

RESIDENTIAL TENANCIES ACT 2004
PRIVATE RESIDENTIAL TENANCIES BOARD TRIBUNAL

REPORT OF TRIBUNAL REFERENCE NO:TR 209/2011 DR303/2011

APPELLANT LANDLORD: Brian McGrattan

RESPONDENT TENANTS: Dominik Rzeznik
Dorota Binkowska -Rzeznik

ADDRESS OF RENTED DWELLING: 34,Cloghgarrett Abbey,Rathbride Road,
Kildare Town, Co. Kildare
("the Dwelling")

TRIBUNAL: Nesta Kelly (Chairperson)
Tom Dunne
Geraldine Feeney

VENUE: PRTB Offices, Floor 2,O'Connell Bridge
House, D'Olier Street, Dublin 2

DATE OF HEARING: 19th April 2012 at 2.30 p.m.

ATTENDEES:

For the Appellant: Pierce Fagan of Conway Auctioneers, Landlords Agent

For the Respondents: Dominik Rzeznik & Dorota-Binkowska Rzezniz. Tenants

IN ATTENDANCE: Gwen Malone Stenographer.

1. Background:

1. On the 9th February 2011, 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 a Paper-based Adjudication which took place on 15th July 2011.

The Adjudicator determined that :-

The Landlord pay the sum of €323.78 to the Tenant within 14 days of the issue date of the Determination Order, being part of the security deposit unjustifiably retained, having deducted the Landlords loss of rent of €276.22.

.Subsequently, a valid Appeal was received from the Landlord on 15th August 2011.

2. On 16th August 2011 the PRTB constituted a Tenancy Tribunal and appointed, Charles Corcoran, Geraldine Feeney and Tom Dunne as Tribunal Members pursuant to Section 102 and 103 of the Act and appointed Charles Corcoran to be the Chairperson of the Tribunal (“the Chairperson”). Nesta Kelly was subsequently substituted as Chairperson.

3. On 23rd March 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 19th April 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:

- . PTRB file

2. Documents Submitted at the Hearing:

None

4. Procedure:

The Chairperson asked the persons 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”.

She 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 his case first ;that there would be an opportunity for cross-examination by the Respondents; that the Respondents would then be invited to present their case and 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.

The Chairperson explained that following this, the Appellant would be given an opportunity to make a final submission.

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 punishable by a fine of €3,000 or up to 6 months imprisonment or both.

She also reminded the parties that as a result of the hearing that day, the Board would issue 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.]

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

The hearing commenced with the Appellants case.

Matters Agreed by the Parties.

The following matters were agreed by the Parties.

1. The Tenancy commenced on 4th August 2010 for 12 months
2. The monthly rent was €600 and a deposit of €600 was paid.
3. The Tenancy was terminated early by the Tenants on 26th November 2010 following them issuing a Notice of Termination on 1st November 2010

5. Submissions of the Parties:

Appellant Landlords Case:

The Landlord through his Agent said that when the Tenants terminated the Lease; which was for 12 months from August 2010 on 1st November 2010, they were told that they would have their deposit returned subject to the Landlord obtaining new tenants. He accepted that the Tenants allowed several viewings at the dwelling prior to them vacating on 26th November 2010, but it was not until 14th December 2010 that it was re-let. He was therefore claiming loss of rent of 14 days amounting to €276.22, in addition (as per TS 25) a further amount of €348.48 costs involved in re-letting the dwelling. This was in excess of the security deposit held of €600.

When cross-examined by the Tenants regarding the fact that this was never mentioned at the time they served notice, he agreed that they had not been told of this.

It was further put to him by the Tenants, that the document (TS25) was only submitted to the PRTB after the Adjudicators report and Determination Order had been issued; he accepted that this was indeed the case. When further asked by the tenants was it the case that the dwelling was not re-let immediately due to high heating costs, he said that was one of the issues.

Respondent Tenants Case:

They had issued a Notice of Termination breaking the Lease on 1st November 2010 due to the fact that they had very high heating costs as shown by bills (TS 13 & TS14). They had a very young child and the weather was very cold during the Autumn. They had to light a fire as they said that 2 of the heaters were not functioning properly. They had allowed several viewings during their notice period. They had never been told that they would be responsible for fees incurred in re-letting the property, only that any loss of rent could be deducted from the deposit.

6. Findings of Tribunal and Reasons Therof:

6.1

The Tribunal finds that the Tenants breached a 12 month Lease on 1st November 2010 and that the dwelling was not re-let until 14th December 2010. The Tribunal thus allows the Appellant Landlords claim for 14 days loss of rent amounting to €276.22 to be deducted from the €600 security deposit.

Reason.

The Tenants had entered into a 12 month Lease from 4th August 2010 and vacated the dwelling on 26th November 2010 thus causing loss to the Landlord.

6.2

The Tribunal does not allow the Appellant Landlords additional claim of €348.48 in respect of re-letting fees.

Reason.

The Tribunal accepts the evidence of both parties that this charge was not brought to the Tenants notice at the time they gave notice.

6.3

The Tribunal finds that the security deposit of €600 less loss of rent of €276.22 should be returned to the Respondents.

Reason

Section 12 (1) of the Residential Tenancies Act 2004 applies.

7. Determination

Ref. TR 209/2011 Dr 303/2011

In the Matter of Brian McGrattan Appellant Landlord and Dominik Rzeznik and Dorota Binkowska-Rzeznik Respondent Tenants, the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the sum of €323.78 to the Respondent Tenants within 14 days of the date of issue of the Order made by the Board the security deposit of €600 unjustifiably retained, having deducted loss of rent of €276.22 in respect of the dwelling at 34,Cloghgarrett Abbey, Rathbride Road, Kildare Town, Co. Kildare.

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

Signed:

Nesta Kelly Chairperson.

For and on behalf of the Tribunal.