

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR09/DR831/2011. Case Ref No: DR831/2010

Appellant Landlord: Walter de Kretser

Respondent Tenant: Peter Timmons
Keith Douglas
Fiachra Moloney
Stephen Muldowney

Address of Rented Dwelling: 482, South Circular Road,
Dublin 8

Tribunal: Tom Dunne (Chairperson)
Louise Moloney
Michael Farry

Venue: PRTB, Floor 2, O'Connell Bridge House,
D'Olier Street, Dublin 2.

Dates of Hearing: 18 February, 2011 at 10.30am.

Attendees:

For the Appellant:	Walter de Kretser	Landlord
	Gillian Fox	Landlord

For the Respondents:	Keith Douglas	Tenant
	Paul Timmons	Brother of Peter Timmons

In Attendance: Gwen Malone Stenographers

1 Background:

1. On 19 May 2010 the Tenants made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act. The matter was referred to adjudication and on 8 November 2010 the adjudicator determined that the Appellant Landlord shall pay to each of the Respondent Tenants the sum of €265.35 being a portion of the security deposit of €1,900 paid by the Tenants in respect of the tenancy of the Dwelling plus €25 each in respect of the loss of the sum that should have been returned to them at an earlier date. Subsequently a valid appeal was received from the Landlord by the PRTB on 22 December 2010.

The grounds of appeal being;

- a. that the hearing was biased and the Landlord claimed he did not get an opportunity to present his evidence;
 - b. that the co-plaintiffs were absent and no signed proxies were presented;
 - c. the Landlord claimed that valid invoices and statement which he produced to the hearing were unfairly scrutinised and not accepted;
 - d. the Landlord claimed he lost rental income whilst bringing the house back to rental condition.
2. On 12 January 2011 the PRTB constituted a Tenancy Tribunal and appointed Tom Dunne, Louise Moloney and Michael Farry as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Tom Dunne to be the chairperson of the Tribunal (“the Chairperson”).
3. On 27 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 being 2.30 pm on 18 February 2011 in the offices of the PRTB.
4. On 18 February 2011, the Tribunal convened the hearing at 10.30 am 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 .Procedure:

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

Respondent that the Appellant Landlord was known to him and explained the relevant circumstances. On behalf of the Respondent Tenants, Paul Timmons accepted the disclosure and said that he also knew the Chairperson as a result of similar circumstances and he was happy to proceed. The Tribunal assured the parties that there was no question of bias for or against either party or the Tribunal continued. 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".

He explained the procedure which would be followed and stated that that the Tribunal was a formal procedure but that it would be as informal as was possible.

The Parties were then asked to take the oath prior to making any submissions and Keith Douglas, Paul Timmons, Walter De Kretser and Gillian Fox did so.

The Chairperson invited the Appellant Landlord to set out his case.

4. Submissions of the Parties:

Appellant Landlord's submissions

The Appellant Landlord said that the tenancy ended on Friday 26 February 2010 and that he tried to make arrangements to inspect the Dwelling prior to the day of termination but only succeeded in doing so on the following day when he inspected without the Tenants. He said that he found the Dwelling to be in very poor condition and required a lot of cleaning and some repairs which is why he withheld the deposit.

He said that the total of his claim was in excess of €4,000 and the basis for this was set out in the documents sent to the Tribunal and was supported by this evidence which he provided in the form of invoices and bills as well as photographs. He stated that this damage included damage to the sanded floors that was beyond normal wear and tear. The Appellant Landlord also submitted a letter from his Estate Agent as to the condition of the Dwelling at the end of the tenancy stating that it was not in a condition to be let.

In his evidence the Appellant Landlord said that he had rented the house on the basis of no smoking but that smoking had occurred and that there was some resultant damage to a sofa and also that smoke alarms had been removed.

Following questioning by Paul Timmons the Appellant Landlord agreed that the ceiling in the kitchen had collapsed towards the end of the tenancy following work that was carried out in the house which was necessitated by a pipe that had burst and problems with the boiler but said that this work had been completed properly.

The Appellant Landlord said that he has a prospective tenant lined up to take the Dwelling but that this did not happen because of the condition of the dwelling which required time to

sort out and that as a result he was out of pocket and as he had a mortgage this was a serious issue.

