

RESIDENTIAL TENANCIES ACT 2004 (“the Act”)

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR172/2011/DR2186/2010

Case Ref No: DR2186/2010

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| Appellant Landlord: | Christie O'Reilly and Anne O'Reilly |
| Respondent Tenant: | Austin Rogers |
| Address of Rented Dwelling: | Apt. 26 Riverdale, Upper Dargle Road, Bray, Co. Wicklow (“the Dwelling”) |
| Tribunal: | Ciara Doyle (Chairperson) Liam Nolan Maurice O'Donoghue |
| Venue: | PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2. |
| Date of Hearing: | 7 February 2012 at 2.30 p.m. |
| Attendees: | |
| For the Appellant: | Christopher (Christie) O'Reilly (Landlord) Anne O'Reilly (Landlord) Miriam Shannon (Agent) |
| For the Respondent | There was no attendance by or on behalf of the Respondent |
| In Attendance: | Gwen Malone Stenographers |

1. Background:

1. On 13th December 2010, 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 13th day of June 2011. The Adjudicator determined that the Respondent Landlords shall pay the total sum of €1,100 to the Appellant Tenant, within 14 days of the issue of the determination order, being the entire security deposit, unjustifiably retained, in regard to the tenancy of the dwelling Apt 26, Riverdale, Upper Dargle Road, Bra, Co. Wicklow. Subsequently a valid appeal was received from the landlord by the PRTB on 15th July 2011.
2. On 20th July 2011 the PRTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Liam Nolan and Mary H Morris as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Ciara Doyle to be the chairperson of the Tribunal (“the Chairperson”). Maurice O’Donoghue was subsequently substituted for Mary H. Morris as Tribunal member.
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, the Tribunal convened a hearing at 2.30 p.m. 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 (and their witness) to identify themselves and to identify in what capacity they were attending the Tribunal. She 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”.

She 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 including their witnesses; that there would be an opportunity for cross-examination by the Respondent if he presented himself at the hearing; that the Respondent would then be invited to present his case, including the evidence of his witness, and that there would be an opportunity for cross-examination by the Appellant. She said that members of the Tribunal might ask questions of the Parties from time to time.

The Chairperson explained that following this, the Appellant would be given an opportunity to make a final submission.

She stressed that all evidence would be taken on oath and be recorded by the official stenographer present and she 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.

She 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].

She asked the Parties if they had any queries about the procedure. There were none.

The hearing commenced with the Appellant's case.

5. Submissions of the Parties:

Appellant Landlords Case:

The Appellant Landlord advised the Tribunal that he had let the dwelling to the Respondent Tenant, through Terrie Dunne Letting Agents, on 9 September 2007. He said the dwelling was originally let to the Respondent Tenant and his partner but his partner had later moved out of the dwelling. The Tribunal was told that the Respondent Tenant signed a further 12 month fixed term tenancy agreement on 12 September 2008 and a copy of this agreement was furnished to the Tribunal.

The Appellant Landlord said the Respondent Tenant had paid a deposit of €1,100 at the commencement of the Tenancy and the monthly rent was €1,200.

The Appellant Landlord's Agent (hereinafter called "the Agent") told the Tribunal that she had received an email from the Respondent Tenant on 15 April 2009 to advise her that he was considering moving out of the dwelling and enquired if the Agent had any alternative accommodation. She said he did not indicate a specific date as to when he was intending to vacate the dwelling. The Agent said she forwarded this email to the Appellant Landlord.

When questioned by the Tribunal, the parties admitted that they had never replied to this email. They told the Tribunal that as the Respondent Tenant had not indicated a specific date on which he intended to vacate the dwelling, they had not considered his email to be a notice of termination of the tenancy.

The Appellant Landlord said that the Respondent Tenant subsequently moved out in April 2009 but that he did not communicate this to either the Appellant Landlord or the Agent. He left his brother in occupation of the dwelling until 16 May 2009, when keys were returned to the Agent.

The Agent furnished evidence that she carried out an inspection of the dwelling on 18 May 2009 and found it to be damaged beyond normal wear and tear. She prepared a report, a copy of which was furnished to the Tribunal. She told the Tribunal that she had indicated to the Respondent Tenant that she had forwarded the report to the Landlord and was awaiting his instructions before refunding any deposit.

