

RESIDENTIAL TENANCIES ACT 2004 (the 'Act')

Report of Private Residential Tenancy Tribunal

Tribunal Reference No: TR223/2011 / DR1808/2010

Case Reference Number: 1808/2010

Appellant Landlord:	Jim Barrett
Respondent Tenants:	April and Mark Ferron
Address of Rented Dwelling:	The Orchard, Balteen, Lowertown, Schull, Co. Cork ("The dwelling")
Tribunal:	Maurice O'Donoghue (Chairperson) Anne Colley Louise Moloney
Venue:	Meeting Room, Floor 5 Extension, Cork County Council, County Hall, Cork
Date and time of Hearing:	29 February 2012 at 11.00 am.
Attendees:	
For the Appellant Landlord:	Jim Barrett
For the Respondent Tenants:	No attendance by or on behalf of Tenants (as previously advised by Tenants to PRTB by e-mail dated 23 February 2012, copy in case file)
Also in Attendance:	Stenographer, Gwen Malone Stenographers

1. Background:

On the 5th October 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 an Adjudication, which took place on 10 June 2011. Both parties informed the PRTB in advance of the hearing that they would be unable to attend, but that they wished the hearing to proceed in their absence. The Adjudicator found as a fact that the Landlord was in breach of his obligation to repay promptly the security deposit and determined that the Landlord should repay the entire deposit of €800.00 to the Applicant Tenants.

Subsequently a valid appeal was received from the Appellant Landlord by the PRTB on 30 August 2011. The grounds for the appeal were that the Adjudicator’s report was allegedly one-sided; he had failed to consider the conditions in the lease that required the tenants to keep all outdoor areas in good repair and to report any defects in the dwelling to the Landlord in writing and in a prompt manner.

The PRTB Board at its meeting on 14 September 2011 approved the reference to a Tenancy Tribunal of the appeal. The PRTB constituted a Tenancy Tribunal and appointed Kieran Buckley, Anne Colley and Louise Moloney as Tribunal members pursuant to Sections 102 and 103 of the Act and appointed Kieran Buckley to be the Chairperson of the Tribunal (“the Chairperson”). The PRTB subsequently substituted Maurice O’Donoghue as a member and appointed him to be the Chairperson of the Tribunal (“the Chairperson”) in place of Kieran Buckley on the 18th February 2012.

On 3rd 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 29 February 2012 at 11.00 am the Tribunal convened a hearing at the Meeting Room 5th Floor Extension, County Hall, Cork.

2. Documents Submitted prior to the Tribunal Hearing Included:

The PRTB case file.

3. Documents Submitted at the Hearing:

At the outset of the hearing the Chairperson informed the Appellant Landlord that the Respondent Tenants had sent an e-mail to the PRTB dated 23 February 2012 (copy in case file) wherein they stated that they were unable to attend the Tribunal Hearing. This e-mail also contained a submission by the Respondent Tenants that reiterated their initial grounds for complaint. The Appellant Landlord confirmed that he had not received a copy of this e-mail and was unaware of the submission. The Chairperson gave a copy of the e-mail and

submission to the Appellant Landlord and afforded him an opportunity to read and consider it. The Appellant Landlord stated that he was happy to proceed having considered the additional documentation and the hearing proceeded.

4. Tribunal Procedures

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be as informal as possible; that the person who appealed (the Appellant Landlord) would be invited to present his case, and as the Respondent Tenants were not present the Chairperson said that members of the Tribunal might ask questions of the Appellant Landlord from time to time. The Chairperson said that the Tribunal would consider the submission received from the Respondent Tenants and all of the documentation in the case file, and would attach appropriate weight to the submission bearing in mind that the Appellant Landlord was present giving oral evidence under oath and the Respondent Tenants were not.

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

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the Appellant Landlord that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €3,000.00 or up to 6months imprisonment or both.

The Chairperson also reminded the Appellant Landlord 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].

The Chairperson asked the Appellant Landlord if he had any queries about the procedure. The Appellant Landlord confirmed that he had no queries regarding the Tribunal procedure.

The Appellant Landlord was then sworn in.

5. Submissions of the Parties:

Before inviting the Appellant Landlord to present his case, the Chairperson said that the Tribunal had read all the documentation submitted by the Parties and it appeared that the following facts were facts upon which the Parties were agreed. The Appellant Landlord agreed that the following matters were not disputed:

The Tenancy commenced on 14 March 2009 and terminated on 14 September 2010.

The tenancy was a “Part 4” tenancy as described in the Act.

The rent was €800.00 per month, and the tenants paid a security deposit of €800.00 at the commencement of the tenancy that was retained by the landlord.

There were no rent arrears outstanding when the tenancy came to an end.

5.1. Appellant Landlord's Case

The Appellant Landlord claimed that the tenants were in breach of their obligations under the lease in that they failed to properly maintain the garden and that they had left the dwelling in a dirty condition necessitating a considerable amount of cleaning, painting, garden maintenance and professional cleaning of mats and carpets at a total vouched cost of €910.00 when they vacated the dwelling. The Appellant Landlord accepted that his claim did not make any allowance for the effect of fair wear and tear over an eighteen month tenancy. The Appellant Landlord also claimed that the Tenants were in breach of their obligation to inform him in writing of any defects in the dwelling, resulting in a build up of mildew in an ensuite bathroom in the dwelling, which could have been avoided if he was made aware of the defect. The Appellant Landlord acknowledged that the defect was present in the building before the tenants moved in, and that they were not responsible for it.

