

# RESIDENTIAL TENANCIES ACT 2004

## Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR193/2011/MR1649/2010

Case Reference No: MR1649/2010

Appellant Tenant:	Karam Wadie
Respondent Landlord:	Elaine McCarthy
Address of Rented Dwelling:	27, Ardmore Lawn, Bray, Co.Wicklow (referred to as the 'dwelling' in this report)
Tribunal:	Finian Matthews (Chairperson) Vincent P Martin Mary Heaslip
Venue:	Tribunal Room, Private Residential Tenancies Board, Floor 2 O'Connell Bridge House, D'Olier Street, Dublin 2.
Date and Time of Hearing:	8 March 2012 at 2.30 p.m
Attendees:	
For the Appellant:	Karam Wadie (Tenant)
For the Respondent:	Elaine McCarthy (Landlord) Paul Murphy (Witness)
Also in Attendance:	Gwen Malone Stenographers. Samira Dirya, PRTB appointed interpreter

## **1. Background:**

On 14 September 2010 the Appellant Tenant made an application for dispute resolution services to the Private Residential Tenancies Board (referred to as “the PRTB” in this report).

Pursuant to section 93 of the Residential Tenancies Act, 2004 (referred to as “the Act” in this report) the PRTB arranged for the matter to be the subject of mediation, which mediation took place on 20 May, 2011 in the presence of the Tenant and the Landlord. No agreement was reached by the parties at mediation.

On 29 July, 2011 the Appellant Tenant requested the PRTB to refer his case to a Tribunal.

The PRTB at a Board meeting on 11 August, 2011, approved referral of the Appellant Tenant’s case to a Tribunal. In accordance with Sections 102 and 103 of the Act, the PRTB constituted such a Tenancy Tribunal and appointed Finian Matthews, Vincent P Martin and Mary Heaslip as Tribunal members. The Board appointed Finian Matthews to be the Chairperson of the Tribunal (referred to as “the Chairperson” in this report). On 8 February, 2010 the parties were notified of the constitution of the Tribunal, were provided with details of the date, time and venue set for the hearing and were provided with a copy of the Tenancy Tribunal Hearing Procedures.

On 8 March, 2011, the Tribunal convened a hearing at 3.00 p.m at the offices of the PRTB, Floor 2, O’Connell Bridge House.

The grounds for the appeal before the Tribunal were that in the view of the Appellant Tenant, he was entitled to the repayment of the balance of his deposit i.e. €525 following the termination of the tenancy.

## **2. Documents Submitted prior to the Tribunal Hearing:**

The PRTB file

## **3. Documents Submitted at the Hearing Included:**

None

## **4. Procedure**

The Chairperson welcomed the Parties to the Tribunal and stated that it had been established to hear an appeal by the Appellant Tenant following mediation held on 20 May, 2011, in the case of a dispute between the Tenant and the Landlord in respect of a tenancy at 27 Ardmore Lawn, Bray, Co. Wicklow. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. 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 and understood the PRTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so. The Chairperson said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present and that a transcript of the proceedings would be produced based on that audio recording. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €3,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenant would be invited first to present her case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present her case, followed by an opportunity for cross-examination by the Appellant Tenant. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant Tenant and the Respondent Landlord would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

All persons giving evidence to the Tribunal were then sworn, as was the Interpreter.

## **5. Matters agreed between the Parties**

Before taking submissions from the parties the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

- The tenancy commenced on 15 April, 2010
- The term of the tenancy specified in the letting agreement was 12 months
- The tenancy terminated on 14 June, 2010
- The rent was €1050 per month
- The Respondent Tenant paid a deposit of €1050

Both parties accepted that they were in agreement in relation to the foregoing matters.

The Appellant Tenant was invited to open his case.

## **6. Submissions of the Parties:**

### **Appellant Tenant's Case:**

The Appellant Tenant said that he had some initial difficulty with appliances in the dwelling, such as the cooker and dishwasher which he brought to the attention of the Respondent Landlord. He said that in the early part of the tenancy he had lived alone in the dwelling because his family had gone abroad for a funeral. One day when he returned from work he said that the toilet was not clean, which meant that someone had entered the house in his absence. After that he said he placed paper behind a door on 3 occasions before he left for work and each time he returned from work the paper had been moved. He added that he had also placed money on the floor which was gone when he got home from work. As a result of the foregoing he felt that the dwelling was unsafe to live in and he said he informed the Respondent Landlord that he wished to leave the dwelling. He said that he moved his luggage from the dwelling to his local church and only slept in the dwelling on a small number of occasions until the tenancy ended on 14 June.

The Appellant Tenant said he never raised his concerns about possible intrusion into the dwelling in his absence at work with the Respondent Landlord. He added that when he told the Landlord that he wished to leave the dwelling she agreed to this, but that when the Landlord's husband (the witness) came to collect the keys, he told him he was not getting the keys back until he, the Appellant Tenant, got his deposit back. He said he spoke to the Landlord's husband a number of times after that, each time insisting on the return of his deposit before handing over the keys.

