

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR168/2011/DR92/2011. Case Ref No: DR92/2011

Appellant Tenant:	Nan Zhang
Respondent Landlord:	Ruairi Holohan
Address of Rented Dwelling:	2 Clarinda House, Clarinda Park West, Dun Laoghaire, Co Dublin (“the Dwelling”)
Tribunal:	Henry Murdoch (Chairperson) Dervla Quinn Tom Dunne
Venue:	PRTB, Floor 2, O’Connell Bridge House, D’Olier Street, Dublin 2.
Date & time of Hearing:	17 January 2012 at 10.30 am
Attendees:	
For the Appellant:	Nan Zhang (Tenant) Claire Lane (Threshold representing Tenant)
For the Respondent	Ruairi Holohan (Landlord)
In Attendance:	Gwen Malone Stenographers

1. Background:

1. On 11th February 2011 the Tenant 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 19th April 2011. The Adjudicator determined that the dispute between the Tenant and the Landlord was outside the jurisdiction of the Residential Tenancies Act 2004. Subsequently a valid appeal was received from the Tenant by the PRTB on 8th July 2011. The Tenant in her appeal stated that she strongly disputed the arguments and reasoning in the Adjudicator’s Report.
2. The Board at its meeting on 20th July 2011 approved the referral to a Tenancy Tribunal of the appeal. The PRTB constituted a Tenancy Tribunal and appointed Henry Murdoch, Dervla Quinn and Tom Dunne as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Henry Murdoch to be the chairperson of the Tribunal (“the Chairperson”).
3. On 16th 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 17th January 2012 the Tribunal convened a hearing at 10.30am 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:

1. PRTB file.

Documents Submitted at the Hearing Included:

There were no further documents submitted 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. 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 Tenant) would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent would then be invited to present his 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 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.

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:

Preliminary Issue

The Chairperson said that the Appellant Tenant is arguing that the dispute between her and the Respondent Landlord comes within the jurisdiction of the PRTB and the Respondent Landlord has a contrary view. The Chairperson said that this would be the first issue to be dealt with by the Tribunal as a preliminary issue, but without prejudice to its finding in that regard, it would hear evidence on other facts regarding the dispute.

Before inviting the Appellant Tenant to present her case as regards jurisdiction, the Chairperson said that the Tribunal had read all the documentation submitted by the Parties and it appeared that the following facts were facts upon which the Parties were agreed:

- (a) The arrangement, under which the Appellant Tenant occupied the Dwelling, commenced on 6th October 2009 (TS 32).
- (b) The rent was €400 per month and a deposit of €400 was paid at commencement (TS 32).

- (c) The dwelling was a 2 bedded apartment to which the Appellant Tenant had exclusive occupation of one bedroom and non-exclusive occupation of all the common areas, which she would share with whoever had a right to occupation of the second bedroom.
- (d) The second bedroom was occupied by another tenant in September 2010 for about 4 months, and this person paid her rent directly to the Respondent Landlord.
- (e) Apart from that period of 4 months, the only tenant occupying the Dwelling for the 16 month period from 6th October 2009 to February 2011 was the Appellant Tenant.
- (f) The Appellant Tenant vacated the Dwelling on 12th February 2011. The only time the Respondent Landlord stayed overnight in the Dwelling, prior to the Dwelling being vacated, was on three nights in February 2011 prior to the Dwelling being vacated and after the Parties were in dispute.

The Parties signified that these were facts upon which they were agreed.

Submission of Appellant Tenant on Preliminary Issue

The Representative for the Appellant Tenant disputed the Adjudicator's decision that the tenancy did not come within the jurisdiction of the PRTB. She said that at the initial viewing the Appellant Tenant had been told that this was a "house share", that there would be a second tenant, that she would have exclusive use of a bedroom and would share the common areas with the second tenant, that she would be given the right to select the second tenant. The Representative said that there was in fact a second tenant for a 4 month period and that the Appellant Tenant did not object to this, and that she paid rent to the Respondent Landlord who was always clearly her landlord.

