

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR245/2011/DR1705/2010

Case Ref No: DR1705/2010

Appellant Landlords:	John McInerney and Catherine McInerney
Respondent Tenant:	Olga Leonard
Address of Rented Dwelling:	Ground Floor Flat E1, Cois Luachra, Dooradoyle, Limerick.
Tribunal:	Liam M. Nolan (Chairperson) Ciara Doyle Michael Irvine
Venue:	Council Chambers, Limerick City Council, City Hall, Merchants' Quay, Limerick
Date of Hearing:	24 April 2012 at 2.30 p.m.
Attendees:	
For the Appellant:	Pat O'Dea, Roberts Auctioneers (Agent)
For the Respondent:	Olga Leonard (Tenant)
In Attendance:	Gwen Malone Stenographers

1. Background:

1. On 15 September 2010 the 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 matter was referred to an adjudication which took place on 4 September 2011. This was a paper-based adjudication. The Adjudicator determined that the Landlords shall pay to the Tenant the total sum of €900.00 within 14 days of issue of Determination Order, being the full amount of the security deposit of €600.00 unjustifiably retained by the Landlord plus damages of €300.00 for having deprived the Tenant of the use of the deposit. Subsequently a valid appeal was received from the Landlord by the PRTB on 5 October 2011.
2. On 30 November 2011 the PRTB constituted a Tenancy Tribunal and appointed Liam M. Nolan, Ciara Doyle and Michael Irvine as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Liam M. Nolan to be the chairperson of the Tribunal (“the Chairperson”).
3. On 10 April 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 24 April 2012 the Tribunal convened a hearing at 2.30 p.m. at the Council Chambers, Limerick City Council, City Hall, Merchants’ Quay, Limerick.

2. Documents Submitted Prior to the Hearing Included:

- PRTB file

3. Documents Submitted at the Hearing Included:

- Written statement from Catherine McInerney.
- Invoice dated 6 May 2010 in respect of replacement of bathtub at dwelling
- Copy of letter dated 11 April 2012 in respect of second-named Appellant’s medical appointment on date of Tribunal Hearing.

4. Procedure:

The Chairperson asked the Parties present 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 that there would be an

opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, 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 of €3,000 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 Oath was then administered.

The hearing commenced with the Appellant's case.

5. Submissions of the Parties:

Appellant Landlords' Case:

Agent for the Landlords presented their case on their behalf, explaining that the first-named Appellant was working overseas and the second-named Appellant could not attend due to a prior medical appointment relating to circumstances which had prevailed for some time and which, he said, had to date prevented her from addressing the issues in dispute with the Tenant. His evidence included an apology from the second-named Appellant to the Tenant in this regard. The Tribunal noted the circumstances surrounding the second-named Landlord's medical condition.

He stated that the security deposit had been retained by the Landlords on foot of claimed damage to the dwelling, including:

- Leaking bath, allegedly due to damage caused by the Tenant and which had been replaced at a cost of €367.96
- A broken window blind – which had been replaced by the Tenant but where the replacement blind did not fit the window in question
- Damage to an interior wall where a poster had allegedly been nailed to the wall

Agent for the Landlords stated on their behalf that the Tenant had been an excellent tenant in every respect during the course of her tenancy.

Respondent Tenant's Case:

The Tenant in her evidence stated that she had never used the bath while a tenant in the dwelling, there being a shower available for use and which she had used, and she was completely unaware of any claim in this respect prior to the date of the Tribunal Hearing. She stated that the dwelling had been in an unfit condition for occupancy at commencement of the tenancy but she had nonetheless taken occupancy and taken responsibility for cleaning the dwelling herself due to her immediate housing requirements at the time. She stated that she had replaced a window blind due to the dirty condition of the blind in question, and she accepted that although the replacement blind she had purchased was of an incorrect size, it had fulfilled its function. She did not accept that an interior wall had been damaged by her, due of a poster being nailed to the wall or otherwise.

6. Findings of the Tribunal and Reasons Therefor:

Having considered all of the documentation before it including the Adjudicator's Report dated 4 September 2010, 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 that the security deposit of €600.00 was unjustifiably withheld by the Landlords.

Reason:

The Tribunal considers that the evidence in respect of the alleged damage to the bath is deficient, and insufficient reason for withholding the entirety of the deposit, or any part of it. The Landlords therefore are in breach of section 12 (1) (d) of the Act, where the Tenant was not in breach of section 16 (f) of the Act, or any other provision of the Act.

2. The Tribunal further finds that a sum in damages for the unjustifiable withholding of the deposit and the Tenant's loss of use of the value of the deposit is merited, and fixes this sum at €100.00. The Tribunal is satisfied on the totality of the evidence presented by the parties that the sum awarded is appropriate, having regard for the Tenant's stated position that her priority objective was the return of the Security Deposit.

Reason:

The Tenant was at a loss of the use of the security deposit, the return of which she was entitled to, and it is appropriate that this factor is recognised by the award of damages in the stated sum.

7. Determination:

Ref: TR245/2011/DR1705/2010

In the matter of John McInerney and Catherine McInerney (Appellant Landlords) and Olga Leonard (Respondent Tenant) the Tribunal in accordance with section 108 (1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the sum of €700.00 to the Respondent Tenant within 14 days of the date of issue of the Order made by the Board, being the full amount of the security deposit of €600.00 unjustifiably retained by the Appellant Landlord plus damages of €100.00 for having deprived the Respondent Tenant of the use of the deposit in respect of the tenancy of the dwelling at Ground Floor Flat E1, Cois Luachra, Dooradoyle, Limerick.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 24th day of April 2012.

Signed:

LIAM M. NOLAN, Chairperson
For and on behalf of the Tribunal.