

RESIDENTIAL TENANCIES ACT 2004
(“the Act”)

Private Residential Tenancies Board Tribunal

Report of Tribunal Reference No: TR259/2011/DR2135/2010
Case Ref No: DR2135/2010

Appellant Tenant:	Denise O’Sullivan
Respondent Landlord:	Colm Barry and Siobhan Barry
Address of Rented Dwelling:	8 The Meadows, Rosferna, Murroe, Co. Limerick (“the Dwelling”)
Tribunal:	Ciara Doyle (Chairperson) Michael Irvine Liam Nolan
Venue:	Council Chambers, Limerick City Council, City Hall, Merchants Quay, Limerick.
Date of Hearing:	25 th April 2012 at 2.00 p.m.
Attendees:	
For the Appellant:	Denise O’Sullivan (Tenant) Claire McNamara (Witness)
For the Respondent:	Colm Barry (Landlord) Siobhan Barry (Landlord)
In Attendance:	Gwen Malone Stenographers

1. Background:

1. On 7th December 2010, the Landlord 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 2nd August 2011. The Adjudicator determined that the Respondent Tenant shall pay the total sum of €1,800 to the Applicant Landlords within 14 days of the date of issue of the Determination Order, this amount being rent arrears of €1,480; compensation for damages beyond wear and tear of €950 plus damages for loss and inconvenience of €170, having deducted the €800 deposit lawfully withheld by the Applicant Landlords, in respect of the tenancy at 8 The Meadow, Rosferna, Murrow, Co. Limerick. Subsequently a valid appeal was received from the Respondent Tenant by the PRTB on 18th November 2011.
2. On 30th November 2011 the PRTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Michael Irvine and Liam Nolan 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”).
3. On 28th March 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 25th April 2012, the Tribunal convened a hearing at 2.00 p.m. at 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:

- Invoice of Finucanes Electrical Limited dated the 15th August 2006 from the Respondent Landlord
- Two Photographs of wheelie bins by the Appellant Tenant

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. 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 including her witnesses; that there would be an opportunity for cross-examination by the Respondents; that the Respondents would then be invited to present their case, including the evidence of his witness, 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 Appellant 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 €4,000 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 oath was then administered.

The hearing commenced with the Appellant's case.

5. Submissions of the Parties:

Appellant Tenant's Case:

The Appellant Tenant advised the Tribunal that she commenced occupation of the Dwelling on the 11th October 2008. She said she paid the Respondent Landlord €1,600 at that time comprising €800 deposit and €800 rent.

She then proceeded with the consent of the tribunal, to read out a copy of her statement which was already included in the PRTB file.

She said the property was in a fairly standard condition when she moved in but it was not painted after the previous Tenants and there was some wear and tear.

She said she lived there for one year with her one year old son and did not complain at any time during that year. She said that the washing machine and tumble dryer in the Dwelling were very old but were working at the time. She said that there was a three seater white sofa in the Dwelling which had been ripped and was old.

She described the bed as old and in bad condition and said the carpets on the stairs had also been subject to wear and tear. She said she asked the Respondent Landlord at the outset if she could bring her own items in to the Dwelling and he agreed to her request.

In June 2009 she said she rang the Respondent Landlord to give one months' notice of termination of the tenancy and the Respondent Landlord accepted her notice. She said she was to move out in July but then phoned the Respondent Landlord to ask if she could stay on as her situation had changed. On that occasion she said she arranged a meeting with the Respondent Landlord to discuss the rent. She told the Tribunal that he agreed to reduce it to €600 a month as that was all she was entitled to receive from social welfare at the time in respect of rent.

She said she then asked the Respondent Landlord if she could pay her rent weekly rather than monthly as she received her social welfare payment every Wednesday. She said she pointed out to the Respondent Landlord that some months had five Wednesdays in the month and she should only have to pay him on four Wednesdays in any given month. She said he agreed to this arrangement but they never confirmed it in writing.

During this meeting she said the Respondent Landlord never complained about the condition of the Dwelling. She said she always kept it clean and tidy. She said she was never late with her rent.