The Representative said that section 48 of the 2004 Act made provision for multiple tenants and they did not have to commence their tenancy at the same time and that section 3 did not exclude the application of the Act to a "house share" or multiple tenants. She said that the Appellant Tenant had exclusive possession of one bedroom and joint exclusive possession of the common areas. The exclusive occupancy was exclusive occupancy against the Respondent Landlord and outsiders. She said the whole Dwelling met the definition of a self-contained residential unit. She said that the Appellant Tenant had been told that she could find a second tenant and that when the Respondent Landlord found one, that second tenant had moved in with her consent. The Representative said that, in her opinion, it was not the

intention of the Oireachtas to exclude from the 2004 Act such a large group of tenancies as typified by this one.

The Appellant Tenant in her evidence said that she had sourced the Dwelling by clicking on “house sharing” on the Daft Internet site, as she wanted sharing and had previously shared for 7 years. She said that there were two bedrooms (one double and one single) and the price was the same for both. She said that the Respondent Landlord had asked her if she could find someone to take the other room, and that if she could not, that he would try to find someone acceptable to her. She said that she was never told by the Respondent Landlord that they did not have a landlord / tenant relationship.

She said that the Respondent Landlord’s post never came to the apartment itself; it went to a postbox upstairs and when it was full she would contact him by text message. She said that she had contact with him on a few occasions eg when the heater was not working, but that whenever he visited it was always with her permission which she would give by text message eg when he came to collect one of his daughter’s toys or when someone would come to view the apartment.

Submission of Respondent Landlord on Preliminary Issue

The Respondent Landlord said that the arrangement he had with the Appellant Tenant did not come within the 2004 Act. He said that he had previously lived in the apartment and it was his home; his father was in an apartment above. He said that the persons in the apartment each had to have an arrangement directly with him. He said that they did not have joint exclusive use of the apartment. He said that he had use of the apartment and had free access to the apartment which he exercised. He said that he did not have to give notice to obtain access; he would not go in if there was a light on or if he could hear a shower running. He instanced before the second tenant moved in, he did not get permission to show her the apartment.

He said that all his possessions were in the apartment and his motor bike was in the back yard. He said that he regularly visited to water the plants. He said that on being advised by text that he had “loads of mail” he went to the apartment and his mail was on the sitting-room table. This was denied by the Appellant Tenant who said his mail was never taken into the apartment. She also said that she looked after the plants and she disputed his claim that all his possessions were in the apartment – there were only some books and some of his daughter’s toys. She also said that she gave him permission by text message to collect his daughter’s toys.

The Respondent Landlord said that the Appellant Tenant was a lodger in a flatshare (TS 24 TM 13) and had an exclusive right only to a bedroom and consequently this was not a “self-contained residential unit” as required by section 4 of the 2004 Act.

The Respondent Landlord cited two cases as a precedent for his contention that the 2004 Act does not apply to the arrangement he had with the Appellant Tenant: TR08/DR378/2006 and TR10/DR532 & 589/2006 *Murphy v Flannery*.

General Issues

The Chairperson said that if the Tribunal found that it had jurisdiction to make a Determination in relation to the dispute, it appeared that the issues it had to deal with were:

- (a) Was the Notice of Termination by the Respondent Landlord a valid Notice in accordance with the Act?
- (b) Was there a breach by the Respondent Landlord of his obligations under the 2004 Act

The Parties agreed that the following were facts upon which they were agreed:

- (a) The Appellant Tenant was told by text message on her phone by the Respondent Landlord on 7th January 2011 that he was giving her one month's notice as he was going to rent out the apartment for €1000 per month plus bills (TS23 – TM 7).
- (b) As of the date of termination, the rent which had been paid by the Appellant Tenant was up-to-date, and there are no arrears of rent.
- (c) The deposit of €400 had been repaid by the Respondent Landlord to the Appellant Tenant on 18th February 2011.

