

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR220/2011/DR137/2011

Case Ref No: DR137/2011

Appellant Landlord:	Sean O' Carroll and Elaine O' Carroll
Respondent Tenant:	Lorraine O'Connor
Address of Rented Dwelling:	2.2 De Bruin Court, Poleberry, Waterford City ("the Dwelling")
Tribunal:	Aidan Brennan (Chairperson) Cian Ó Lionáin Ciara Doyle
Venue:	Conference Room G03, Department of the Environment, Community and Local Government, Newtown Road, Wexford
Date of Hearing:	16 February 2012 at 2.00 p.m.
Attendees:	
For the Appellant:	Derek Delaney (Landlord's Agent)
For the Respondent:	Lorraine O'Connor (Tenant) Matthew O'Connor (Representative)
In Attendance:	Gwen Malone Stenographers

## **1. Background:**

1. On 13 January 2011, the Tenant made an application 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 12 July 2011. The Adjudicator determined that the Respondent Landlords shall pay the total sum of €660.04 to the Applicant Tenant, within 14 days from the date of issue of determination order, being the entire unjustifiably retained security deposit of €350.00, plus prepaid rent of €310.04, in respect of the tenancy of the dwelling 2.2 De Bruin Court, Poleberry, Waterford City. Subsequently a valid appeal was received from the landlord/tenant by the PRTB on 17 August 2011.
2. On 31 August 2011 the PRTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Cian Ó Lionáin and Aidan Brennan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Ciara Doyle to be the chairperson of the Tribunal (“the Chairperson”). Aidan Brennan was subsequently substituted for Ciara Doyle as Chairperson.
3. On 25 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 16 February 2012, the Tribunal convened a hearing at 2.00 pm. at Conference Room G03, Department of the Environment, Community and Local Government, Newtown Road, Wexford

## **2. Documents Submitted Prior to the Hearing Included:**

- PRTB file

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

- None

## **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 their witnesses; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, including the evidence of her witnesses, 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 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 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.

The hearing commenced with the Appellant's case.

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

### **Appellant Landlords' Case:**

Derek Delaney of Calicon Property Management gave evidence to the Tribunal as the Appellant Landlords' agent. He said the Respondent Tenant moved in to the dwelling on the 15<sup>th</sup> September 2010. He said she signed a fixed term tenancy agreement with the Appellant Landlords from 1<sup>st</sup> September 2010 to 31<sup>st</sup> May 2011. He referred the Tribunal to a copy of the said tenancy agreement. He said the Respondent Tenant paid rent of €357 on the 15<sup>th</sup> September 2010 for the month of September 2010. She also paid a security deposit of €350. He admitted that at adjudication the Appellant Landlords had failed to furnish evidence of the fixed term tenancy agreement.

On the 4<sup>th</sup> October 2010 he said the Respondent Tenant moved out of the dwelling, due to what she said were security issues, after her car was vandalised. He said there was nothing the Appellant Landlords or their agent could have done to prevent the vandalism to her car.

He said the Respondent Tenant failed to serve a valid notice of termination on the Appellant Landlords as required under Section 58 of the Act.

He said the Respondent Tenant paid rent for October 2010 as it was automatically deducted from her account.

Mr. Delaney advised the Tribunal that the dwelling was re-let to a new tenant on 17<sup>th</sup> January 2011. He submitted to the Tribunal that the Appellant Landlords were owed €903.98 by the Respondent Tenant, being 77 days rent due and owing from 1<sup>st</sup> November 2010 to 17<sup>th</sup> January 2011, when the dwelling was re-let.

### **Respondent Tenant's Case:**

The Respondent Tenant told the Tribunal that she moved into the dwelling on the 15<sup>th</sup> September 2010. She said she paid rent of €357 and a security deposit of €350 to the Appellant Landlords' agent.

On the 27<sup>th</sup> September 2010 she said her car was damaged by people coming from a neighbouring apartment. She said she requested CCTV footage from the Appellant Landlords' agent as the Gardai wanted to establish the identity of the perpetrators.

Initially she was lead to believe that this CCTV footage would be furnished but she was later told that it was not working.

The Respondent Tenant told the Tribunal that there were a number of security issues in relation to the dwelling including a broken lock on her apartment door. She said she had furnished the Appellant Landlords' agent with a list of defects in respect of the dwelling but they had failed to remedy the defects.

