

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR 165/2011/ DR1294/2010

Case Ref No: DR1294/2010

Appellant Landlord:	Canal Road Rental Co. Ltd
Respondent Tenants:	Darren Friel, Jason Burke
Address of Rented Dwelling:	25 Grand Central, Canal Road, Letterkenny, Co .Donegal. ("The Dwelling")
Tribunal:	Fintan McNamara (Chairperson)  Nesta Kelly  Mary Heaslip
Venue:	Members Room, Sligo co Council  Riverside, Sligo.
Date of Hearing:	1 <sup>st</sup> March 2012 at 2.30 p.m.
Attendees:	
For the Appellant:	Martin McGee (Apartment Block Manager representing the Landlord)
For the Respondent	Darren Friel and Jason Burke  (Tenants)
In Attendance:	Gwen Malone Stenographers

## **1. Background**

1. On the 30<sup>th</sup> July 2010 the Respondent Tenants made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act. The matter was referred to an adjudication which took place on the 29<sup>th</sup> April 2011. The Adjudicator determined that the Respondent Landlord return €46808 of the withheld security deposit of €560 having allowed for the deduction of €91.92 for an outstanding utility bill to the Respondent Tenants. A valid appeal was received from the Landlord by the PRTB on the 5<sup>th</sup> July 2011

2. On the 20<sup>th</sup> July 2011 the PRTB constituted a Tenancy Tribunal and appointed Gus Cummins, Mary Heaslip and Nesta Kelly as Tribunal members pursuant to Section 102 and 103 of the Act, and appointed Gus Cummins to be the chairperson of the Tribunal (“the Chairperson”). Mr Cummins subsequently indicated his unavailability and was replaced by Fintan McNamara

3. On the 3<sup>rd</sup> February 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. The Tribunal was scheduled for the 1<sup>st</sup> March 2012.

4. On the 1<sup>st</sup> March 2012, the Tribunal convened a hearing at 2.00 p.m. at the member’s room, Sligo County Council, Riverside, Sligo

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

Correspondence between the Parties.

Copy of Tenancy agreement commencing 1st September 2009

Copy of rent payments dated July 2010

Invoice of €276.94 dated 15<sup>th</sup> July 2010 for carpet cleaning.

Warning letter to tenants dated 13<sup>th</sup> May 2009 re breach of tenancy obligations

Photographic evidence.

Extract from the accounts of the management Co in relation to the tenancy

PRTB file

## **Documents submitted at the Hearing**

### 3. Procedure:

The Chairperson asked the parties present to identify themselves and to explain 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) in the normal course 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 their 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 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 €4,000 or up to 6 months imprisonment or both.

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.

### 5. Submissions of the Parties:

**Appellant Landlord's Case:** The Appellant landlords through their agent stated in evidence **that** the tenancy in question commenced on the 28<sup>th</sup> august 2008 and ended on the 24<sup>th</sup> May 2009, followed by a further tenancy in September 2009 which was to end on the 31<sup>st</sup> August 2010.

After some discussion all parties agreed that there was a deposit of € 560 which had been paid some years earlier but was maintained as tenants replacement tenants came to reside in the dwelling.

The agent claimed that the dwelling required extensive cleaning when the tenancy ended and that initially he had paid €80 to a person who came and did some cleaning work, but failed to return to complete the task. He then organised the Cleaning Doctor another company to do

the necessary work and incurred an expense of €27694. He referred to photographic evidence to support his claim

The agent said that there was also an outstanding utility bill of €91.92. The tenants accepted that the utility bill was owing but disputed the claims for cleaning which they said was excessive. They claimed the dwelling needed painting when they moved in and were provided with two tins of paint to do this. They did accept that some cleaning was required.

On being questioned by the Tribunal the agent conceded that work had not been done on the dwelling for some years as it was subject to on-going tenancies in the course of which there might be two or three people residing there. He said that he only received verbal notice from the Respondent Tenants on the 25<sup>th</sup> May that they were leaving on the 31<sup>st</sup> May although their lease ran until the 31<sup>st</sup> August. He felt he was entitled to the three months' rent that would have accrued to the 31<sup>st</sup> August.

**Respondent Tenant's Case:** In their evidence the Respondent tenants claimed that it was in fact the agent who contacted them two weeks before the end of May and asked them, if they wished to extend the tenancy. They requested some time to think about the offer but decided against staying on and there was no further discussion on this. They claimed that it was only after the adjudication that the issue of three months' rent owing arose. The agent denied that he gave up his right to pursue this claim at the adjudication.

The tenants claimed that it was only after they sought the return of their deposit that they got the statement of claim. They felt that their departure in May was by mutual consent although no written notice of Termination had been served. On being questioned by the Tribunal the agent conceded that leases were generally of nine months in what was student accommodation but sometimes there were twelve month leases. He dealt with some three hundred odd units and did not recall every detail of his conversation with these tenants as they were leaving. He acknowledged that he did not explain to them their options if they wished to terminate their tenancy before it expired as he believed they should be aware of their obligations under the act. However, he conceded that it may not be prudent to do so.

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

Having considered all of the documentation before it, including the Report of the Adjudication dated 29<sup>th</sup> April 2011, and having considered the evidence presented to it by the Parties, the Tribunal's findings and reasons therefore are set out hereunder.

**6.1 Findings:**

The lease in question commenced on the 1<sup>st</sup> September 2009 for a fixed term letting agreement of twelve months which was to expire on the 31<sup>st</sup> August 2010

**6.2** The Respondent Tenants are not in breach of the Residential tenancies Act 2004 Section 62(1) (a) for failing to serve a written notice to terminate the tenancy Reason : the issue of early termination was not raised with them when they were vacating and they were entitled to feel that the verbal notice they gave was accepted.

**6.3** Both parties accepted that a utility bill of €91.92 is outstanding.

**6.4** The Respondent Tenants were not in breach of Section 16(f) of the RTA 2004.

Reason: they did not cause damage to the dwelling beyond normal wear and tear and the claim for cleaning costs is excessive given the duration of the tenancy. The Tribunal deems that €100 towards cleaning costs is the appropriate amount

**7. Determination:**

Ref: TR165 /2011/DR1294/2010

In the matter of Canal road Rental Co ltd Appellant Landlord and Darren Friel and Jason Burke the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines as follows:

The Appellant Landlord shall pay the sum of €368.06 being partial refund of the Security deposit of €560 after deducting €191.94 in respect of cleaning costs and a utility bill within seven days of the issue of this Determination Order.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 1<sup>st</sup> day of March 2012.

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**Signed:** Fintan McNamara Chairperson  
For and on behalf of the Tribunal.

