

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR166/2011/DR1991/2010 & DR100/2011

Dispute Ref No:	DR1991/2010 & DR100/2011
Appellant Tenant:	Karey Coughlin Lewis and Simon Lewis
Respondent Landlord:	Dermot Cuddy
Address of Rented Dwelling:	34 Warren House Road, Baldoye, Dublin 13
Tribunal:	Liam M. Nolan (Chairperson) Maurice O'Donoghue Ciara Doyle
Venue:	PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.
Date of Hearing:	7 February 2012
Attendees:	
For the Appellant:	Karey Coughlin Lewis (Tenant) Simon Lewis (Tenant)
For the Respondent	Kate Marquis (Denis McSweeney Solicitors) Karen O'Brien (Denis McSweeney Solicitors)
In Attendance:	Gwen Malone Stenographers

1. Background:

1. On 14 February 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 November 2011 the Tenants also made an application to the PRTB pursuant to Section 78 of the Act. The two complaints were joined and the matter was referred to an adjudication which took place on 23 May 2011. The Adjudicator determined that the Notice of Termination served on the Tenants on 28 December 2010 in respect of the tenancy of the dwelling at 34 Warren House Road, Baldoye, Dublin 13 ("the dwelling"), was valid, and that the Tenants

should pay to the Landlord the sum of €1276.90 within 21 days of date of issue of a Determination Order by the PRTB, being rent arrears and damages for overholding and for breach of tenant obligations. Subsequently a valid appeal was received from the Tenants by the PRTB on 5 July 2011.

2. On 20 July 2011 the PRTB constituted a Tenancy Tribunal and appointed Liam M. Nolan, Mary H. Morris and Ciara Doyle 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”). Maurice O’Donoghue was subsequently substituted for Mary H. Morris.
3. On 11 January 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 7 February 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:

- Written statement of evidence dated 1 February 2012 from the Landlord, who was not present at the Hearing.

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 Appellants) would be invited to present their case first including any witnesses; that there would be an opportunity for cross-examination by the Respondent’s representatives; that the Respondent’s representatives would then be invited to present the Respondent’s case, and that there would be an opportunity for cross-examination by the Appellants. He said that members of the Tribunal might ask questions of both parties from time to time.

The Chairperson explained that following this, the Appellants 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 Chairperson then itemised those aspects about which there appeared to be no dispute, as follows:

- a) The tenancy commencement date was 1 August 2010.
- b) The Rent payable was €1350.00 per calendar month, payable on the first day of each month, and the Security Deposit paid on commencement was €1350.00
- c) The Respondent Landlord continued to hold the Security Deposit at date of Hearing
- d) The dwelling was vacated by the Appellant Tenants on 18 April 2011
- e) The validity of the Notice of Termination dated 28 December 2010 was not at issue.

The Hearing then commenced with the Appellants' case.

5. Submissions of the Parties:

Appellant Tenants' Case:

The original dispute centred on the validity of the Notice of Termination dated 28 December 2010, however the Appellants had withdrawn this element of their complaint at the adjudication stage of dispute resolution. The Tenants' appeal therefore was based on the calculation of damages for overholding, including arrears of rent claimed by the Landlord and alleged breach of tenant obligations.

The Appellants addressed the various aspects of the Respondent Landlord's claim for damages, based on which he had retained the Security Deposit. The Respondent had objected to the carrying on of a business at the dwelling, in this case the business of sports therapy on an individual client basis by the first-named Appellant. The Appellants' evidence was that this business was known to the Respondent from commencement and was not a cause for concern. The Appellants acknowledged that they had not signed the lease issued to them but had queried numerous aspects which the Respondent had allegedly not dealt with. They stated that they had difficulties in contacting the

Respondent, who was living and working outside the jurisdiction, and communication had instead been to and through Mr Ray Barrett, delegated to act as the Respondent's on-site representative and "handy-man". They claimed that there was a persistent problem with heating in the dwelling, which was at its worst around the time of the birth of a child on or about 26 November 2010, when they claimed to have measured the temperature in the en-suite bathroom associated with the master bedroom at minus 13 degrees. The Appellants had requested that a defunct dishwasher be replaced, which was done by the Respondent, and the old dishwasher be removed, which was not done.

