

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

**Report of Tribunal Reference No: TR167/2011/DR2080/2010. Case Ref No:
DR2080/2010**

Appellant Landlord:	Nasir Khan
Respondent Tenants:	Irma Rajewska & Marcin Konar
Address of Rented Dwelling:	132 Grangeview Road, Clondalkin, Dublin 22 ("the Dwelling")
Tribunal:	Gene Feighery (Chairperson) Vincent P Martin Nesta Kelly
Venue:	PRTB, Floor 2, O'Connell Bridge House Dublin 2.
Date & time of Hearing:	17 th February, 2012 @ 2.30pm
Attendees	
For the Appellant:	Mr. Nasir Khan (Landlord)
For the Respondent	Irma Rajewska (First Named Respondent Tenant) Marcin Konar (Second Named Respondent Tenant) Patrycja Rajewska (Witness)
In Attendance:	Gwen Malone Stenographers Karel Prusa (Interpreter) Word Perfect Translations

1. Background:

1. On the 25 November 2010, Marcin Konar and Irmína Rajewska (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 **13 June 2011**. The Adjudicator determined that Nasir Khan (Landlord) shall pay the total sum of €2,880 to the Tenants representing €2500 in damages for breach of Landlord obligations plus €145 for expenses incurred by the Tenants as a result of the Landlord’s failure to carry out repairs and €235 in respect of missing possessions. Subsequently a valid appeal was received from the Landlord by the PRTB on 7 July 2011
2. The Board at its meeting on 20 July 2011 approved the referral to a Tenancy Tribunal of the appeal. The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin and Nesta Kelly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Gene Feighery to be the chairperson of the Tribunal (“the Chairperson”).
3. On 30 December 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.
4. On **26 January 2012** the Tribunal were due to hear the convened hearing at the offices of the PRTB, Floor 2, O’Connell Bridge House, D’Olier Street, Dublin 2 however an adjournment request was made by the Appellant Landlord on the grounds of ill-health. The request for an adjournment was granted and the reconvened hearing took place at the same venue on 17th February 2012.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB file.

An application by each party to submit documents at the hearing was refused by the Tribunal on the basis that exceptional circumstances did not exist for their admittance and both parties did not give the requisite notice, applying for the first time to introduce new documents during the course of the hearing. In addition, neither party consented to this new evidence being admitted.

3. Documents Submitted at the Hearing Included:

4. Procedure:

The Chairperson asked the Parties present to identify themselves and to identify 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) 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 her 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 explained that following this; both parties would be given an opportunity to make a final submission.

The Chairperson advised 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, as was the Interpreter.

5. Submissions of the Parties:

Before inviting the Appellant to open and present his case, the Chairperson said that the Tribunal had read all the documentation submitted by the Parties and it appeared that the following facts were agreed between them:

- A fixed term twelve month tenancy existed between the parties.
- The tenancy agreement terminated prematurely on 6th December 2010.
- The rental payment was € 900 per calendar month.
- A deposit of €900 was paid by the Respondent Tenants to the Appellant Landlord at the commencement of the tenancy.

Appellant Landlord's Case:

In his direct evidence to the Tribunal the Appellant Landlord alleged that the claim by the Respondent Tenants before the Tribunal was a fabrication by them in order to extract money from him.

He further stated that, despite the fact that he calculated that a sum amounting to €1,800 was owed to him in respect of rent arrears for the months of November and December 2010, that he had instructed his Agent, to return the deposit of €900 to the Respondent Tenants. He stated that neither he nor his Agent had received any complaints about the Dwelling from the Respondent Tenants whatsoever, and that had he received such complaints, he would have attended to them immediately as it was in his best interest to do so. The Appellant Landlord stated that due to family commitments in Pakistan, he was unable to attend the Adjudication hearing however, on his return from Pakistan he had personally telephoned the Respondent Tenants and offered them their deposit of €900 back

