

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference	TR 194/2011 Case Ref. DR 360/2011
Appellant Tenants	Nicola Healy and Eamon O’Grady (“Appellant Tenants” or “Tenants”)
Respondent Landlord	Irene Reilly and Brian Reilly (“Respondent Landlords” or “Landlords”)
Address of Rented Dwelling:	5 Talbot Court, Millview Road, Malahide, County Dublin. (“Dwelling”)
Tribunal:	James Bridgeman (Chair) Charles Corcoran Mary Doyle
Venue:	Tribunal Room, Private Residential Tenancies Board, 2 nd Floor, O’Connell Bridge House, D’Olier Street Dublin 2.
Date of Hearing:	15 March 2012 at 2.30 p.m
Attendees:	
For the Appellant Tenants:	Nicola Healy, Appellant Tenant Eamon O’Grady, Appellant Tenant Sabrina Harrison, witness
For the Respondent Landlords:	Irene Reilly, Respondent Landlord

Brian Reilly, Respondent Landlord
Joseph Bolger, representing the Respondent
Landlords

In Attendance:

Gwen Malone Stenographers

1. Background

1.1 On 24 April 2010, the Tenants made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act. The matter was referred to adjudication. David Duncan was appointed adjudicator and made a paper-based adjudication on 16 July 2011. 1,2 The Adjudicator determined that “[t]he Respondent Landlords shall pay the total sum of €207.50 to the applicant tenants, within 14 days from the issue of the determination order, being the part of the unjustifiably retained security deposit of €2,000, the sum of €192.50 having been already paid by the respondent landlords in respect of the tenancy at the dwelling at 5 Talbot Court, Millview Road, Malahide, Co. Dublin.

1.3 A Notice of Appeal dated 29 July 2011 was filed by the Appellant Tenants and received by the PRTB on 3 August 2011. The grounds of appeal were that the adjudicator did not accept the Appellant Tenant’s claim for the cost of heating oil.

1.4 On 11 August 2011 the PRTB constituted a Tenancy Tribunal and appointed James Bridgeman, Charles Corcoran and Mary Doyle as Tribunal members pursuant to Section 102 and 103 of the Act. James Bridgeman was appointed as chairperson of the Tribunal (“the Chairperson”).

1.5 On 9 September 2011 the Parties were notified of the constitution of the Tenancy Tribunal.

1.6 On 20 February 2011 the Parties were notified of the date, time and venue set for the hearing which was scheduled for 15 March 2012.

1.7 On the 15 March 2012, the Tribunal convened a hearing at 2.30 a.m. at the Private Residential Tenancies Board, D'Olier Street, Dublin 2

2. Documents submitted prior to the hearing included:

2.1 The Tribunal was furnished with the following documents prior to the Hearing:

- PRTB file

3. Document submitted at the hearing:

3.1 The following documents were submitted at hearing:

3.2 The Appellant Tenants submitted the following documents:

- An unsigned Letting Agreement, and
- A photograph of a damaged radiator cover.

3.3 The Respondent Landlords submitted the following documents

- a print out of weather data from the Meteorological Office;
- photographs taken by Brian Reilly, Respondent Landlord.

4. Procedure:

4.1 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".

4.2 He explained the procedure which would be followed; that the Tribunal was a formal procedure but that he would endeavour to ensure that it was as informal as possible; that the Appellant Tenants would be invited to give evidence and present their case first including their witness; that there would be an opportunity for cross-examination by the Respondents' representative; that the Respondent Landlords would then be invited to give evidence and present their case, and that there would be an opportunity for cross-examination by the Appellants. He said that members of the Tribunal might ask questions of both Parties from time to time.

4.3 The Chairperson explained that the Parties would be invited to make final submissions at the end of the hearing and that the Appellant Tenants would have the last word.

4.4 He stressed that all evidence would be taken on Oath and recorded by the official stenographer present and he reminded the Parties that knowingly to provide false or misleading statements or information to the Tribunal was an offence.