The Appellant Tenant said that he met the Landlord's husband by arrangement at the dwelling on the morning of 15 June. He said he handed over the keys and was given a cheque for €525. He said he immediately took the cheque to a local bank for cashing, but was informed at that stage that payment on the cheque had been stopped. The Appellant Tenant also agreed that at no stage had he ever informed the Respondent Landlord of the exact date on which he intended to vacate the dwelling.

The Appellant Tenant confirmed that at the outset of the tenancy he paid the deposit of €1050 and €525 in rent to cover the period up to the end of April, 2010. He said that he made a further monthly payment of €1050 at the beginning of May, 2010. The Appellant Tenant said that these were all of the payments he made to the Landlord in respect of the tenancy. He agreed that he owed two weeks rent for the period from 1 to 14 June, 2010 and was seeking the repayment of €525 from his deposit, with the balance to be offset against the rent arrears for the first two weeks in June.

### **Respondent Landlord's case**

The Respondent Landlord confirmed that the tenancy started on 15 April, 2010. She said that the Appellant Tenant paid the security deposit of €1050, but told her he had insufficient funds to pay the first full month's rent. Instead he paid €525 to cover the rent up to end of April, 2010. She added that at the beginning of May, 2010 the Appellant Tenant paid a further month's rent to cover rent up to end of May. She said that relations with the Appellant Tenant were good at the start of the tenancy but deteriorated quickly. She said that in the early weeks of the tenancy she received a number of complaints from the Appellant Tenant in relation to the shower head in the bathroom, weeds in the driveway leading up to the dwelling, dust on the seams in the sofa, unsafe sockets and a smell in the dwelling. She added that the Tenant indicated that he wished to have a gas cooker installed, rather than the electricity already installed. She said she offered to share the cost of having gas cooking installed with the Appellant Tenant, but this never came to anything. She also said that she responded quickly to any complaint made by the Tenant, and arranged for example for fire cementing and also to have the boiler serviced and for a new element in the immersion tank. The Respondent Landlord said that the Appellant Tenant never seemed to be satisfied with anything she arranged to have done and was constantly complaining.

The Respondent Landlord also said that she told the Appellant Tenant that she was willing to accept the termination of the tenancy, but she required one month's notice. She said that she thought he was leaving at the end of May, but that when she contacted him at the end of May he said he still wasn't sure when he was leaving. She added that she was always willing to refund the deposit, if she got a month's notice of termination.

The Respondent Landlord added she had received indications that the Appellant Tenant intended to leave the dwelling on 14 June. She said that her husband (the witness) called to the dwelling several times that day, but was told each time by the Appellant Tenant that he wasn't ready to leave yet. She said that her husband eventually arranged to meet the Tenant at the dwelling the following morning, at which point the tenant was given the cheque for €525. She said that the Tenant was given the cheque for the purposes of getting him out of the dwelling, but that following the handover of the cheque she then cancelled it. She felt that there was no other way to get the tenant out and regain possession of the keys to the dwelling.

The Respondent Landlord also said that after a number of weeks dealing with the Appellant Tenant's complaints she could not deal with him any longer and asked her husband (the witness) to take over. She also said that the Appellant Tenant went to her parents' house, who lived nearby, seeking the return of his deposit, upon which she instructed him not to do so again. She added that the Appellant Tenant was aggressive and shouted abuse in seeking his deposit back. She also said that at one point the Appellant Tenant had dialled 999 asking the Gardai to come to the dwelling, but that he had left the area of the dwelling by the time the Gardai arrived.

The Respondent Landlord also said that she had asked the Tenant to clean the fridge and the cooker in the dwelling at the end of the tenancy. She said also that it had taken 2 days to clean up the dwelling, but that she was making no claim in that regard. She was of the view she said that she was entitled to retain the deposit to cover the two week period for which no rent was paid and in respect of the tenant's failure to give any notice of termination of the tenancy.

The Respondent Landlord's witness told the Tribunal that the Appellant Tenant had been accepted by them initially on the basis that he told the Respondent Landlord that he was willing to rent the dwelling for a period of up to 4 years. He said that he had a good relationship with the Appellant Tenant at the beginning of the tenancy and had even helped the Appellant Tenant to move to the dwelling from his previous accommodation. The witness added that from an early stage in the tenancy the Respondent Landlord started to receive complaints from the Appellant Tenant, which he responded to immediately. He cited examples such as a faulty socket on the landing, which he tested and found to be working normally; faulty downstairs sockets which he also tested and found to be in working order. In relation to the alleged smell in the house, he found that he could detect no such smell. When the tenant suggested that the smell could be due to carbon monoxide he offered to install a carbon monoxide monitor, but he said that when he arrived at the dwelling to install the monitor, the Appellant Tenant would not allow him to do so. The witness also said that he tried to establish from the Appellant Tenant if he wished to stay in the dwelling or not, but was never able to get a definite answer to that question. He reiterated that he told the tenant that if he wished to terminate the tenancy the Respondent Landlord would require a month's notice.