In relation to the Dwelling he stated that it was in excellent condition at the commencement of the written tenancy agreement which was signed on 1 March 2010. He said that everything within the Dwelling was new and it had also been newly painted. He stated that the shower was working and the tiles were perfect, and that a fence existed around the Dwelling as otherwise he contended that the Respondent Tenants' would not have signed the lease. In addition, he stated that the Respondent Tenants had carried out an inspection of the Dwelling before they signed the said lease and confirmed to his Agent that the Dwelling was in excellent condition and in accordance with their requirements. He questioned the plausibility of the Respondent Tenant's decision to leave in November, because tiles were missing and there was no fence. He wondered why it took from March to November 2010 for the Respondent Tenants to find such problems.

He stated that although the lease commenced on 1 March 2010, the Respondent Tenants only moved into the Dwelling on 7 or 8 March 2010. This was due to the fact that the gas supply to the Dwelling required reconnection and there was no heating in the Dwelling. Although the Respondent Tenants claimed that they incurred a reconnection fee of €200 the Appellant Landlord stated that it was his understanding that this sum was paid by his Agent, however he conceded that he was not in a position to confirm this with certainty and he adduced no documentation to the Tribunal in support of this statement. The Appellant Landlord stated that he very much relied on his Agent to manage the day to day affairs concerning the Dwelling.

The Appellant Landlord accepted that in November 2010, his Agent experienced a delay in sourcing a heating engineer to fix the central heating in the Dwelling so the Respondent Tenant's sourced their own engineer and paid him his professional fee of €80. He stated that

an adjustment in the November monthly rental payment was to reflect this charge, however no rent at all was paid by the Respondent Tenants in November.

The Appellant Landlord stated that he changed the locks to the Dwelling on approximately 16 or 17 December 2010, which was a week following the vacating of the Dwelling by the Respondent Tenants. He stated that on 6 December 2010 the Respondent Tenants attended the Agent's office returning the keys and informing the Agent that they were leaving. The Appellant Landlord stated that they vacated the Dwelling the same day without any notice and without having paid rent for November or December. 2010.

Respondent Case:

The First Named Respondent Tenant stated that they signed the lease on 1 March 2010 on the understanding that the Dwelling was 100 per cent habitable. They moved in on 10 March 2010 but were not informed that there was a problem with the heating and that the gas needed to be reconnected. She told the Tribunal that she was required to pay €200 to have the gas reconnected in order to have the gas supply restored to the Dwelling. There was electricity supply to the Dwelling, but no electric shower, therefore they were unable to wash because the water was heated by gas.

The First Named Respondent Tenant continued her direct evidence by stating that superficially the Dwelling looked in excellent condition, with newly painted walls, new carpets and beds, however upon taking up occupancy, a number of problems became apparent. The Respondent Tenants contacted the Agent and complained about the missing tiles, toilet seat and shower curtain in the bathroom, the defective cooker, microwave, toaster and shelving in the kitchen, the overgrown grass, rubbish and lack of fencing in the garden. The First Named Respondent Tenant stated that the Agent told her that these matters would be attended to immediately, however apart from the replacement of the cooker in the kitchen, none of the issues raised were addressed. The Tenants were required to dispose of rubbish from a previous tenancy themselves and they incurred in €32 domestic waste charges. They stated that they purchased rugs to cover up the poor quality flooring downstairs in the sum of €180.

In April the First Named Respondent Tenant stated that they erected a fence around the Dwelling at their own expense, in order to secure the Dwelling and preserve their privacy. In addition, they had a dog with the permission of the Appellant Landlord and it needed to be contained.