In September 2009, she described how the shower upstairs started leaking through the ceiling wall and down the walls. She said she rang the Respondent Landlord straight away and he came around to look at it and told her it needed some silicone. She also said she mentioned to him at that time that the washing machine was giving trouble. She said the Respondent Landlord looked at it and advised her that it was caused by hard water.

The next time she said she used the shower it leaked again so she stopped using it and instead used the bath in the main bathroom.

In the December 2009, she said she had her second child. Around two months after that she described how the bath in the main bathroom started leaking into the kitchen ceiling and into the light fitting. She said she rang the Respondent Landlord but there was no answer. She told the Tribunal that she kept trying for a week until she got an answer and during this time she could not use the bath or the shower due to the leak. She said the Respondent Landlord eventually called around and said it was a leak in one of the pipes underneath the bath base.

On that occasion she said she mentioned that the tumble dryer was not working. She said they had an argument when he said that she broken it. She claimed the tumble dryer was old before she moved into the house. She said the Respondent Landlord refused to buy a new one so she bought her own and put the old dryer in the shed.

On the 7th October 2010 she told the Tribunal that she gave one months' notice of termination of the tenancy by telephone to the Respondent Landlord. She commented that while he showed the Dwelling to potential Tenants he never complained about the condition of the Dwelling. However she did admit that it was agreed that she would clean the carpets before she moved out of the Dwelling which she failed to do. She told the Tribunal that the Respondent Landlord had come to the Dwelling on one occasion when she wasn't there and let himself into the house without her permission to show new tenants.

Two days before she was due to move out she said that the Respondent Landlord called to the Dwelling claiming that he was owed arrears of rent. She said he furnished her with a statement detailing the arrears and advised her that in addition to keeping her deposit of €800 she owed him another €650. She said she told him she would look at it but said she thought it didn't sound right at the time.

The Appellant Tenant said after she moved out of the Dwelling the Respondent Landlord then rang her about the €650 rent arrears. She indicated that she had since looked over the statement he had given her and that he was looking for the fifth week of every month which she said he had agreed to waive. She said she then arranged to meet the Respondent Landlord at the Dwelling. When she arrived at the Dwelling she said she was confronted by Mrs. Barry one of the Respondent Landlords about rubbish left behind in the Dwelling. She said she told her she would take the rubbish away the next day as she had arranged a trailer, but as she kept shouting she had to leave. She said she offered to clean the carpets and to rent a machine but she wasn't allowed the keys to do so. She said she was intimidated by the actions of Mrs. Barry.. The next day she said she went back to the property with a trailer and took her outdoor items including wheelie bins. She said she didn't take the TV as it wasn't hers. She admitted that she left a broken bed in the property which her son had broken jumping on it.

Claire McNamara then gave evidence. She said she had spent time in the Dwelling during the tenancy. She said she had witnessed the leaks referred to by the Appellant Tenant. She said that the carpets weren't in as poor condition as alleged by the Respondent Landlord and she said that the large TV left behind wasn't the Appellant Tenant's and that it had been found in the attic. She said when the leaks occurred in the main bathroom it caused trouble with the electrics in the kitchen which was very dangerous. She also remembered the tumble dryer being broken. She recalled the argument between the Appellant Tenant and Siobhan Barry and said her behaviour was intimidating.

Respondent Landlords Case:

The Respondent Landlord submitted an invoice showing that he had purchased the dryer and washing machine in the property new on the 15th August 2006. He disputed they were old as stated by the Appellant Tenant. He told the Tribunal he never had to carry out repairs to the washing machine and it was not broken as alleged by the Appellant tenant.

He told the Tribunal he purchased the dwelling newly constructed in 2006 and this was his second letting of the dwelling. He said when the Appellant Tenant moved in the carpets were two years old. He admitted that the rent had been renegotiated during the term of the tenancy. He said it had commenced at €800 and ended up at €650. He recalled the Appellant Tenant asking to pay her rent weekly in the sum of €150 per week but never agreed to her skipping the fifth week in any month. He directed the Tribunal to the Lease dated 17th July 2009 in the PRTB file which stated the rent to be €650 per month which he said equated to €150 per week over the course of the year. He denied ever agreeing a rent reduction to €600 per month. He said that they had carried out an inspection early on in the tenancy. At that point he said while the house was untidy the Appellant Tenant was paying her rent on time and he did not want to cast judgement on her. He said there were no problems until December 2009 when small arrears of rent began to arise.

