

## **RESIDENTIAL TENANCIES ACT 2004**

### **Private Residential Tenancies Board Tribunal**

<b>Report of Tribunal Reference</b>	<b>TR 234/2011 Case Ref. DR 344/2011</b>
<b>Appellant Landlord</b>	Patricia Daly (“Appellant Landlord” or “Landlord”)
<b>Respondent Tenants</b>	Robert Shaw and Louise Kelly (“Respondent Tenants” or “Tenants”)
<b>Address of Rented Dwelling:</b>	20 Brookview, Dublin Road, Athlone, Co. Westmeath (“Dwelling”)
<b>Tribunal:</b>	James Bridgeman (Chair) Mary Heaslip John Lynch
<b>Venue:</b>	Tribunal Room, Private Residential Tenancies Board, 2 <sup>nd</sup> Floor, O’Connell Bridge House, D’Olier Street Dublin 2
<b>Date of Hearing:</b>	20 April 2012 at 11.00 a.m
<b>Attendees:</b>	
For the Appellant Landlord:	Patrick Daly
For the Respondent Tenants:	No attendance
<b>In Attendance:</b>	Gwen Malone Stenographers

## **1. Background**

1.1 On 23 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 paper based adjudication.

1.2 The Adjudicator determined that “[t]he Respondent Landlord shall pay the total sum of €655.00 to the Applicant Tenants, within 14 days from the issue of the Determination Order by the Board, being the part of the security deposit of €600.00 unjustifiably retained, plus damages of €450.00 for breach of landlord obligations, having deducted rent arrears of €395.00 in respect of the tenancy of the dwelling at 20 Brookview, Dublin Road, Athlone, Co. Westmeath.”

1.3 A Notice of Appeal dated 16 September 2011 was filed by the Appellant Landlord and received by the PRTB on 19 September 2011.

1.4 On 5 October 2011 the PRTB constituted a Tenancy Tribunal and appointed James Bridgeman, Mary Heaslip and John Lynch 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 **5 October 2011** the Parties were notified of the constitution of the Tenancy Tribunal.

1.6 On **26 March 2012** the Parties were notified of the date, time and venue set for the hearing which was scheduled for 20 April 2012.

1.7 On 20 April 2012, the Tribunal convened a hearing at 11.00 a.m. at the Private Residential Tenancies Board, D’Olier Street, Dublin 2.

1.8 The Appellant Landlord was represented by her father Mr Paddy Daly. The Respondent Tenants did not attend. The Tribunal waited until 11.20 a.m. and proceeded in the absence of the Respondent Tenants.

## **2. Documents submitted prior to the hearing included:**

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

- PRTB file

### **3. Document submitted at the hearing:**

No additional documents were submitted at hearing:

### **4. Procedure:**

4.1 The Chairperson asked the representative of the Party present to identify himself and to state the capacity in which he attended the Tribunal. Mr Paddy Daly confirmed that he was the authorised representative of the Landlord and that he had received the relevant papers from the PRTB in relation to the case including the document entitled “Tribunal Procedures”.

4.2 The Chairperson 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 as the Respondent Tenants had been notified and had not attended or communicated with the PRTB, the Tribunal had decided to proceed in the absence of the Respondent Tenants; that Mr. Daly would be invited to make submissions on behalf of the Appellant Landlord and give evidence relevant to the Landlord’s appeal. He explained that members of the Tribunal might ask questions of both Parties from time to time.

4.3 The Chairperson explained that all evidence would be taken on Oath and recorded by the official stenographer present and he reminded the witness that knowingly to provide false or misleading statements or information to the Tribunal was an offence.

4.5 He informed Mr Daly 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 Mr Daly as the only representative of any Party present, if he had any queries about the procedure and there being none the Tribunal proceeded with the Hearing.

## **5. Issues in Dispute**

5.1 The following issues were in dispute to be determined by this Tribunal:

5.2.1 The Tenants alleged that the Landlord had unlawfully retained the security deposit of €600.00 and that the Landlord was in breach of the obligation to maintain the Dwelling to an appropriate standard. In particular the Tenants alleged that there was dampness, condensation and mould caused by a defect in the building that caused them lack of enjoyment of the Dwelling and had damaged their property. In particular the Tenants made the following claims in the adjudication proceedings under appeal:

a refund of half rent for the periods when one bedroom in the Dwelling was not available due to dampness	€300.00
costs of an inspection report prepared for the proceedings	€302.00
loss of earnings	€320.00
van hire and fuel	€320.00
damage to Tenant's property due to dampness and mould	€200.00
return of deposit	€600.00

5.3 In her Defence the Appellant Landlord denied that the Tenants were entitled to the relief sought and asserted her entitlement to retain the security deposit. Her counter-claim and the basis of her appeal was:

- that she was not responsible for the dampness, condensation and mould in the Dwelling which was due to the Tenant's failure to adequately ventilate the Dwelling; the Dwelling was constructed in the year 2006 and there was no prior or subsequent problems with dampness;
- that she was entitled to retain the security deposit in full because the Tenants had failed to pay rent on 25 September 2010 which was due and payable in respect of the final weeks of the tenancy that terminated on 15 October 2010 and the Tenants failed to deliver up the keys to the apartment for a further seven days.

At the hearing the Landlord's representative withdrew the claim in respect of alleged unpaid utility bills and gas services reconnection.