Appellant Tenant's Case:

The Appellant Tenant said that when she received the one month's notice on 7th January 2011 she was upset as the Dwelling was her home and she was a good tenant and wanted to remain on and she communicated this to the Respondent Landlord (TS 23 – TM8). He responded by text message on 19th January 2011 that she was due to move out by 11th February and wanted to know if she would be moving sooner, to which she responded that she was not moving out (TS 23 – TM 9 and 10).

She said that on 21st January 2011 the Respondent Landlord entered the Dwelling without notice or permission when she was in her pyjamas, as a result of which, she wrote to him on 31st January 2011, stating that she intended to continue to reside in the Dwelling and requested that he give 24 hours notice if he intended to enter the Dwelling (TS 29).

The Appellant Tenant said that when she returned to the Dwelling after work on the evening of 9th February 2011, she opened the door and there was no light as the electricity had been

switched off. She said that with the aid of the street light when she opened the curtains, she found her goods all bundled together on her bedroom floor, her bed was gone, the kitchen door had been locked, as had the other bedroom. She said that she went to the Garda Station in Dun Laoghaire to report the matter and was advised to contact the PRTB.

She said that she was traumatised by what had happened. She said that she stayed that night in the Kingston Hotel in Dun Laoghaire. The following night (10th February 2011) she stayed in a friend's living room and on the third night (11th February 2011) she returned to the Dwelling to collect her belongings as she had been told by the Respondent Landlord that he would have her belongings moved. She slept in the sitting-room that night and the Respondent Landlord stayed in the Dwelling also that night. She vacated the Dwelling next day (12th February 2011).

Respondent Landlord's Case:

The Respondent Landlord did not deny the evidence of the Appellant Tenant in relation to final days before the Dwelling was vacated. He said that as the arrangement he had with the Appellant Tenant did not come within the remit of the 2004 Act and the PRTB, he did not have to comply with the requirements of the 2004 Act as regards notice for access or notice of termination. He said that as the Appellant Tenant was a lodger in a flatshare, he had given her notice and when she had not complied with that notice, he had moved in himself, which he was entitled to do. He said that he had removed her bed from her bedroom and put it in his bedroom which he had then locked.

The Respondent Landlord alleged that some text messages were missing from the papers supplied by the PRTB along with the Notice of the Tribunal hearing, but he was unable to identify what was missing. The Representative for the Appellant Tenant said that there were no omissions and that the text messages (TS 23 and 24) were the same as had been submitted at the Adjudication.

The Respondent Landlord also said that he had requested that the PRTB subpoena Kevin Baneham to appear on his behalf at the Tribunal. The Chairperson confirmed that such a request had not been brought to his attention, as would normally be the case, but that if it had, he could have had some difficulty dealing with it, as Mr Baneham is a barrister and appeared at the Adjudication Hearing of this dispute for the Appellant Tenant. He said that he would have had a similar difficulty if he had had a request from the Appellant Tenant for a subpoena of the Respondent Landlord's representative, if there had been one. In response to a question from the Tribunal, the Respondent Landlord said that he wanted Mr Baneham present to give evidence of conversations they had together. The Tribunal pointed out that the Respondent Landlord could not give evidence of what Mr Baneham had said to him (because it would be *hearsay*), but he could give evidence of what he (the Respondent Landlord) had said to Mr Baneham. The Respondent Landlord declined to give this evidence.

Following the close of the Tribunal, the Tribunal learned that such a request for a subpoena had indeed been received by the PRTB on 28th December 2011 by email and due to an administrative error had not been communicated to the Chairperson. The Tribunal is of the view that the Respondent Landlord has not been disadvantaged by this administrative error, as (a) the request would in all probability have been denied as possibly breaching lawyer / client confidentiality, and (b) the Respondent Landlord declined to give evidence of his side of the conversation when invited to do so by the Tribunal.

