

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

**Report of Tribunal Reference No: TR173/2011 /DR163/2011 Case Ref No:
DR163/2011**

Appellant Tenant: Lisa Evans

Respondent Landlord: Martin Carway

Address of Rented Dwelling: 586 Aras Na Cluaine, Clondalkin, Dublin 22

Tribunal: Eoin O'Sullivan (Chairperson)
Finian Matthews
Nesta Kelly

Venue: Tribunal Room, Private Residential
Tenancies Board, O'Connell Bridge House,
D'Olier Street, Dublin 2.

Date of Hearing: 24 January 2012 at 2.30 p.m.

Attendees:

For the Appellant: Lisa Evans

For the Respondent Jana Keane (Keane and Thompson Property
Consultants) representing the Landlord
Martin Carway

In Attendance: Gwen Malone Stenographers

1. Background:

1. On 19 January 2011, the Landlord made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act in relation for payment of rent arrears in respect of the Tenant’s occupation of the dwelling. The matter was referred to an Adjudication, which took place on 9 June 2011. The Adjudicator’s report dated 15 June, 2011, including her Findings of Fact and Determination in relation to the dispute was sent to both parties. The Adjudicator determined that the Landlord’s claim for payment of the arrears of rent from 1 June 2010 to 31 January 2011 in the amount of €6,400 was upheld, and that the Tenant pay the sum of €5,600, being the rent arrears of ~~€500~~€500, less justifiably retained security deposit of €800 to the Landlord at the rate of €100 per month. Subsequently a valid appeal was received by the PRTB from the Tenant on 15 July 2011, the grounds of the appeal being that the Tenant was not aware that she had to service written letter of termination of tenancy and that she was not in a position to pay the rent arrears .
2. On 20 July 2011, the PRTB constituted a Tenancy Tribunal and appointed Eoin O’Sullivan, Finian Matthews and Mary Doyle as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Eoin O’Sullivan to be the chairperson of the Tribunal (“the Chairperson”). Mary Doyle was later substituted by Nesta Kelly.
3. On 24 August 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 24 January 2012, the Tribunal convened a hearing at 2.30 p.m. at Tribunal Room, Private Residential Tenancies Board, 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:

- No additional documents were submitted

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 those who appealed (the Appellant) would be invited to present her 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. He 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 final a 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 €4,000 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 hearing commenced with the Appellants case.

5. Submissions of the Parties:

Appellant Tenant’s Case:

The Tenant gave evidence to the Tribunal that she had commenced occupancy of the dwelling on 1 February 2010 at a monthly rent of €800 and had also paid a security deposit of €800, having signed a one year lease agreement. She vacated the dwelling in early August 2010 having informed, via a number of telephone conversation’s, the Landlord’s agent of her intention to do so due to the unsuitability of the dwelling for her and her children due to the anti-social behaviour in the vicinity of the dwelling. Furthermore, evidence was given to the Tribunal by the Appellant that she had received a notice from Dublin Fire Brigade that the dwelling was uninhabitable, but this notice was not submitted to the Tribunal. The Appellant Tenant gave evidence that she had paid a portion of her rent in June and July, a sum of €200 per month, and that stated that her security deposit would cover the month of August and therefore she did not believe that there were any arrears of rent. The reason why the full rent was not paid in June and July was that her rent allowance cheques were stolen.

Respondent Landlord’s Case:

The Respondent Landlord, via his agent, Jana Keane, gave evidence to the Tribunal that no rent was received from the Appellant Tenant for the period June 2010 to January 2011 inclusive, a period of eight months, leaving rent in arrears in the amount of €6,400. The security deposit of €800 was retained by the Landlord, leaving an outstanding balance of €5,600. The Landlord's Agent gave evidence to the Tribunal that she had not received a Notice of Termination from the Tenant. The Landlord's agent checked the dwelling in early October, as rent was not received, and it was ascertained that the Tenant had vacated. The dwelling required renovation before it could be placed back on the market and new tenants were not secured until February 2011.

6. Findings of the Tribunal and Reasons Therefor:

The tenancy created was a fixed term tenancy of one year, commencing on 1 February 2010 and expiring on 31 January 2011, at a monthly rent of €800. Based on the evidence before it, the Tribunal is satisfied that the Tenant vacated the dwelling in early July 2010. The Tenant gave evidence that she had given Notice to the Landlord's agent in a telephone conversation, a conversation that the agent denied had occurred. Such a notice is not valid as a notice must be in writing in relating to a fixed term tenancy unless otherwise provided for. Notice can only be given for breach of obligations or where consent under S.186 of the Act is refused. Therefore the tenancy continued until it expired on 31 January 2011. Once the Landlord became aware that the Tenant had vacated the dwelling, the Landlord is obliged to mitigate his loss and the Tribunal is satisfied that this obligation was complied with, but that new tenants were not acquired until after the lease period expired. On this basis, the Appellant Tenant is therefore liable to pay the rent for the eight months between the beginning of June 2010 and the end of January 2011 at the rate of €800 per month, being €6,400 less the deposit retained of €800, a net liability of €5,600. There was no evidence before the Tribunal that the Appellant Tenant paid the sum of €200, as part rent payment, in June and July 2010.

7. Determination:

Ref: TR173/2011 /DR163/2011

In the matter of Lisa Evans (Appellant Tenant) and Martin Carway (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Tenant shall pay the total sum of €5,600 to the Respondent Landlord, within 28 days of the date of issue of this Order, being rent arrears of €6,400, less the justifiably retained security deposit of €800, in respect of the tenancy of the dwelling at 586 Aras Na Cluaine, Clondalkin, Dublin 22.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 23rd day of February 2012.

Signed:

Eoin O'Sullivan Chairperson

For and on behalf of the Tribunal.