The First Named Respondent Tenant stated that in November 2010 the gas central heating broke down. It was 10 degrees within the Dwelling and 6 degrees at night. She told the Tribunal that when she contacted the Agent acting on behalf of the Appellant Landlord, he told her that he was not in a position to make a decision regarding the replacement of the

boiler without the Appellant Landlord's permission and that the Landlord was uncontactable. The First Named Respondent Tenant stated that she had made 150 attempts to contact the Appellant Landlord by phone and text, leaving messages each time. Her attempts were ignored. The Respondent Tenants borrowed heaters from friends in an attempt to heat the Dwelling. They could only heat one room at a time, and their newborn baby had to sleep with them in order to keep warm. This form of heating was very expensive and they incurred an increased ESB bill as a result. The Respondent Tenants had to visit their sister's dwelling in order to wash, and they were particularly concerned about the health of their newborn baby. She stated that they were fortunate that their infant was not affected by the conditions in the dwelling, however the Second Named Respondent became ill and had to attend hospital as a result.

The Respondent Tenants stated that they printed off the standard Notice of Termination from the PRTB website and issued it to the Appellant Landlord's Agent in November 2010, allowing for the requisite 28 days notice and citing the lack of heating as the reason for their departure from the Dwelling. The termination date specified in the Notice of Termination was the 10 December 2010. However, she conceded that she had not made a copy of the Notice of Termination and was unable therefore to provide supporting documentation to the Tribunal in support of this claim.

The First Named Respondent Tenant stated that November 2010 was the last time she attended the Agent's office and that she did not return any keys to him – she still has the keys with the Agent's keyring in her possession. She stated that they began moving into a new Dwelling on 1 December 2010, but that because they both worked and did not have suitable transportation, it took them a number of days to carry out the move. She stated that on 6 December 2010 the Agent informed her that the locks to the Dwelling had been changed and that they could no longer gain access to the Dwelling. She told the Tribunal that this action was premature as their termination date was 10 December and that she had not removed many items belonging to them from the Dwelling. These items included, inter alia two rugs €180, child's scooter €15, baby walker €40.

The witness on behalf of the Respondent Tenant's stated that the central heating boiler was broken and that when she visited the Dwelling she always had to keep her coat on due to the cold condition of the Dwelling. She stated that the Respondent Tenants had to visit her home in order to bath the baby and to shower themselves. In addition, she stated that she had to wash their dishes for them because they had no hot water in their Dwelling.

6. Findings of the Tribunal and Reasons Therefor:

The Tribunal has drawn its conclusions based on the documentation before it, including the Report of the Adjudication dated 19 May 2010 and having considered the evidence presented to it by the parties. The Tribunal's findings and reasons therefor are set out hereunder:

Finding:

1. The Respondent Tenants failed to pay rent for the month of November, contrary to their obligations under the Act.

Section 16 (a) of the Act states:

In addition to the obligations arising by or under any other enactment, a tenant of a dwelling shall-

(a) Pay to the landlord or his or her authorised Agent (or any other person where required to do so by any enactment) –

(i) the rent provided for under the tenancy concerned on the date it falls due for payment.

Reason:

The Respondent Tenants had an obligation to pay rent to the Appellant Landlord up until the valid termination date of the tenancy and it is not at their discretion to unilaterally withhold any such payment based on their opinions regarding the condition of the Dwelling and/or to decide that their security deposit shall convert into a rental payment for the final month of the tenancy.

2. The Tribunal finds that the Appellant Landlord was justified in retaining the Respondent Tenant's security deposit in the sum of €900 under the Act.

Section 12(4)(a)(i) of the Act states:

(a) No amount of the deposit concerned shall be required to be returned or repaid if, at the date of the request for return or repayment, there is a default in –

(i) The payment of rent and the amount of rent that is in arrears is equal to or greater than the amount of the deposit,

Reason:

In the circumstances where the Appellant Landlord should have received the requisite rental payment of €900 for the month of November 2010 from the Respondent Tenants and did not, he is justified in retaining the full deposit after the Respondent Tenants had vacated the dwelling in December 2010.

3. The Tribunal finds that the Appellant Landlord is in breach of his obligations under the Act for failing to address the problems raised by the Respondent Tenants in relation to the Dwelling.