The witness also said that while the Appellant Tenant had been making it clear that he wanted to move from the dwelling, he had never at any stage specified a termination date for the tenancy, either orally or in writing. The witness also said that when he called to the dwelling on 14 June 2010 it was still not clear whether or not the Appellant Tenant intended to vacate the dwelling. He added that he was of the view that he had done everything he could to respond to any complaints made by the tenant. He confirmed that no written notice of termination was ever received from the Appellant Tenant. The witness said that he also told the tenant that in staying on in the dwelling after 1 June, 2010, the Appellant Landlord would be entitled to deduct any rent accruing from the Tenant's deposit.

The Chair thanked both parties for attending and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the PRTB of that Determination.

## **7. 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 therefor are set out hereunder.

**Finding:** The Tribunal finds that the Respondent Landlord was not in breach of any of her obligations under the Act.

**Reasons:** The Tribunal accepts the evidence of the Respondent Landlord to the effect that any complaints about the dwelling, brought to the attention of the Respondent Landlord by the Appellant Tenant, over the course of the first few weeks of the tenancy, were either trivial in nature or were unsubstantiated. The Tribunal is further satisfied that the Respondent Landlord responded promptly and appropriately to any complaints that were brought to her attention.

**Finding:** The Respondent Landlord is lawfully entitled to retain the sum of €525 in respect of un-paid rent for the period from 1 June 2010 to 14 June 2010 from the Appellant Tenant's deposit of €1,050

**Reasons:** The Appellant Tenant was required under the provisions of section 16 (a) of the Act to pay to the Respondent Landlord the rent provided under the tenancy agreement on the date it fell due for payment. Where, as in this case, there was a failure on the part of the Appellant Tenant to comply with that requirement, the Respondent Landlord was entitled in accordance with section 12(4)(b) of the Act to deduct any rent that was in arrears from the Appellant Tenants security deposit.

While the Appellant Tenant paid the rent due for the period from 15 April 2010 to 30 April 2010 and for the month of May 2010, he failed to pay the rent due for the period from 1 June 2010 to 14 June 2010, on which date it was agreed by both parties the tenancy terminated. Both parties also agreed at the Tribunal Hearing that the amount of rent due in respect of the period from 1 June 2010 to 14 June 2010 was €525

**Finding:** The Tribunal finds that the tenancy was unlawfully terminated by the Appellant Tenant.

**Reasons:** The Respondent Tenant freely entered into a fixed term tenancy of 12 months duration, based on a written tenancy agreement signed by both parties, with no break clause. If the Appellant Tenant had wished to terminate the tenancy by reason of any alleged failure on the part of the Respondent Landlord to comply with any obligations of the tenancy he was first required under the provisions of sub-section (3) of section 68 of the Act, to notify the landlord in writing of the alleged failure and to afford the landlord a reasonable time after being so notified to remedy any such failure. The Appellant Tenant did not serve any such notice on the Respondent Landlord at any time between the date the tenancy commenced on 15 April, 2010 and 14 June 2010, the date on which the tenancy terminated. Furthermore and contrary to the requirements of the Act, no written notice of termination of the tenancy was ever given to the Respondent Landlord by the Appellant Tenant. As no valid, or any, notice of termination was ever served by the Appellant Tenant, no entitlement on the part of the Appellant Tenant to terminate the tenancy was ever established.

**Finding:** The Tribunal finds that the Respondent Landlord, having made appropriate efforts to mitigate the losses accruing to her as a result of the early termination of the fixed term tenancy entered into between her and the Appellant Tenant, would in the normal course be entitled to be re-compensated by the Respondent Tenant for loss of rent in lieu of the 28 day written notice the tenant was required to serve, having first complied with the provisions of section 68(3) of the Act. The Tribunal also finds that the Appellant Landlord would in addition be entitled to be re-compensated for any further loss of rent up to the date on which the dwelling was re-let at the same level of rent as that payable by the Appellant Tenant.

The Tribunal was advised by the Respondent Landlord, however, that she wished to limit her claim for compensation in respect of losses incurred by her as a result of the early termination of the tenancy to an amount of €525, being the balance of the Appellant Tenant's deposit, it having been agreed by the parties that the Respondent Landlord was also entitled to deduct €525 from the deposit to cover rent for the period from 1 June to 14 June 2010. The Tribunal upholds the Respondent Landlord's claim with regard to the balance of the deposit.

**Reasons:** The Tribunal notes that shortly after the Appellant Tenant terminated the tenancy without notice, the Respondent Landlord put the dwelling back on the market and succeeded in attracting a new tenant within a period of approximately six weeks. The Tribunal is satisfied therefore that the Respondent Landlord took appropriate measures to mitigate the losses incurred by her as a result of the early termination of the tenancy.

## **8. Determination**

REF: TR193/2011/MR1649/2010

In the matter of Karam Wadie, Appellant Tenant and Elaine McCarthy, Respondent Landlord, the Tribunal in accordance with section 108(1) of the Act, determines that:

The security deposit of €1,050 paid by the Appellant Tenant has been justifiably retained by the Respondent Landlord in respect of the tenancy of the dwelling at 27 Ardmore Lawn, Bray, Co.Wicklow.

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

Signed:

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Finian Matthews, Chairperson  
For and on behalf of the Tribunal.