On the 29<sup>th</sup> September 2010 she said she told the Appellant Landlords' agent that she was not happy to continue to live in the dwelling. At that stage she said it was suggested to her by the Landlords' agent that she might be able to move into another dwelling. She said she would have moved but it was not suggested to her again by the Appellant Landlords' agent.

On the 4<sup>th</sup> October 2010 she said she moved out of the dwelling. She said she was surprised to find that the rent for October 2010 was taken from her account.

After she moved out of the dwelling, she said she arranged a meeting with the Appellant Landlords' agent but she said he cancelled it 5 minutes before the meeting was due to take place even though she had travelled from Wexford to Waterford for the purposes of the meeting.

She said she did not receive the tenancy agreement when she moved in to the dwelling and had had to ask for it on many occasions. When questioned by the Tribunal she did however, accept that the copy tenancy agreement furnished to the Tribunal was the tenancy agreement she had signed in respect of the dwelling.

She said despite signing a fixed term tenancy agreement until 31<sup>st</sup> May 2011, she had never intended to stay in the dwelling after December 2010. She said she had discussed her plans to move out in December 2010 with the Appellant Landlords' agent and it had been agreed with them. When questioned by the Tribunal why she intended to leave at that time, she said that her college course was by appointment only after Christmas.

She said she had rented other properties from the Appellant Landlords' agent on this basis in the past and the agent was aware of the situation.

Derek Delaney then cross examined the Respondent Tenant on her evidence. She admitted she knew the moving out date on the Lease was clearly stated as 31<sup>st</sup> May 2011 but proceeded to sign it anyway. He said he disputed the claim that any staff member of his company would allow any tenant to move out before the expiry of a fixed term.

He then asked the Respondent Tenant about the list of defects she said she had sent for the dwelling.

The Respondent Tenant said she couldn't remember if she put the list of defects in writing. Derek Delaney told the Tribunal that any lists given by email would usually be attended to without delay but given that the Respondent Tenant had moved out at such short notice on this occasion perhaps there wasn't an opportunity to remedy the defects, particularly if a written list was not given to his office. He said he was not aware of any such list having been furnished.

The Chairperson referred the Respondent Tenant to the signature page of the tenancy agreement which clearly stated the fixed term to be from 1<sup>st</sup> September 2010 to 31<sup>st</sup> May 2011, just above the Respondent Tenant's signature. She confirmed that it was her signature and the dates of the fixed term were clearly stated above her signature.

The Chairperson then asked the Respondent Tenant what she was looking for from the Appellant Landlords. She said she was looking for €16 comprising of €644 for overpaid rent and her security deposit, together with €272 being half the quote she received for the repairs carried out to her car after it was vandalised.

## **6. 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 therefore are set out hereunder.

1. The Tribunal finds the Respondent Tenant breached a fixed term tenancy agreement with the Appellant Landlords.

**Reason:** The Respondent Tenant vacated the dwelling before the expiry of the fixed term.

2. The Tribunal finds that there was no breach of Landlord obligations by the Appellant Landlords.

**Reason:** No sufficient evidence was furnished to the Tribunal in support of this claim by the Respondent Tenant.

3. The Tribunal finds the Appellant Landlords mitigated their loss in the circumstances.

**Reason:** The Appellant Landlords re-let the dwelling within a reasonable timeframe following the departure of the Respondent Tenant.

4. The Tribunal finds the Respondent Tenant is liable to the Appellant Landlords for outstanding rent of €903.98.

**Reason:** This sum comprises rent due and owing under the fixed term tenancy agreement, from 1<sup>st</sup> November 2010 to 17<sup>th</sup> January 2011, when the dwelling was re-let.

## **7. Determination:**

Ref: TR220/2011/DR137/2011

In the matter of Sean O'Carroll and Elaine O'Carroll (Appellant Landlords) and Lorraine O'Connor (Respondent Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

- The Respondent Tenant shall pay the sum of €553.98 to the Appellant Landlords within 28 days of the date of issue of this Order, being outstanding rent due of €903.98, for the early termination of a fixed term tenancy agreement having deducted the justifiably retained security deposit of €350 in respect of the tenancy of the dwelling at 2.2 De Bruin Court, Poleberry, Waterford City.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 16<sup>th</sup> day of February 2012.

**Signed:**

---

**Aidan Brennan**  
**Chairperson**  
For and on behalf of the Tribunal.