

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR179/2011 /DR268/2011. Case Ref No: DR268/2011

Appellant Tenants: Feargal de Buiteleir and Megan Ni Ghabhlain

Respondent Landlords: Brian Kelly, Dora Kelly and Michael Kelly.

Address of Rented Dwelling: 15A Isoldes Tower, Lower Exchange Street,
Dublin 2. ("the Dwelling")

Tribunal: John Lynch (Chairperson)
Dervla Quinn
Jim Bridgeman

Venue: PRTB, Floor 2, O'Connell Bridge House,
D'Olier Street, Dublin 2.

Date of Hearing: 14th February 2012 at 2.30 p.m.

Attendees:

For the Appellant Tenants: Feargal de Buiteleir (Tenant)

For the Respondent Landlords: Brian Kelly (Landlord)
Karen Kelly (Witness)

In Attendance: Gwen Malone Stenographers

1. Background:

1. On the 8th day of February 2011 the Tenants made an application dated the 3rd day of February 2011 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 the 23rd day of June 2011. The Adjudicator determined that the Applicant Tenants application regarding deposit retention was not upheld in respect of the tenancy of the Dwelling. Subsequently a valid appeal was received from the Tenants by the PRTB on the 19th day of July 2011.
2. On the 27th day of July 2011 the PRTB constituted a Tenancy Tribunal and appointed John Lynch, Dervla Quinn and Jim Bridgeman as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Lynch to be the chairperson of the Tribunal (“the Chairperson”).
3. On the 23rd day of 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 the 14th day of 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. Document submitted at the hearing:

The Respondent Landlord with the Appellant Tenant’s consent submitted a copy letter from The Post Mistress Newcastle P.O. dated 14th February 2012.

4. Procedure:

The Chairperson asked the Parties present (and their witnesses) 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 person who appealed (the Appellant) would be invited to present their case first including his witnesses; that

there would be an opportunity for cross-examination by the Respondent; 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. He said that members of the Tribunal might ask questions of both Parties from time to time.

The Chairperson explained that following this, the Appellant and the Respondent 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 €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.

Prior to the commencement of evidence on questioning by the Tribunal the Respondent Landlord said the correct Landlord was Brian Kelly, Dora Kelly and Michael Kelly and not just Brian Kelly and the proceedings were amended accordingly.

The Parties agreed that the tenancy commenced on 31st October 2009 and terminated on the 7th November 2010, the rent was €1200 per month and a deposit of €1200 was paid by the Tenants. It was also agreed that the rent was fully paid to the date of termination.

The hearing commenced with the Appellant Tenants' case.

5. Submissions of the Parties:

Appellant Tenants' Case:

The Appellant Tenant relied on his claim as submitted to PRTB (TS22 to TS25 on the file). He said that the Respondent Landlord returned €300 of the deposit but retained €900 for ESB arrears.

He said ESB bills came to the Dwelling but as they were not addressed to him he did not open them but forwarded them on to the Respondent Landlord. He confirmed he never paid any ESB bills during the tenancy and had on numerous occasions requested the Respondent Landlord to sign over the ESB account to the Tenants names and he would pay them, but this was never done.

He stated that the person in whose name the account is liable for the bills and if the bills were furnished to him regularly he would have paid them.

The Tribunal referred him to clause 2.6 of the letting agreement dated 31st day of October 2009 which the Tenants signed and under which the Tenants agreed "to pay promptly all accounts for the supply of electricity..." but the Appellant Tenant denied liability as the ESB account was not in their names.

Respondent Landlords Case:

The Respondent Landlord said the Appellant Tenants were liable for ESB, never paid anything towards the bills and believe that more than the €900 he retained was due by the Appellant Tenants. He referred to Invoices on file and in particular TS50 which showed a credit payment of €600 and a balance due of €422.82 making a total of €1022.82 and they only retained €900.

In cross examination the Appellant Tenant put it to him there was never any reference to ESB bills there were no bills issued in their names and the account was not in their names either.

The Respondent Landlord's witness gave evidence of paying the ESB as per Invoice TS50 and took meter readings with the Appellant Tenants when they were leaving.

Respondent Landlord's Submission:

The Respondent Landlord apologised for not having receipts for ESB but only invoices. He said the Appellant Tenants were liable for ESB and were trying to get off paying on a technicality. He said he was entitled to retain more than the €900 but was prepared to forget about the rest.

Appellant Tenants' Submission:

The Appellant Tenant submitted the Respondent Landlord was not entitled to retain €900 of the deposit without furnishing a bill or receipts. He denied liability for the ESB as there was no bill in his name and also disputed that the lease made him liable for ESB bills.

6. Findings of the Tribunal and reasons therefor:

Having considered all of the documents before it including the report of the adjudication dated the 5th day of July 2011 and having considered the evidence presented to it by the parties the Tribunal's findings and the reasons therefor are set out hereunder:

Finding

The Tribunal FINDS that the Appellant Tenants are liable for ESB consumed during their tenancy and on the evidence submitted same would appear to come to at least €1022.82 (see TS 50) and on the balance of probabilities is unlikely to be less than the €900 retained by the Respondent Landlords from the deposit and accordingly the Appellant Tenants Appeal must fail.

Reasons.

The Appellant Tenants are liable for ESB consumed during their tenancy whether or not the ESB account is in their names. The letting agreement dated 31st day of October 2009 and in particular clause 2.6 makes the Tenants liable for all accounts for the supply of electricity to the Dwelling. The Appellant Tenants are not liable to the ESB for same but are liable to the Respondent Landlords.

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7. Determination:

In the matter of Feargal de Buiteleir and Megan Ni Ghabhlain (Appellant Tenants) and Brian Kelly, Dora Kelly and Michael Kelly (Respondent Landlords) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

- The Respondent Landlords are entitled to retain ~~€900~~ of the €1,200 security deposit towards ESB charges pursuant to clause 2.6 of the letting agreement dated 31 October 2009 signed by the parties in respect of the tenancy of the dwelling at 15A Isoldes Tower, Lower Exchange Street, Dublin 2.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 21st day of February 2012.

Signed:

John Lynch Chairperson
For and on behalf of the Tribunal.