4.5 He informed the Parties that following 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].

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

4.7 The hearing commenced with the Appellant Tenants' case.

5. Issues in Dispute

5.1 The Parties confirmed that the following issues were in dispute and to be determined by this Tribunal:

5.2 The Appellant Tenants claimed:

- Compensation for pressure and stress;
- Compensation for the cost of heating oil;

- Interest on the monies paid by the Tenants for heating oil.

5.3 The Respondent Landlords claimed:

- The cost of cleaning of the Dwelling on termination of the Tenancy;
- Compensation for alleged damage to a radiator cover;
- Compensation for alleged prior termination of the Tenancy by the Tenants.

6. Agreed Facts

6.1 The following facts were agreed by the Parties.:

6.2 The Tenancy of the Dwelling commenced on 2 August 2010.

6.3 The Tenancy terminated on 1 February 2011.

6.4 There was a Letting Agreement which provided that:

- the Tenancy was for a fixed term of 12 months expiring on 1 August 2011
- there was a “Break Clause Option” expressed to be “after 6 months less 1 day lapsing on 1 February 2011
- either Party was entitled to exercise this Option by giving not less than 28 days notice in writing to be received no later than 4 January 2011.
- the rent was €2,000.00 per month payable in advance without deduction “on or before the 2nd day of each month”.

6.5 The Special Conditions expressly provided that:

- the oil tank was to be left full when the Tenants vacated the property;
- the day to day maintenance of the garden was the responsibility of the tenant.

6.6 The Appellant Tenants paid the security deposit of €2.0000.00 at the commencement of the Tenancy.

6.7.1 The oil tank was not checked by the Appellant Tenants, the Respondent Landlords or their agents when the Tenancy commenced.

6.7.2 The previous tenants had paid €249.98 for a delivery of 316 litres of oil on 13 July 2010.

6.7.2 The Appellant Tenants paid €856.04 for a delivery of 1,284 litres of heating oil on 18 November 2010.

6.7.3 The Appellant Tenants left the tank for the heating oil full when they vacated the Dwelling.

6.7 All rent was paid in a timely manner up to date on termination.

6.8 On termination of the Tenancy, the Respondent Landlords refunded only €1,792.00 of the security deposit of €2,000.00 and retained the balance of €207.50 from the security deposit. The Respondent Landlords claimed to be entitled to retain the balance of €207.50 being €108.90 for professional leaning costs and €98.60 in respect of damage to a radiator cover. [It should be noted that the Appellant Tenants denied that the Landlords were entitled to retain any of the security deposit].

7. Submissions of the Appellant Tenants

7.1 Ms Nicola Healy, Appellant Tenant, testified that there was a number of problems with the house when the Tenants went into occupation on 2 August. Among her complaints was that the house had not been professionally cleaned and the sink continuously blocked. She accepted the house in the condition that she found it and the Tenants cleaned it themselves to their own satisfaction but she complained to the Landlord's agent Ms Sabrina Harrison of Murphy Moore Property Services. Ms Harrison agreed that it would not be necessary for the Tenants to arrange for a professional cleaning when they vacated the premises.

7.2 The Tenants understood that the oil tank was full when the Tenancy commenced. There was no dip-stick provided for the oil tank. The Tenants did not inspect the oil tank when they went into occupation. The oil ran out in 8 weeks and the Tenants paid €856 for a fill.

7.3 She complained to the Landlord's agent that the oil tank could not have been full when the Tenancy commenced. There had not been excessive use of the central heating in the months of August and September. She lit a fire some of the evenings and in fact the man who delivered the oil had commented that the tank could not have been full in August. Ms Harrison made enquiries of the previous tenants and ascertained that the previous tenant had only put oil to a value of €249.98 when they vacated. Ms Harrison assured the Tenants that the Landlords would pay the difference between the cost of a full tank and €249.98 at the end of the Tenancy.

7.4 When the Tenancy terminated the Landlord refused to pay the balance as agreed and instead offered to pay half the value of the oil.

