one of the Tenants, namely Anne Wiliamson.

The Chairperson explained to the Respondent Tenant's Representative that the Tribunal was satisfied that the Appellant Landlord was properly informed of the constituted hearing taking place today, but that he had failed to attend. She afforded the Respondent Tenant's Representative an opportunity to make a statement to the Tribunal with regard to the dispute.

The Chairperson thanked the Respondent Tenant's Representative for attending the Tribunal and advised him that in circumstances where the moving party fails to attend a Tribunal Hearing that an Affirmation of the Adjudicator's Determination is issued by the Board. She confirmed that the Affirmation is legally enforceable and there are no grounds for appeal except on a point of law to the High Court.

She further advised him that following the hearing the Tribunal will make its Determination in relation the dispute, based on the Adjudicator's determination dated 29 November 2010 and will notify the PRTB of that Determination.

5. Findings of the Tribunal and reasons therefor:

The Tribunal confirms the Determination of the Adjudicator in the Adjudication Case Number DR1269/2010 carried out on 24 November 2010 and the Determination dated 29 November 2010.

The Tribunal further determines the following matter: In the special circumstances where the Appellant Landlord Anthony Dunne failed to appear at the hearing or to ensure that someone should appear on his behalf to enable the appeal to proceed, the Tribunal under section 115 (2) (i) of the Act (and section 109 rules) and pursuant to clause 13 of the Tribunal procedures as circulated, directs that the Appellant Landlord shall pay the sum of €3,000 to the Private Residential Tenancies Board, being part of the costs incurred by the Board in establishing the Tribunal to deal with this dispute.

6. Determination

REF: TR05/DR1269/2010

In the matter of Anthony Dunne Appellant Landlord and Laura Dalton, Ann-Marie Dunne and Anne Williamson, Respondent Tenants, the Tribunal in accordance with section 108(1) of the Act, determines that:

The Appellant Landlord shall pay the sum of €2,000 to the Respondent Tenants, within 14 days of the issue of this order, being the entire of the unjustifiably retained security deposit of €1,800 plus damages of €200 for retaining the deposit.

In addition, the Appellant Landlord shall pay a contribution of €3,000 within 14 days of the issue of this order, towards costs for failing to attend the Tribunal Hearing.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on the 23 March 2011.

Signed:

Gene Feighery – Chairperson

For and on behalf of the Tribunal.