

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR02/2012/DR1197 & DR1207/2011

Dispute Ref No:	DR1197/2011 & DR1207/2011
Appellant Landlord:	Joe Kealy
Respondent Tenant:	Denis Hennessy
Address of Rented Dwelling:	5 West Street, Callan, Co. Kilkenny
Tribunal:	Liam M. Nolan (Chairperson) Mary Doyle John Lynch
Venue:	PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.
Date of Hearing:	23 March 2012 at 10.30 a.m.
Attendees:	
For the Appellant:	Joe Kealy (Landlord) Joanne Kealy
For the Respondent	Denis Hennessy (Tenant)
In Attendance:	Gwen Malone Stenographers

1. Background:

1. On 30 July 2011 the Landlord made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 78 of the Residential Tenancies Act 2004 ("the Act"). On 26 July 2011 the PRTB also received an application from the Tenant pursuant to Section 78 of the Act. The two complaints were joined and the matter was referred to an adjudication which took place on 15 September 2011. The Adjudicator determined that the Notice of Termination served on the Tenant on 11 August 2011 in respect of the tenancy of the dwelling at 5 West Street, Callan, Co. Kilkenny ("the dwelling"), was invalid, and that the Tenant was not overholding in the dwelling. He also determined that the Tenant should pay to the

Landlord the sum of €643.10 within 14 days of date of issue of a Determination Order by the PRTB, being rent arrears in respect of the tenancy. Subsequently a valid appeal dated 10 January 2012 was received from the Landlord by the PRTB.

2. On 18 January 2012 the PRTB constituted a Tenancy Tribunal and appointed Liam M. Nolan, Mary Doyle and John Lynch as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Liam M. Nolan to be the chairperson of the Tribunal (“the Chairperson”).
3. On 8 March 2012 the Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.
4. On 23 March 2012 at 10.30 a.m. the Tribunal convened a hearing 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. Documents Submitted at the Hearing Included:

- None

4. Procedure:

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 as informal as was possible; that the party who appealed (the Appellant) would be invited to present their case first including any witnesses; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present the Respondent’s case, 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, the Appellant would be given an opportunity to make a final 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. There were none.

The Oath was then administered.

The Chairperson then itemised those aspects about which there appeared to be no dispute, as follows:

- a) The tenancy commencement date on the lease was 6 March 2008 but the Tenant did not move in until 8 March 2008.
- b) The initial rent payable was €160.00 per week i.e. €8320.00 per annum or €693.33 per calendar month and the Security Deposit paid on commencement was €700.00 to include PRTB Tenancy Registration Fee imposed by the Landlord.
- c) The weekly rent was subsequently reduced in stages, to €135.00 per week.
- d) The Respondent Landlord continues to hold the Security Deposit at date of Hearing
- e) The Tenant is still in occupation of the dwelling.

The Hearing then commenced with the Appellant's case.

5. Submissions of the Parties:

Appellant Landlord's Case:

The Landlord's appeal was based on alleged inaccuracies in the Adjudicator's Report concerning date of registration of the tenancy and specific payments of rent. He went through these issues in detail, assisted by his witness. In particular, he drew attention to discrepancies between his record of rent payments received, and the Tenant's record of payments made, including instances where it appeared that figures had been altered so as to favour the Tenant.

The Landlord gave a general history of the tenancy and indicated that the tenancy had been an unhappy one from his point of view, with regular occurrences of delays and shortfalls in the weekly rent payment, difficulties in getting access to the dwelling and including allegations of damage to fixtures and fittings within the dwelling. These matters were questioned in detail by the Tribunal.

The Landlord's claim was for final arrears as at date of Tribunal Hearing of €1537.00 including approximately €1036.00 in arrears which had accumulated since the

Adjudication Hearing on 15 September 2011. He confirmed that weekly rent payments, nett of the Tenant's apportioned contribution, were being received directly by him from the Department of Social Protection (Social Welfare), with weekly balances of rent payable by the Tenant being in arrears.