Respondent Landlord's Case:

Evidence on behalf of the Respondent took the form of a statement read at Hearing by Ms Kate Marquis by permission of the Tribunal members, a copy having been provided to the Appellants. This statement now forms part of the PRTB file. In summary, the Respondent's case comprised the following:

- a) The Appellant Tenants had failed to execute the lease issued to them
- b) The Appellant Tenants had instead embarked on a continuous stream of minor complaints
- c) The Appellant Tenants had carried on a business at the dwelling, contrary to the provisions of the lease issued to them
- d) The Respondent had determined to place the dwelling on the market and accordingly, had issued a valid Notice of Termination dated 9 November 2010, with an expiry date for surrender of possession of the dwelling of 31 December 2010.
- e) He had subsequently re-considered the termination date of 31 December 2010 which would have the effect of disrupting the Tenants over Christmas 2010 and had issued a second valid Notice of Termination on 28 December 2010, with a termination date of 31 January 2011.
- f) He then became aware that the Appellant Tenants were resisting termination and did not vacate the dwelling until on or about 18 April 2011, as a result of which sale of the dwelling was delayed and the Respondent became liable for payment of a Non-Principal Private Residence charge of €200.00.
- g) On re-gaining possession, the Respondent found damage to a cabinet which had to be dumped, as well as other damage to curtains and curtain rails. He sought damages, estimated at €278.00 to include hire of a skip to remove damages items, in respect of the alleged damages to fixtures, fittings and soft furnishings as itemised at adjudication.
- h) He was also claiming for arrears of rent totalling €2626.90, less retained deposit €1350.00.

6. Findings of the Tribunal and Reasons Therefor:

Having considered all of the documentation before it including the Adjudicator's Report dated 3 June 2011, and having considered the evidence presented to it by the parties, the Tribunal's findings and reasons therefore are set out hereunder.

1: The Notice of Termination dated 28 December 2010 is deemed to be valid.

Reason:

The Notice of Termination is in accordance with the relevant provisions of the Act, and its validity was not in the final analysis disputed by the Appellants.

2: Appellant Tenants are found to be in breach of their obligations as tenants under the terms of the lease issued to them.

Reason:

In carrying out even a limited business at the dwelling, the Appellant Tenants breached the strict terms of their lease even where they had not signed and returned the lease.

3: Appellant Tenants are found to have been overholding on their tenancy and the Respondent Landlord is entitled to recovery of rent arrears in respect of period of overholding.

Reason:

The Notice of Termination dated 28 December being accepted as valid and incorporating a termination date of 31 January 2011, the Appellant Tenants did not vacate the dwelling until on or about 18 April 2011. 2011, with arrears of rent accruing during the period of overholding.

4: The Respondent Landlord is entitled to damages in respect of additional losses suffered.

Reason:

The actions of the Appellant Tenants led to the Respondent Landlord incurring the Non-Principle Private Residence charge of €200.00, also to replacement cost of damaged bathroom cabinet at €200.00 and to skip hire charges of €78.00

7. Determination:

Ref: TR166/2011/DR1991/2010 & DR100/2011

In the matter of Karey Coughlin Lewis and Simon Lewis (Appellant Tenants) and Dermot Cuddy (Respondent Landlord) the Tribunal in accordance with section 108 (1) of the Residential Tenancies Act 2004, determines that:

- The Appellant Tenants shall pay the sum of €1,754.90 to the Respondent Landlord within 21 days of date of issue of this Order, being rent arrears of €2,626.90 together with charges and costs for repairs and replacements in excess of normal wear and tear of €478 in respect of the tenancy of the dwelling at 34 Warren House Road, Baldoyle, Dublin 13, having allowed for the security deposit of €1350.00 lawfully retained.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 7th day of February 2012.

Signed:

LIAM M. NOLAN

Chairperson

For and on behalf of the Tribunal.