## **6. Agreed Facts**

As the Respondent Tenants did not attend the Hearing there were no agreed facts.

## **7. Submissions of the Appellant Landlord**

7.1 In his submissions and testimony on behalf of the Landlord, Mr Paddy Daly confirmed that the Respondent Tenants had entered into a tenancy agreement with the Landlord in respect of the Dwelling at a rent of €600.00 per month payable on the 25<sup>th</sup> day of each month and that the Landlord had received a security deposit of €600.00 from the Tenants at the commencement of the tenancy on 25 May 2010. Mr Daly testified that he received oral notice of termination of the tenancy from the Respondent Tenants on 17 September 2010. Mr Daly had provided the Tenants with a written notice in writing of the Landlord's acceptance of the notice from the Tenants which confirmed that the tenancy would be terminated on 15 October 2010.

7.2 Mr Daly accepted the Tenant's allegation that there was dampness, condensation and mould in the Dwelling but disputed the cause of the dampness. The Tribunal informed him that they had received the PRTB file in advance of the Hearing which included a report submitted by the Tenants which stated that there were black spots and mould growth in the Dwelling as a result of a fault within the cavity space in a wall, where a cavity was bridged by a board incorrectly fitted or by mortar bridging the cavity from an external wall to the inside wall allowing water to cross from the outside block to the inside block. The Tribunal explained that while the Respondent Tenants were not present to introduce the report into evidence, however since the Tribunal had had sight of the report he was invited to comment on its contents.

7.3 Mr Daly challenged the status and content of the report and stated that in his view the dampness was caused by failure on the part of the Respondent Tenants to properly ventilate the Dwelling. He testified that there had been no problems with dampness or mould in the Dwelling prior the Tenants going into occupation and there had been no problems with dampness or mould since they vacated.

7.4 Mr Daly testified that the Tenants had paid the rent each month up to 25 September. The Landlord had retained the security deposit in lieu of the last month's rent and monies owed on utility bills. Mr Daly testified that whereas the tenancy had terminated on 15 October 2010, the Tenants did not return the keys to him until seven days later. Although the Appellant Landlord had her own set of keys to the Dwelling he was reluctant to enter into the Dwelling during that period and he claimed that the Landlord was entitled to rent in respect of that additional seven days.

## **8. Submissions of Respondent Tenants**

The Respondents did not attend.

## **9. Findings by the Tribunal and Reasons**

9.1.1 In relation to the issue of the dampness, condensation and mould in the Dwelling, this Tribunal finds that the Respondent Tenants are not entitled to compensation for loss of enjoyment of the bedroom or damage to their property due as claimed or for the loss of earnings and moving expenses they claimed relating to the termination of the tenancy.

### **Reasons**

9.1.2 The Respondent Tenants were not present to provide any evidence to the Tribunal. In particular the report submitted by the Tenants that was on file did not have the *status* of admissible evidence. Because the Tribunal had had sight of the report on file, in the interest of fairness in the circumstances, the Tribunal invite Mr Daly to comment on the report and its findings if he wished. While he was not obliged to do so,

Mr Daly convincingly dealt with the findings of the report that the dampness was caused by a fault within the cavity space in a wall. He submitted that there was no evidence of any such fault in the cavity wall and testified that there were no problems with dampness either prior to or subsequent to the time that the Tenants occupied the Dwelling. He gave a reasonable explanation that the probable cause for the dampness was the Tenants failure to properly ventilate the Dwelling and there was no evidence to contradict this explanation as the Respondent Tenants failed to attend the Hearing.

9.2.1 In relation to the issue of the retention of the security deposit, the Tribunal finds that the Appellant Landlord is entitled to retain the sum of €395 of the €600 deposit in respect of rent due and owing to 15 October 2011. The Appellant Landlord should therefore refund the sum of €205.00 to the Respondent Tenants.

### **Reasons**

9.2.2 The Respondent Tenants did not pay the rent due on 25 September 2010. The Tenancy terminated on 15 October 2010. The Tenants therefore owe the Respondent Landlord rent in respect of the final 20 days of the Tenancy.

9.2.3 The Tribunal rejects the Landlord's claim for rent in respect of the seven day period following the termination of the Tenancy during which time the Tenants failed to return the keys of the apartment to the Landlord. The Landlord was aware that the tenancy had terminated and the Landlord had keys to and access to the apartment during this time.

9.3 In the circumstances of this Appeal, this Tribunal finds that it would be inappropriate to award damages against the Landlord for failure to promptly refund the security deposit.

**10. Determination:**

Tribunal Reference      **TR 234/2011 Case Ref. DR 344/2011**

In the matter of Patricia Daly, Appellant Landlord, and Robert Shaw and Louise Kelly, Respondent Tenants, this Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

Within fourteen days of making this Order, the Appellant Landlord shall pay to the Respondent Tenants the sum of €205.00 being the security deposit of €600.00 retained by the Landlord less the sum of €395.00 in respect of 20 days unpaid rent due and owing by the Respondent Tenants to the Appellant Landlord in respect of the Dwelling at 20 Brookview, Dublin Road, Athlone, County Westmeath.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 24<sup>th</sup> day of May 2012

**Signed:**

**James Bridgeman, Chairperson**

For and on behalf of the Tribunal.