5.2 Respondent Tenant's case

The Respondent Tenants claimed in their submission that they had initially agreed to pay an additional sum of €30.00 per month for lawn maintenance provided by the landlord's agent, but that they had stopped paying for this after three months occupancy as the service was provided on only one occasion. The Respondent Tenants claimed that they "had purchased a lawnmower for our own use (to maintain the garden) without any concession offered by or requested from the landlord". The Appellant Landlord agreed at the hearing that the respondent tenants had paid extra for garden maintenance for two or three months after they went into occupancy. He claimed that the Respondent Tenants had then agreed to purchase a lawnmower and maintain the garden themselves, and that he had allowed, and they had accepted a reduction or set off in rent in respect of the cost of the lawnmower. He claimed that he had documentary evidence of this but did not produce any documentary evidence at the hearing. The Respondent Tenants also claimed in their initial application to the PRTB that they had cleaned the dwelling prior to vacating it, but they accepted that the cleaning may not have been subjectively acceptable: "we apologise that the cleaning was not to their (the landlord's) standards, and offered to go back to the dwelling and carry out additional cleaning." The Appellant Landlord acknowledged during the Tribunal hearing that the Respondent Tenants had in fact offered to return to the dwelling and carry out additional cleaning, but that he had not afforded them an opportunity to do so.

6. Findings of the Tribunal and Reasons There for:

Having considered all of the documentation before it, including the Report of the Adjudication dated 6 July 2011, having considered the evidence presented to it by the Parties, the Tribunal's findings and reasons there for are set out hereunder.

6.1 Finding: A "Part 4" tenancy as described in the Act existed between the Appellant Landlord and the Respondent Tenants. This tenancy was founded on a lease agreement dated 4 February 2009 that created a fixed term one year tenancy between them, commencement date 14 March 2009, at an agreed rent of €800.00 per month, and the Tenants paid a security deposit of €800.00 at the commencement of the tenancy in accordance with the lease. The Tenants remained in occupation of the dwelling by agreement with the landlord at the conclusion of the fixed one year term, and the tenancy continued as a periodic month to month tenancy at the same rent and subject to the same terms and conditions of the original agreement for a further six months, when the tenants vacated the dwelling by agreement with the landlord, and the tenancy terminated. The security deposit was retained by the landlord when the tenants vacated the dwelling. There were no rent arrears outstanding when the tenancy came to an end.

Reason: This finding is based on the formal acknowledgement by the Appellant Landlord during the Tribunal hearing and the written submissions by the Tenants that the above mentioned matters were not disputed.

6.2. Finding: The Tribunal finds that damage in excess of fair wear and tear was caused to the dwelling during the tenancy and that the Appellant Landlord is entitled to compensation in the amount of €500.00 in respect of that damage. Accordingly, the Tribunal finds that the Appellant Landlord is entitled to compensation in the amount of €500.00 in respect of damage arising from the Respondent Tenants tenancy of the dwelling, this sum to be deducted from the deposit of €800.00 held by the Landlord and the balance of €300.00 to be returned by the Appellant Landlord to the Respondent Tenants.

Reasons:

The Tribunal is satisfied, on the balance of probabilities, based on the evidence adduced at the hearing and the photographic evidence in the case file that the Respondent Tenants failed to properly maintain the garden and external areas of the dwelling during the tenancy, and that they vacated the dwelling leaving it in a dirty and damaged condition in excess of that attributable to normal fair wear and tear.

The Appellant Landlord claimed a total of €910.00 in respect of the vouched costs of cleaning, painting, and remedial works to the dwelling and garden, and the costs of professional mat and carpet cleaning. The Appellant Landlord accepted during the hearing that this claim did not make any allowance for the effect of fair wear and tear over an eighteen month tenancy. The Appellant Landlord also accepted that he did not make any or adequate arrangements for an inspection of the dwelling before or on the termination date of the tenancy. The Appellant Landlord

acknowledged that the Respondent Tenants had offered to return to the dwelling and carry out additional cleaning when they were notified of the alleged deficiencies but he did not avail of this offer.

There was conflicting evidence regarding the arrangements or agreements between the parties in respect of the provision of a lawnmower and the arrangements for maintaining the garden. The Tribunal is satisfied that the Respondent Tenants were in breach of their obligation to the landlord to keep all outdoor areas in good repair as required by Condition Number 16 of the lease.

The buildup of mildew caused by an inherent defect in the dwelling occurred gradually, the Tribunal is satisfied that the Respondent Tenants did bring this to the Appellant Landlords attention and were told to open a window. The Appellant Landlord acknowledged that the defect was present in the building before the tenants moved in, and that the Respondent Tenants were not responsible for it.

Taking all of the circumstances of the case into consideration, including the matters referred to above, The Tribunal is satisfied that the sum of €500.00 is properly deductible from the deposit in respect of damage in excess of normal wear and tear.

7. Determination:

Ref: TR223/2011 / DR1808/2010

In the matter of Jim Barrett (Appellant Landlord) and April and Mark Ferron (Respondent Tenants) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004 determines that:

The Appellant Landlord shall pay the total sum of €300.00 to the Respondent Tenants within 14 days of the date of issue of the Order made by the Board, being the unjustifiably retained portion of the security deposit of €800.00 having deducted the sum of €500.00 for damage in excess of normal wear and tear in respect of the tenancy of the dwelling at The Orchard, Balteen, Lowertown, Schull, Co. Cork.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 8th day of March 2012.

Signed:

Maurice O'Donoghue, Chairperson
For and on behalf of the Tribunal.