7.5 Ms Healy denied that the Tenants or their children broke the radiator cover. She said that she took a photograph of the radiator cover on her in September to show that it was damaged when they went into occupation.

7.6 Mr O'Grady testified that there was a number of problems with the house when the Tenants went into occupation including the fact that the house had not been properly cleaned, there was duct tape on some of the windows and the sink was unusable. He confirmed that there had not been excessive use of the central heating in the months of August and September.

7.7 Ms Harrison was called as a witness by the Appellant Tenants. In the course of her testimony it became apparent that there was a conflict between the evidence of Ms

Harrison and Ms Nicola Healy. In the circumstances, the Tribunal deemed Ms Harrison to be a hostile witness and permitted the Tenants to cross-examine Ms Harrison.

7.8 Ms Harrison, testified that the levels on the oil tank had not been checked when the Tenants went into occupation. When she made enquiries, the previous tenants told her that they had put only €249.98 worth of oil into the tank when they vacated the Dwelling and gave her a copy of the receipt. Ms Harrison did not recall telling Ms Healy that the Landlords would repay the difference between €249.98 and the cost of the full tank of oil at the end of the Tenancy. She did recollect that the Landlord had agreed to “sort it out” at the end of the Tenancy and that she conveyed this message to the Tenants.

7.9 Ms Harrison confirmed that the Tenants had requested the six month break clause in the Letting Agreement.

7.10 The Tenants served a notice of intention to vacate on 14 December and the Tenancy terminated after 6 months.

7.11 After the termination of the Tenancy, Ms Harrison discussed the issue of the payment for the oil with Ms Irene Reilly, Respondent Landlord, Ms Harrison was initially told by Ms Irene Reilly that she would “look at it” and subsequently Ms Reilly agreed to pay half the difference.

8. Submissions of Respondent Landlord

8.1 Ms Irene Reilly, Respondent Landlord testified that she did not inspect the property when the Tenancy commenced. She received a phone call in November from Ms Harrison advising her that the oil had run out and when the Tenants ordered a fill, the man who delivered the oil had said that the tank could not have been full in August. At that stage the information that she had was unclear, and she had a muddled understanding that the Tenants wanted €250.00.

8.2 As she did not know how much oil the Tenants had used at that stage she would have been agreeable to pay half of €250.00. The first time she heard about a sum of €600.00 was when the case was brought before the PRTB.

8.3 She understood that the Tenants would stay for 12 months. The Landlords would not have let the house if they understood that the Tenants were only intending to take it for six months. The Tenants left the house dirty and it took about 2 weeks to organise the cleaning. Cleaning cost €120.00 and the Landlords were at a loss of one month's rent due to the early termination by the Tenants after 6 months.

8.4 When the house was inspected it was apparent that the radiator cover was broken and it was repaired at cost €90.

8.5 Mr Reilly, Respondent Landlord adduced photographs of the house and garden which he took after the Dwelling was vacated by the Tenants.

8.6 The Landlords accepted that the house had not been professionally cleaned before the Tenants went into occupation and that Ms Harrison had agreed with them that it would not be necessary to have the house professionally cleaned at the end of the Tenancy. Mr Reilly said that he would agree to a small contribution towards the cleaning and would bear the cost of work on the garden himself.

9. Findings by the Tribunal and Reasons Therefor.

9.1. Compensation for pressure and stress.

9.2. This Tribunal has no jurisdiction to award damages for stress.

9.2. Compensation for the cost of heating oil

9.3 Ms Harrison acted as the agent for the Landlords. There is a clear conflict in the evidence as to what was agreed between Ms Harrison and Ms Healy regarding the cost of

heating oil in their discussions in November. Ms Healy is convinced that it was agreed that the Landlord would pay the difference between the cost of a full fill of oil at the end of the Tenancy and €250.00. Ms Harrison has no recollection of making this agreement. Ms Reilly testified that she did not agree to any such arrangement.