Respondent Tenant's Case:

The Tenant questioned the Landlord's account of events including specific instances of rent payments over the period 2008 to 2012. In particular he questioned certain specific payments, being instances where it appeared to the Tribunal that the figures in question had been altered. In denying liability for rent arrears as claimed by the Landlord, the Tenant accepted that he was liable for arrears of rent in the order of €700.00. He stated that he was willing to surrender the tenancy at an early date where he had time to identify alternative accommodation. He stated that he was actively looking for alternative accommodation at the date of the Tribunal Hearing.

At this point in the proceedings, the Chairperson suggested that it might suit the parties to take a little time to consider whether a settlement might be possible. He outlined some of the options which might be considered by the parties and he stressed that in the absence of any settlement agreement, the only matter on which the Tribunal could make a determination was that of arrears of rent.

The Members of the Tribunal then withdrew from the Hearing Room. The Tenant also withdrew, to facilitate the Landlord in considering options.

On resuming the Hearing shortly thereafter, the Tribunal was advised by the Landlord that the following terms would be acceptable to him if adopted by the Tenant:

- a) The Landlord would withdraw his claim for arrears of rent totalling €1537.00 as itemised
- b) The Landlord would retain the Security Deposit of €700.00 held by him
- c) Tenant to surrender the dwelling and return vacant possession to the Landlord within eight weeks of date of date of Tribunal Hearing i.e. not later than 23 May 2012
- d) Weekly rent to remain payable in the intervening period through to Tenant's surrender of the dwelling
- e) Terms to be in full and final settlement of all matters as between the parties, including any claims of any kind the Tenant may feel he has against the Landlord.

Recording these terms, the Chairperson confirmed to the parties on behalf of the Tribunal, that if an Order was made by the Tribunal pursuant to agreement on terms between the parties, any such Order would be binding and fully enforceable, without appeal except to the High Court on a point of law. The Tenant confirmed to the Tribunal his understanding

of this position and he stated that he accepted these terms as fully binding in every way, and in particular he gave an irrevocable undertaking to vacate the dwelling not later than 23 May 2012.

6. Findings of the Tribunal and Reasons Therefor:

Having considered all of the documentation before it including the Adjudicator's Report dated 20 December 2011, having considered the evidence presented to it by the parties, and in particular having regard for the agreement reached by the parties at Hearing, the Tribunal's findings and reasons therefore are set out hereunder.

1: The tenancy is deemed to be terminated and the Respondent Tenant will vacate the dwelling not later than 23 May 2012.

Reason:

The parties have agreed that the tenancy is terminated and that the Respondent Tenant will surrender possession of the dwelling not later than the stipulated date.

2: The Appellant Landlord will retain the Security Deposit of €700.00 held by him, in full and final settlement of all arrears of rent as at date of the Tribunal Hearing.

Reason:

The parties are agreed that retention of the Security Deposit by the Appellant Landlord will suffice to cover arrears of rent as at date of Hearing.

3: Rent will continue to be payable at the rate of €135.00 per week through to date of surrender of the dwelling by the Respondent Tenant.

Reason:

The parties are agreed that rent will remain payable while the Respondent Tenant remains resident in the dwelling.

4: The foregoing terms are accepted by the parties in full and final settlement of the dispute between the parties, and all matters arising.

Reason:

The parties have accepted the above terms on the basis indicated.

7. Determination:

Ref: TR02/2012/DR1197 & DR1207/2011

In the matter of Joe Kealy (Appellant Landlord) and Denis Hennessy (Respondent Tenant) and the tenancy of the dwelling situated at 5 West Street, Callan, Co. Kilkenny, the

Tribunal in accordance with section 108 (1) of the Residential Tenancies Act 2004, determines that:

- The Respondent Tenant shall vacate the tenancy of the dwelling at 5 West Street, Callan, Co. Kilkenny not later than the 23rd day of May 2012. The Appellant Landlord shall retain the security deposit of €70000 held by him, in full and final settlement of the dispute between the parties, rent shall continue to be payable at the rate of €135.00 per week through to date of surrender of the tenancy.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 23rd day of March 2012.

Signed:

LIAM M. NOLAN

Chairperson

For and on behalf of the Tribunal.