Section 12(1)(b)(ii) of the Act states:

In addition to the obligations arising by or under any other enactment, a landlord of a dwelling shall-

(b) subject to subsection (2) carry out to-

- (ii) the interior of the dwelling all such repairs and replacement of fittings as are from time to time necessary so that that interior and those fittings are maintained in, at least the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed.*

Reason:

The Respondent Tenants gave a compelling account of the matters in dispute in evidence to the Tribunal, and supported their claim with photographs regarding the condition of the Dwelling.

The Tribunal does not accept that the Landlord can evade his responsibilities under the Act; by attributing blame to his Agent who was not present at the Tribunal. It is clear to the Tribunal that the Respondent Tenants suffered a serious reduction in the quality of life in their living environment as a result of the conditions in the Dwelling.

3. The Tribunal finds that the Appellant Landlord is responsible for the reimbursement of expenses incurred by the Respondent Tenants as a result of his failure to carry out repairs to the Dwelling.

Section 12(1)(g) of the Act states:

Without prejudice to any other liability attaching in this case, reimburse the tenant in respect of all reasonable and vouched for expenses that may be incurred by the tenant in carrying out repairs to the structure or interior of the dwelling which the landlord is responsible under paragraph (b) where the following conditions are satisfied:

- (i) the landlord has refused or failed to carry out the repairs at the time the tenant requests him or her to do so, and*
- (ii) The postponement of the repairs to some subsequent date would have been unreasonable having regard to either –*

- (I) *a significant risk the matters calling for repair posed to the health or safety of the tenant or other lawful occupants of the dwelling, or*
- (II) *a significant reduction that those matters caused in the quality of the tenant's or other such occupants' living environment.*

Reason:

The Respondent Tenants incurred additional expense in ongoing attempts to heat their Dwelling and to carry out basic living functions within the Dwelling such as showering, cooking and washing dishes. An unacceptable burden of responsibility and expense in relation to the repair and maintenance of the heating system within the dwelling, the reconnection of the gas supply, the removal of waste from a previous tenancy, and the sourcing of a heating engineer, all fall within the statutory duty of the Appellant Landlord but which he failed to carry out.

5. The Tribunal finds that despite the fact that the Respondent Tenants had vacated the dwelling, the Appellant Landlord has unlawfully terminated the tenancy on 6 December 2010, four days in advance of the valid termination date, denying the Respondent Tenants access to the dwelling resulting in distress, inconvenience and loss of personal belongings to them.

Section 58 (1) of the Act states:

From the relevant date, a tenancy of a dwelling may not be terminated by the landlord or the tenant by means of a notice of forfeiture, a re-entry or any other process or procedure not provided for by this Part.

Reason:

The Tribunal were unconvinced by the evidence of the Appellant Landlord in relation to the circumstances surrounding the termination of the tenancy and the changing of the locks prematurely. His failure to supply the Tribunal with supporting evidence from his Agent and his varying and contradictory statements in relation to tenancy commencement dates and rental payment dates were noted. Therefore, taking into consideration the evidence of both parties in this matter, the Tribunal remained convinced that an unlawful termination was carried out by the Appellant Landlord.

Determination

In the matter of Nasir Khan (Appellant Landlord) and Irmia Rajewska and Marcin Konar (Respondent Tenants) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Appellant Landlord was justified in retaining the deposit of €900 in lieu of unpaid rent for the month of November 2010 in respect of the tenancy of the dwelling at 132 Grangeview Road, Clondalkin, Dublin 22.
2. The Appellant Landlord shall pay the sum of €2,880 to the Respondent Tenants within 14 days of the date of issue of this Order, being damages of €2,500 for breach of his obligations under the Act in failing to carry out necessary repairs and replacements and for expenses incurred and missing possessions amounting to €380.00 relating to the above tenancy.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 13 March 2012.

Signed:

Gene Feighery, Chairperson

For and on behalf of the Tribunal.