Tenant's Submissions

In their evidence the Respondent Tenant's said that near the end of the tenancy the kitchen ceiling had collapsed and just before that event a burst pipe had to be dealt with by the Landlord who also had to replace the boiler. They said that these works were substantial and required builders to work in the Dwelling which resulted in some marks on the walls and other damage. The Respondent Tenants said that the fall of the ceiling resulted in dust and dirt throughout the Dwelling and the Tenants submitted that some of the cleaning referenced by the Landlord pertained to dust and dirt arising from the said works which was not their responsibility.

The Respondent Tenants further said that there had been a break-in at the Dwelling during the tenancy which resulted in some damage which was being claimed for by the Landlord and that they felt that this should be paid for out of insurance.

The Respondent Tenants said that they had not been supplied with the materials needed to maintain the garden and they would have done so if this had been done.

In their evidence the Respondent Tenants disputed the origins of the burns to the sofa pointing out that the photographs showed that there were covers that could be removed and that these were pictures of the sofa with the covers off.

The Respondent Tenant also said that they had removed a bracket that was attached to the wall at the end of the stairs which was part of a fitting to provide for a safety gate for a child and agreed they had removed the smoke alarms. They said that smoking had taken place but outside the dwelling. The Respondent Tenants accepted that they had removed the covers from two smoke alarms which they stored in a chest in the hallway and said they had done this because the batteries were not working.

The Respondent Tenants accepted that they were liable for portion of the utility bills and also for the skip hire to remove some things left at the end of the tenancy but submitted that if the Appellant Landlord had got in touch with them they would have removed these items themselves. They also submitted that the amount of money charged and the time spent cleaning and repairing was excessive given the work involved.

While the Respondent Tenants accepted that they should pay for some oil they disputed the amount involved.

The Respondent Tenants submitted that they did dismantle a fold up bed in the attic but this bed was not broken and acknowledged that one other bed had been replaced by the Appellant

Landlord during the tenancy but submitted that this was the Appellant Landlord's responsibility.

In their evidence the Respondent Tenants said that none of them had been available to inspect the dwelling with the Respondent Landlord which they now regret as they felt that if such an inspection had taken place the dispute may not have arisen.

5. Findings of the Tribunal and Reasons therefore:

Having considered all the documents 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 therefor are set out hereunder.

1. On the basis of the evidence before it the Tribunal finds that an allowance of €80 should be made to the Appellant Landlord in respect of the hire of the skip.
2. The Tribunal finds that the tenancy was for one year and finds that an allowance of €400 should be made to the Appellant Landlord in respect of work required to the dwelling over and above fair wear and tear which would normally be expected.
3. The Tribunal finds that there is a conflict in the evidence given by the parties about the state of the Dwelling at the end of the tenancy. The Tribunal finds that an amount of cleaning would have been required as a result of the fall of the ceiling and that the Respondent Tenants would have tried to minimise the cleaning necessary if they had been given the opportunity. The Tribunal will, therefore, allow only some of the cost of cleaning but this has to be set against the cost of the actual work done by Ficek Kryzstof and as a consequence will allow half of this amount at €166.16.
4. The Tribunal finds that the Appellant Landlord was unable to prove that the Respondent Tenants were responsible for the gas bill but that the respondent Tenants should pay €250 in respect of the heating oil.
5. The Tribunal finds that the bed furnished by the Landlord was not the responsibility of the Respondent Tenants and makes no allowance for this.
6. The Tribunal finds that the Appellant Landlord was unable to discharge the burden of proof required to establish that the Appellant Tenants should be responsible for the Sofa.

6. Determination:

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In the matter of Walter de Kretser, Appellant Landlord, and Peter Timmons, Keith Douglas, Fiachra Moloney and Stephen Muldowney, Respondent Tenants, the Tribunal, in accordance with section 108 (1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay to the Respondent Tenant the sum of €250.96 to each of the Respondent Tenants by the 15 July 2011, in full and final settlement of the dispute between them.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 18 day of April 2011.

Signed:

Tom Dunne Chairperson

For and on behalf of the Tribunal.