

RESIDENTIAL TENANCIES ACT 2004

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR246 /DR703/2011 & DR884 Case Ref No:
DR703/2011/DR884/2011

Appellant Tenant	Tatiana Lebeda
Respondent Landlord:	John Corless
Address of Rented Dwelling:	24 Greenhills Court, Greenhills Road, Tallaght, Dublin 24.
Tribunal:	Mary Heaslip (Chairperson) Claire Millrine Liam Nolan.
Venue:	PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2.
Date of Hearing:	23 February 2012. 2.30 p.m.
Attendees:	
For the Appellant:	Oleg (Balica) Zdoleunov (Tenant representative)
For the Respondent	Ciara Muldoon & Aine Treacy (Agents) Dublin Letting and Management Agency.
In Attendance:	Gwen Malone Stenographers

1. Background:

1. On 03 May 2011 the tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act, in relation to alleged breach of landlord obligations, the standard of maintenance of the dwelling and the validity of a Notice of Termination. On 03 June 2011 the landlord made an application to the Private Residential Tenancies Board pursuant to Section 78 of the Act. in relation to rent arrears, and over holding following a Notice of Termination. The matter was referred to an adjudication which took place on Friday 19 August 2011. The Adjudicator determined that the Notice of Termination was valid and that the tenant must vacate the dwelling within fourteen days; that the tenant must pay €3,050 to the landlord being arrears of rent, having allowed €1,337.50 for loss and inconvenience suffered by the tenant as a result of landlord breaches; that the tenant shall continue to pay rent at €800 monthly, and that the deposit shall be returned to the tenant by the landlord at the termination of the tenancy. Subsequently a valid appeal was received from the tenant by the PRTB on 5 October 2011.

2. On 30 November 2011 the PRTB constituted a Tenancy Tribunal and appointed Mary Heaslip, Claire Millrine and Liam Nolan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Mary Heaslip to be the chairperson of the Tribunal (“the Chairperson”).

3. On 13 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.

4. On 23 February 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:

- PRTB file

3. Documents Submitted at the Hearing Included:

- A handwritten note signed by three tenants of apartments in the complex, stating the rent they pay.
- A letter from the HSE regarding the health of the tenant .

4. Procedure:

The Chairperson asked the Parties 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 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. She said that members of the Tribunal might ask questions of both Parties from time to time.

The Chairperson explained that following this, the Appellants’ representative would be given an opportunity to make final a 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 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].

She 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 Tenant’s Case:

The tenant’s representative Oleg Zdoleunov stated that he was present as a friend of the tenant. The Appellant tenant Tatiana Lebeda is unwell and could not attend in person. He offered a letter from the HSE in support of this. Oleg stated that he was familiar with the dwelling in question and had lived there for approx. two years from 2006 to 2008. He worked at that time as a maintenance man. He no longer lives there.

He confirmed that there were ongoing problems with leaks in the apartment, mainly around the area of the balcony doors and the windows. There were also leaks outside in the common areas.

Oleg Zdolbunov submitted a handwritten note to the tribunal, signed by three tenants in the complex, all purporting to show lower rents being paid than the rent being charged to the Appellant tenant.

He had no comment to make on the validity of the Notice of termination.

He was not in a position to make any comment on Ms. Lebedas financial dealings with DLM, the Letting Agent.

He raised the matter of the access to the car park in the complex and stated that access was blocked to the Appellant tenant.

Respondent Landlords Case:

Ciara Muldoon gave evidence as the Landlord's Agent.

She outlined the outstanding rent due and owing, which at 26 February 2012 amounts to € 5,287 (Euro five thousand two hundred and eighty seven) in total.

She stated that the Appellant tenant has been paying rent at €650 p. month since the adjudication of 19 August 2011,(the rent payable being €850 p. month.) and that at no stage did the tenant enter into negotiations or discussions with the Agents regarding the rent payable. She conceded that the rent might be somewhat high in the present market climate.

She stated that ongoing efforts are being made to rectify the problems with the leaks in the apartment complex. Negotiations are mainly between the Management Company and the builder/developer. She understands the builder has been given until March 2012 to rectify the building faults. Since the Adjudication in August 2011 some remedial work had been done to the Apartment and no complaints from the Appellant Tenant have been received by the Agents since then.

The Landlord's Agent stated that while she sympathised with the Appellant tenant, she was instructed by the Respondent Landlord to seek from the PRTB payment of the arrears of rent due and to seek an order confirming his right to vacant possession of his property. An opportunity to adjourn in order to explore the possibility of reaching a mutually acceptable settlement was offered by the Tribunal, The Respondent Landlord's representative indicated that her clear instructions were to seek vacant possession of the dwelling, and the Hearing continued.

Ciara Muldoon stated that she had never been contacted by the Appellant tenant regarding the access to the car park. This facility was managed by the Management Company and not by the Letting Agency.

6. Findings of the Tribunal and Reasons Therefor:

1. The Notice of Termination as issued by the Respondent Landlord on 23 June 2011 is valid, in that it complies with section 62 of The Residential Tenancies Act 2004.
2. Arrears of rent have not been paid and the Appellant Tenant is over holding
3. The Appellant tenant has suffered distress and inconvenience as a result of ongoing leaks and damp in the dwelling since 2006, and while the underlying cause of this problem may be of a structural nature and not attributable to any action of the Landlord the Tribunal is of the opinion that little, or insufficient efforts were made over a seven year period to address the issue or to alleviate the Appellant Tenant's stress and suffering, and that the tenant is entitled to be compensated for this.

4. The rent is in excess of that prevailing in the current market.

7. Determination:

Ref: 246/2011/DR703/2011&DR 884/2011

In the matter of Tatiana Lebeda (Appellant / Tenant) and John Corless (Respondent / Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served by the Landlord on the Tenant in respect of her tenancy at 24 Greenhills Court, Greenhills Road, Tallaght, Co. Dublin is valid.
2. The tenant and all persons residing in the above dwelling shall vacate the dwelling within sixty days of the issue of this order
1. The Appellant Tenant shall pay the sum of €3,287 to the Respondent Landlord within 60 days of the date of issue of this Order made, being €5,287 rent arrears having deducted €2,000 for stress and inconvenience suffered as a result of breaches in the Landlord's obligations in failing to carry out necessary repairs and replacements in respect of the above dwelling.
3. The Tenant shall continue to pay rent from 26 February 2012 at the reduced rate of €650 p. month and any other charges lawfully due, until such time as she vacates the dwelling.
4. On regaining possession of the dwelling the Landlord shall refund to the Tenant the security deposit of €850, unless lawfully withheld in accordance with the Residential Tenancies Act, 2004.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 28 day of February 2012.

Signed:

Mary Heaslip
Chairperson
For and on behalf of the Tribunal.