9.4 This Tribunal finds that all witnesses were truthful and the conflict in evidence was due to a misunderstanding and as there was no written evidence of the communications between the Parties, this Tribunal cannot determine what was in fact agreed.

9.5 Notwithstanding the evidence adduced from the Meteorological Office that the month of August, September and October 2010 were unseasonably cold, this Tribunal finds that on the balance of probabilities the oil tank was not full when the Tenancy commenced and the €249.98 worth of oil that the previous tenants had delivered was a “top-up” rather than a fill.

9.6 It is not possible to determine how much oil was in the tank when the tenancy commenced. The Tenants were responsible for the cost of heating the house, were obliged to leave a full tank at the end of the Tenancy and believed that the oil tank had been left full for them at the commencement of the Tenancy, it is most probable that they would have been economical in their use of the oil. Since the oil ran out after such a short period of time on the balance of probabilities there was not much more than €249.98 worth of oil in the tank when the Tenants went into occupation.

9.7 It was a special condition of the Letting Agreement that the Tenants were obliged to leave the oil tank full when the Tenancy terminated. In such circumstances this Tribunal finds that there was a special obligation on the Landlords to ensure that the oil tank was full when the Tenancy commenced.

9.8 In the circumstances this Tribunal finds that the Tenants are entitled to be compensated for the difference between the cost of a full tank of oil being €856.04 which

should have been there when they entered into occupation and €249.98 which is the probable value of the oil that was there at the time i.e. € 606.06.

9.9 Interest on the monies paid by the Tenants for Heating Oil

9.10 Neither Party has claimed that there was any agreement in respect interest on the monies paid out by the Tenants. In the circumstances this Tribunal makes no award in respect of that claim.

9.11 Cost of cleaning of the Dwelling on Termination of the Tenancy

The Landlords, through their agent, agreed that it would not be necessary to have the Dwelling professionally cleaned at the termination of the Tenancy. The photographic evidence adduced by Mr Reilly shows that the garden had not been cleaned of leaves but in the view of this Tribunal the photographs do not show that the house was unreasonably dirty when the Tenants vacated. Mr Reilly said that he was claiming a contribution towards the cost of cleaning the house but was not pursuing the cost of the garden. In the view of this Tribunal, after a letting of six months it would have been necessary to have the house professionally cleaned before re-letting and in the circumstances this Tribunal finds that the Landlords are not entitled to retain any contribution for cleaning from the security deposit.

9.12 Compensation for Alleged Damage to the Radiator Cover

Ms Healy has testified that the radiator cover was already damaged when the Tenants went into occupation. The Landlords and their agent accept that the Dwelling was not inspected at the commencement of the tenancy. There is no reason not to accept Ms Healy's evidence. In the circumstances this Tribunal finds that the Tenants are not responsible for the damage to the radiator cover and Landlords are not entitled to retain any contribution for damage to the radiator cover from the security deposit.

9.13 Compensation for alleged prior termination of the Tenancy by the Tenants

The Landlords expressly agreed in writing in the Letting Agreement to a “Break Clause Option: After 6 months less 1 day lapsing on 1 February 2011.” The term was specifically negotiated and inserted at the request of the Tenants. In the circumstances their claim for compensation for prior termination must fail.

7. Determination:

Tribunal Reference TR 102/2011 Case Ref. DR 742/2010

In the matter of Nicola Healy and Eamon O’Grady, Appellant Tenants, and Irene Reily and Brian Reilly, Respondent Landlords, this Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

- The Respondent Landlords shall pay the sum of €81450 to the Appellant Tenants within 14 days of the date of issue of the Order made by the Board, being the balance of the security deposit of €207.50 wrongfully retained together with the reimbursement of €606.06 for refill of oil in respect of the tenancy of the dwelling at 5 Talbot Court, Millview Road, Malahide, County Dublin.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 22 March 2012.

Signed:

James Bridgeman, Chairperson

For and on behalf of the Tribunal.