6. Findings of the Tribunal and Reasons Therefor:

Having considered all of the documentation before it, including the Report of the Adjudication dated 24th April 2011, and having considered the evidence presented to it by the Parties, the Tribunal's findings and reasons therefor are set out hereunder.

6.1 Finding:

We find that the Tribunal has jurisdiction to hear this dispute between the Appellant Tenant and the Respondent Landlord.

Reasons:

- (a) The Residential Tenancies Act 2004 applies to every “dwelling” which is the subject of a tenancy, unless specifically excluded under section 3(2) and 3(3). A “dwelling” is defined under section 4(1) as “*property let for rent or valuable consideration as a self-contained residential unit*”. There is no definition in the Act of “*self-contained residential unit*” other than that a “*self-contained residential unit*” includes the form of accommodation commonly known as ‘bedsit’ accommodation”.

The Supreme Court has held that in interpreting words in a statute, if the statute is directed at the public at large, a word or expression should be given its ordinary or colloquial meaning: *Inspector of Taxes v Kiernan* [1981] IR 117. It is the view of the Tribunal that the ordinary meaning of “*self-contained*” as regards a *unit* means – “*containing within itself all parts necessary for completeness*” or put another way “*something which is complete on its own and doesn’t need anything else*” or “*constituting a complete and independent unit of itself*”.

- (b) Consequently a “*self-contained residential unit*” must mean a unit which enables the person residing there to have all the essentials for living ie for sleeping, washing, cooking, toiletry and relaxing. The fact that the person does not have an *exclusive* right to those facilities, does not render the unit less than a “*self-contained residential*”

unit". In fact, the word "*exclusive*" appears in only one section of the 2004 Act ie section 12(1)(a) which deals with the obligation of the landlord to allow a tenant to enjoy peaceful and "*exclusive* occupation" of the dwelling. In our view the words "*exclusive* occupation" have to be interpreted as *excluding* other persons who have no right to such occupation, rather than "*exclusive* occupation" being necessary to create a tenancy to which the 2004 Act applies.

We find as a matter of fact in this case, that the Appellant Tenant had an exclusive right to occupation of a bedroom and a non-exclusive right to other rooms in the unit ie bathroom, kitchen, and living room, which she was required to share with whoever else might have a right from time to time to exclusive occupation of the other bedroom. As the Appellant Tenant was paying rent to the Respondent Landlord for this right, we find as a matter of law that there was a tenancy of a "*dwelling*" within the definition of the 2004 Act as it was a "*self-contained residential unit*" and consequently the PRTB and this Tribunal has jurisdiction in relation to a dispute in relation to the tenancy.

- (c) This finding of law is supported by the provision in section 4(1) that a "*self-contained residential unit*" includes the form of accommodation commonly known as '*bedsit*' accommodation". The word "*includes*" when used in a definition in a statute, has been held to be a word of extension, so that the ordinary meaning is given in addition to the meaning in the extension: *Attorney General (McGrath) v Healy* [1972] IR 393. There is no definition of "*bed-sit*" in the 2004 Act. However, the Irish Council for International Students in their Guide for International Students (2012) in describing the various forms of accommodation available in Ireland, state:

“ A bed-sit is essentially a single room unit with basic cooking facilities (a mini-kitchen area), a bed and some additional furniture. Toilet and bathroom facilities are generally shared with the other occupants of the building though there may be a self-contained shower”.

While in this Tribunal case, the residential unit was not a "*bed-sit*", the inclusion in the 2004 Act of "*bed-sit*" accommodation, clearly demonstrates that *exclusive* occupation to all parts of a residential unit is not a requirement to bring a tenancy within the provisions of the 2004 Act.

