

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR204/2011/DR336/2011  
Case Ref No: DR336/2011

Appellant Tenant Viktoryia Khadoska

Respondent Landlord Fiona Egan

Address of Rented Dwelling: 15 The Dickens, The Gasworks, Barrow Street,  
Ringsend, Dublin 4. ("the Dwelling")

Tribunal: Mary Doyle (Chairperson)  
Liam Nolan  
John Lynch

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

Date of Hearing: 23<sup>rd</sup>. March 2012 at 2.30 p.m

Attendees:

For the Appellant: Victoryia Khadoska – Tenant  
John Sullivan – Witness – Tenant

For the Respondent Fiona Egan - Landlord

In Attendance: Representative of Gwen Malone Stenographers

## **1. Background:**

On 10<sup>th</sup> February 2011 the Applicant Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Residential Tenancies Act 2004 (the Act).

The matters arising from this application were referred to an adjudication which took place on the 29th June 2011. The adjudicator determined that the tenant’s application regarding breach of landlord obligations and standard and maintenance of dwelling in respect of the tenancy of the dwelling was upheld and that the Respondent Landlord shall pay to the Appellant Tenant the sum of €400 within 14 days of the date of the issue of the Order being damages for breach of landlord’s obligations in respect of the rented dwelling Apartment 15, The Dickens, The Gasworks, Barrow street, Ringsend, Dublin, 4.

A valid appeal was subsequently received from the Appellant Tenant by the PRTB on 11th. August 2011.

On 16<sup>th</sup> August 2011 the PRTB constituted a Tenancy Tribunal and appointed Liam Nolan, Mary Doyle and John Lynch as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Mary Doyle to be the chairperson of the Tribunal (“the Chairperson”).

On 24<sup>th</sup>. February 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.

On 23<sup>rd</sup>. March 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**

- None

#### **4 Procedure:**

The Chairperson asked the Parties present 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”. The Chairperson asked the parties if they had read this document and whether there were any questions forthcoming. There were none

The Chairperson explained the procedure which would be followed, that the Tribunal was a formal procedure but that the hearing would be held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present their case and that there would be an opportunity for cross-examination by the Appellant. She said that members of the Tribunal might ask questions of both Parties from time to time.

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. She also advised that a transcript of the evidence could be available from Gwen Malone stenographer, with the consent of the PRTB, for a fee.

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, pursuant to section 123(3) of the Act.

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

Both parties were then sworn.

#### **Matters agreed:-:**

The parties had entered into a lease agreement on 27<sup>th</sup>. November 2009 for a term of 12 months and the rent was €1,200 per month

Deposit of €1,200 was paid by the tenant

The tenancy terminated on 5<sup>th</sup>. March 2011

The remedial works which needed to be attended to were communicated in writing to the Landlord's agent at end of November 2009

The remedial works were completed on 23rd September 2010

## **5. Submissions of the Parties**

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

The Appellant Tenant stated that the dispute arose from a ten month delay by the Landlord in dealing with remedial works which were required in the apartment. She stated that almost immediately when she moved in she noticed that work was needed to remedy the significant degradation to the wooden structure and framework to the balcony door and windows in the living area and to the windows in the master bedroom. This was reported to the Landlord's agent "Dial a Short let". The agent came and took photographs in early December 2009. It was accepted by the agent that remedial works were necessary. The Appellant Tenant stated that due to voids and crevices the apartment was very hard to heat, was uncomfortable to live in, in cold periods, and that because of the voids snails entered into the property in wet weather. She drew the Tribunals attention to numerous emails to Landlord agents between February and June 2010 and was critical of the responses from "Dial a Short Let" stating that they had not responded and if they did so the information was insufficient. She was given several different dates for the completion of the works and all of these fell through.

She stated that she was an excellent tenant, paid her rent on time and kept the apartment in excellent condition whilst residing there.

In September tenant emailed Agent requesting compensation of at least one months rent for distress caused and time consumed. In late September the landlord offered a €100 voucher which was declined by the tenant. In December 2010 the tenant in an email to agent stated that she would accept €400 reduction in rent. The tenant stated that this figure of €400 was not acceptable to the Landlord.

The tenant then mentioned some other issues that were a cause of concern to her i.e. washing machine, floor boards in master bedroom and a broken blind in the master bedroom which she maintained was never fixed.

The Appellant Tenant stated that she was happy that her case was upheld by adjudicator. However she was unhappy with the award of €400 offered

She feels that a figure of €1,200 is justified as she was genuinely affected by the ten months delay and she had not proper enjoyment of the property.

Witness

John Sullivan reiterated the case as stated above by the tenant and in particular was critical of lack of response and information from Landlord's agent "Dial A Short Let"

### **The Respondent Landlord evidence.**

The Respondent Landlord stated that she had never met the tenant. She advised that the apartment was built in 2006/2007. When she was advised of the position with regard to the windows and balcony she felt she might be covered under builders guarantee. This unfortunately took some three months to sort out. She discovered then that she had to pay herself as the builder had gone out of business. She apologised to the tenant for this delay. She accepted that it took longer than it should have but that she relied on a contractor. She stated that she had other rental properties and had used "Dial a Short let for over seven years and that this was first time anybody had difficulties with them.

At this stage it was suggested by the members of the Tribunal that perhaps a settlement might be reached between the parties.

The members of the Tribunal left the room.

When they returned the Landlord said that she had offered €800 to the Tenant as compensation but that this was not acceptable.

### **6 Findings of the Tribunal and Reasons Therefor:**

Having considered all of the documentation before it, including the report of the adjudication dated 11<sup>th</sup>. 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:

### **6.1 Finding**

The Tribunal finds that the Appellant Tenant's appeal under the grounds of standard and maintenance of dwelling and breach of landlord's obligation under section 12 (1) (b) of the act is upheld.

#### **Reason:**

The Tribunal is satisfied that, from the evidence furnished by both parties, the complaints of the Appellant Tenant were notified to the Respondent Landlord and unfortunately took some ten months to remedy. The delay was partly due to the Respondent Landlord's agent's and partly due to the Respondent Landlord's contractors and the Respondent Landlord is liable for both her agent's and contractor's delay. The Tribunal is satisfied that the Respondent Landlord did take some, even if not urgent, action to remedy the said complaints and award the sum of €800 to the tenant for the inconvenience suffered.

## **Determination**

**Ref: TR204/2011/DR336/2011**

In the matter of **Viktoryia Khadoska Appellant Tenant and Fiona Egan Respondent Landlord** the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Appellant Tenant's appeal under the grounds of standard and maintenance of the dwelling and breach of Landlord's obligations is upheld.
2. The Respondent Landlord shall pay the sum of €800 to the Appellant Tenant, within 14 days of the date of issue of the Order, being damages for breach of landlord obligations in failing to carry out necessary repairs and replacements in respect of the tenancy of the dwelling at 15 The Dickens, The Gasworks, Barrow Street, Ringsend, Dublin, 4.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 28<sup>th</sup>.day of March 2012

**Signed:**

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**Mary Doyle Chairperson**

For and on behalf of the Tribunal.