Having received the report the Appellant Landlord said he personally inspected the property and found there to be excessive stains on the carpet, tea stains on the wall, cigarette butts between the mattress and the base of the bed, a broken headboard, an extra mattress lying against the wall of the bedroom, a number of items belonging to the Respondent Tenant left on the balcony, a puncture hole in the wall and grease marks and waste lying in the kitchen.

The Appellant Landlord told the Tribunal that the property could not be re-let in the condition it was in and it was necessary for him to engage a number of contractors to assist him in returning the property to a suitable condition for re-letting. He furnished evidence to the Tribunal, in the form of vouched receipts, for a carpet cleaner in the sum of €180, for professional cleaning services in the sum €200, for painting and repair work in the sum of €378 and for miscellaneous repair items in the sum of €96.47. He also gave evidence that he had engaged a general contractor to dispose of waste at a cost of €300, which included the entrance fee to the dump. No receipt was furnished for this expense but uncontested sworn evidence was given by both the Appellant Landlord and his Agent that this expense had been incurred.

The Appellant Landlord made a claim that he was entitled to all the rent due under the fixed term Lease dated 12 September 2008, from the date the keys were returned on 16 May 2009 to the expiry of the Lease on 8 September 2009, as the property was not re-let during this time.

The Tribunal advised the Appellant Landlord that he had duty to mitigate his loss in a situation where a Tenant terminates a fixed term tenancy early and to re-let the property as soon as practicable. The Tribunal then questioned the Landlord as to why it took him so long to re-let the dwelling.

The Appellant Landlord indicated that he had found it difficult to arrange the various contractors to come out to the dwelling to carry out the necessary work and that it had taken him until September to get the necessary works done.

Respondent Tenant's Case:

The Respondent Tenant did not attend the hearing and was not represented by any party.

6. Findings of the Tribunal and Reasons Therefor:

Having considered all of the documentation before it and having considered the evidence presented to it by the parties, the Tribunal's findings and reasons therefore are set out hereunder.

1. Based on the uncontested sworn evidence furnished by the Appellant Landlord, the Tribunal finds the dwelling was damaged by the Respondent Tenant beyond normal wear and tear, giving rise to costs incurred by the Landlord in the sum of €1,154.47. This sum includes €180 for carpet cleaning, €200 for professional cleaning services, €378 for painting and repair work, €96.47 for miscellaneous repair items and €300 for waste disposal. All expense items were vouched in the form of receipts save for the waste disposal costs which the Tribunal accepts were incurred by the Appellant Landlord, on the basis of uncontested sworn evidence furnished by the Appellant Landlord and the Agent. The Respondent Tenant had a duty not to do any act that would cause deterioration in the condition of the dwelling beyond normal wear and tear.
2. The Tribunal finds the Respondent Tenant breached a 12 month fixed term tenancy agreement by vacating the property 4 months before the expiry of the fixed term. The Appellant Landlord had a duty to mitigate his loss by re-letting the dwelling as soon as practicable. Based on the evidence furnished in respect of the damage, the Tribunal finds that the Appellant Landlord could have mitigated his loss by carrying out the repairs in a shorter period of time to allow the property to be re-let earlier. As such the Tribunal finds the Respondent Tenant is liable for rent of €2,400, being 2 months rent due under the fixed term tenancy agreement. The Tribunal does not award the full amount of rent outstanding for the remaining 4 months of the fixed term tenancy agreement.

7. Determination:

Ref: TR172/2011/DR1286/2010

In the matter of Christie O'Reilly and Anne O'Reilly (Appellant Landlord) and Austin Rogers (Respondent Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

- The Respondent Tenant shall pay the sum of €2,454.47 to the Appellant Landlord within 28 days of the date of issue of this Order, being rent due of €2,400 arising from the early termination of the fixed term tenancy, plus €1,154.47 in respect of damage to the property beyond normal wear and tear, in respect of the tenancy of the dwelling at Apt. 26 Riverdale, Dargle Road, Bray Co. Wicklow having allowed for the deposit of €1,100.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 15th day of February 2012

Signed:

Ciara Doyle
Chairperson
For and on behalf of the Tribunal