He said he spoke to the Appellant Tenant about it and she told him that her rent allowance had been withdrawn and that she was going to the HSE to get the rent allowance back. The Respondent Landlord said he was led to believe that the HSE would assist the Appellant Tenant with the arrears. Eventually he said she gave her notice to leave and he did mention the arrears to her at that point.

In respect of the broken dryer he referred to photographs in the PRTB file showing the top off the dryer in the shed.

In respect of the leaks he said that he did repair the shower with silicone and this worked but in relation to the second alleged leak it was never reported to him. He said he removed the bath panel when the Appellant Tenant moved out and found no leak. At that point he said he discovered what had happened was that the head of the shower was left hanging over the side of the bath.

He said they never had an argument in respect of the tumble dryer and he suspected that her son had jammed something into the lock of the dryer. He said he only realised that the tumble dryer was in the shed after the Appellant Tenant left as she had removed her own dryer and there was a gap where the original dryer was. He said the carpets were damaged beyond fair wear and tear and that he had to replace them. When asked by the Tribunal if he had any receipts for any of the expenses claimed he said he didn't have any receipts. He said he had initially only intended to claim rent arrears and had not intended to claim for any damage to the Dwelling, but this had arisen during the adjudication. He refuted the allegation that he had ever entered the house without the permission of the Appellant Tenant and he said that they had only shown two Tenants the Dwelling during the Respondent Tenant's tenancy as due to the condition of the Dwelling he decided to wait until after she had left to show it any further.

In relation to the broken bed he said that he had purchased it new in July when requested by the Appellant Tenant. He said he had to hire a skip to remove a number of damaged items and items left behind in the Dwelling which had cost him €150.

The Respondent Landlord denied any claims of intimidation but did admit that on the last occasion they met he had sternly asked the Appellant Tenant to arrange for the rubbish to be removed and made her aware of his dissatisfaction with the condition of the Dwelling.

He said that when the Appellant Tenant left it took him two weeks of decorating and cleaning to restore the Dwelling to a habitable condition. He said he was claiming rent arrears of €1,480 together with the cost of replacing the carpets and the dryer and the cost of hiring a skip.

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 Appellant Tenant is found to be in breach of her obligations under Section 16 (a) of the Act for failure to pay the rent provided for under the tenancy.

Reason: Insufficient evidence was given by the Appellant Tenant to show the rent had been reduced from €650 as stated in the Letting Agreement dated 17th July 2009 and signed by Appellant Tenant and the Respondent Landlord.

- (2) The Appellant Tenant is found to be in breach of her obligations under Section 16 (f) of the Act for damage to the property beyond normal wear and tear.

Reason: Sufficient evidence was furnished to the Tribunal by the Respondent Landlord to demonstrate damage beyond normal wear and tear, including a failure by the Appellant Tenant to clean the carpets as agreed, the necessity to hire of a skip to remove waste left behind by the Appellant Tenant and the replacement of a tumble dryer.

- (3) The Tribunal finds that there was no breach of Landlord obligations by the Respondent Landlord.

Reason: Insufficient evidence was furnished to the Tribunal in support of this claim by the Appellant Tenant.

- (4) The Tribunal does not award general damages in this case.

7. Determination:

Ref: TR259/2011/DR2135/2010

In the matter of Denise O'Sullivan (Appellant Tenant) and Colm Barry and Siobhan Barry (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Tenant shall pay the sum of €1,280 to the Respondent Landlord within 28 days of the date of issue of the Order made by the Board, being €1,480 in respect of rent arrears, €200 for carpet cleaning, €250 for a replacement tumble dryer and €150 for skip hire having taken in to consideration the justifiably retained security deposit of €800 in respect of the tenancy of the Dwelling at 8 The Meadows, Rosferna, Murroe, Co. Limerick

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 25th day of April 2012.

Signed:

Ciara Doyle
Chairperson
For and on behalf of the Tribunal.