- (d) The case TR08/DR378/2006 cited by the Respondent Landlord as precedent supporting his contention that the arrangement he had with the Appellant Tenant was outside the scope of the 2004 Act, is an incorrect reference, as it refers to a dispute *Ajayi v Byrne* which did not involve jurisdiction. The other referenced case TR10/DR532 & 589/2006 *Murphy v Flannery* is relevant. However this Tribunal

believes that the law is not correctly interpreted in the Murphy case for all the reasons stated in (a) to (c) above.

- (e) The Respondent Landlord claimed at the Adjudication hearing that the Dwelling was his primary residence and as such the tenancy was excluded by section 3(2)(g). This section provides that the 2004 Act does not apply to a dwelling within which the landlord also *resides*. While the Respondent Landlord did not press this claim at the Tribunal, he did state that all his possessions were in the Dwelling. Consequently, for completeness, we deal with this aspect.

The 2004 Act does not define “*resides*”. In *Deutsche Bank AG v Murtagh [1995 HC] 2 IR 122* it was held that where the words “*ordinarily resides*” appear in a statute but are not defined, they should be interpreted in accordance with their ordinary meaning in the light of the general intention of the statute. We find as a matter of fact that the Respondent Landlord stayed in the Dwelling for only three nights during the 16 month duration of the tenancy and this was after he had given notice that the Dwelling be vacated by the Appellant Tenant and after he had removed her bed from her bedroom. We find, as a matter of law, that this does not constitute “*resides*” as required by the 2004 Act and consequently any claim that the period of residing by the Respondent Landlord brought the tenancy outside the remit of the 2004 Act, fails.

6.2 Finding:

We find that the written Notice given by the Appellant Landlord to the Respondent Tenant by telephone text on 7th January 2011 requiring her to vacate the Dwelling in one month was not a valid Notice of Termination.

Reasons:

- (a) The tenancy commenced on 6th October 2009 and consequently on 6th April 2010 this became a Part 4 Tenancy, which would have entitled the Appellant Tenant to a further 3 ½ years of occupancy.
- (b) A Notice of Termination of a Part 4 Tenancy must be on grounds specified in Section 34 of the Residential Tenancies Act 2004 and must comply with the form specified in Section 62 of the Act and must give the notice period specified in Section 66 of the Act. The Notice of 7th January 2011 from the Appellant Landlord does not comply with these requirements (e.g. it is not in the form specified in the Act and it fails to state that any issue as to the validity of the notice or the right of the landlord to serve it, must be referred to the PRTB pursuant to section 62(1)(g) of the Act).

6.3 Finding: We find that the Respondent Landlord was in breach of his obligation under section 12 of the 2004 Act, which breach caused distress and cost to the Appellant Tenant, in respect of which we award the Appellant Tenant the sum of € 1,500 and this is reflected in our Determination.

Reasons:

- (a) The Respondent Landlord had an obligation under section 12(1)(a) of the 2004 Act to allow the Appellant Tenant to enjoy peaceful and exclusive occupation of the Dwelling. We find that on 10th February 2011 the Respondent Landlord illegally evicted the Appellant Tenant - (i) by removing the bed of the Appellant Tenant and placing it in the other locked bedroom; (ii) by bundling her possessions into a corner and (iii) by locking the kitchen door. This caused severe distress and cost to the Appellant Tenant. She had to sleep in an hotel, get meals in local restaurants, get accommodation from friends, and move out her belongings on 12th February 2011.
- (b) We find as a matter of law that this was a serious breach of the Respondent Landlord's obligations, which merit damages of €1,500.

7. Determination:

Ref: TR168/2011/DR92/2011

In the matter of Nan Zhang (Appellant Tenant) and Ruairi Holohan (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

- The Respondent Landlord shall pay the sum of € 1,500 to the Appellant Tenant within 21 days of the date of issue of this Order being damages for the unlawful termination of the tenancy of the dwelling at 2 Clarinda House, Clarinda Park West, Dun Laoghaire, Co Dublin.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 17th day of January 2012.

Signed:

Henry Murdoch
Chairperson
For and on behalf of the Tribunal.