**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001187 / Case Ref No: 0315-17454**

**Appellant Tenant:** Mejra Ibisevic, Senad Ibisevic

**Respondent Tenant:** Phyllis Hegarty

**Address of Rented Dwelling:** 28 Castleknock Elms, Castleknock , Dublin 15, D15K282

**Tribunal:** Roderick Maguire (Chairperson)

Dervla Quinn, Healy Hynes

**Venue:** Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2

**Date & time of Hearing:** 14 August 2015 at 2:30

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| **Attendees:** | Phyllis Hegarty, Tribunal Respondent, Landlord, Eva Hegarty, Tribunal Representative, Mejra Ibisevic, Tribunal Appellant, Tenant, Oliver Foley, Tribunal Representative,Senad Ibisevic, Tribunal Appellant, Tenant, Seamus Maguire, Solicitor for the Respondent |
| **In Attendance:** | N/A |

**1. Background:**

On 24/03/2015 the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 78 of the Act. The matter was referred to an Mediation which took place on 28/04/2015.

The Applicant Tenants subsequently made an application pursuant to section 96(6) of the Residential Tenancies Act 2004 (“the 2004 Act”) received on 26/05/2015 on the grounds of an Invalid Termination Notice and on the ground that the Applicant Tenants should have been informed by the Landlord that they had the right to apply for a 35-year tenancy under the Housing (Private Rented Dwellings) Act 1982. Approved by the Board on 05/06/2015

The PRTB constituted a Tenancy Tribunal and appointed Dervla Quinn, Healy Hynes, Roderick Maguire as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Roderick Maguire to be the chairperson of the Tribunal (“the Chairperson”).

On 03/07/2015 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 14/08/2015 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

**2. Documents Submitted Prior to the Hearing Included:**

* 1. PRTB File

**3. Documents Submitted at the Hearing Included:**

1 Copy letter from Seamus Maguire & Co. re the letting dated 30 March 2015 .

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson 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.”

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the person who appealed (the Applicants) would be invited to present his 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 Applicants.

The Chairperson explained that following this, both parties 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 Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine or imprisonment or both.

The Chairperson 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.

**5. Submissions of the Parties:**

Applicant Tenants’ Case:

It was submitted on behalf of the Applicant Tenants submitted that the Notices of Termination dated 1 November 2014 and 27 February 2015 were invalid in particular on the basis that they did not specify that the tenants could refer any issue as to the validity of the notices or the right of the tenant to serve it must be referred to the Board under Part 6 of the 2004 Act within 28 days from the date of receipt of it, pursuant to section 62(1)(g) of the 2004 Act.

In addition, it was submitted that it was a breach of the Landlord’s obligations not to inform the tenants that they had a right to a 35-year lease under the Housing (Private Rented Dwellings) Act, 1982 (“the 1982 Act”). The Tenants were informed that the Tribunal did not deal with claims under the 1982 Act and that it was not in a position to decide whether the Applicant Tenants were or were not entitled to such a tenancy, but that the Tribunal would consider whether the actions of the Landlord constituted a breach of her obligations.

Respondent Landlord's Case:

On behalf of the Respondent Landlord, it was submitted that the Notices of Termination were valid and that the Tenants knew what their rights were in relation to the Act. It was denied that the Respondent Landlord had breached her obligations.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The tenancy commenced on 28 September 1996.

2. No deposit was paid.

3. The current rent paid was EUR 825 per calendar month.

4. The Landlord served the two notices dated 1 November 2014 and 27 February 2015 on the Applicant Tenants.

**7. Findings and Reasons:**

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 thereof, are set out hereunder.

1 Finding: The Tribunal finds that the Notices of Termination of 1 November 2014 and 27 February 2015 were invalid notices under Section 62(1)(f)(ii) and (1)(g) of the Residential Tenancies Act 2004.

Reasons:

1.The Tribunal is satisfied that the requirements for a Notice of Termination to specify that the tenants could refer any issue as to the validity of the notices or the right of the tenant to serve it must be referred to the Board under Part 6 of the 2004 Act within 28 days from the date of receipt of it, and to indicate that the tenants had the whole of the 24 hours of the termination date to vacate possession were not complied with. The Tribunal does not accept that these requirements under Section 62 can be fulfilled if it is shown that the Tenant knew these matters where they are not contained in the written Notice of Termination. Section 62 of the 2004 Act expressly states that in order to be valid a Notice of Termination must be in writing and contain particular matters and the Tribunal therefore finds that the Notices of Termination dated 1 November 2014 and 27 February 2015 are invalid.

2 Finding: The Tribunal finds that there was no breach of Landlord obligations.

Reasons:

1. The Tribunal finds that it was not an obligation of the Landlord to assess the possible legal rights of the Tenants pursuant to the 1982 Act and advise them accordingly. The Tribunal were not directed to any authority in support of this and there is nothing in the 2004 Act to indicate that this obligation exists.

**8. Determination:**

**Tribunal Reference TR0515-001187**

**In the matter of Mejra Ibisevic, Senad Ibisevic (Tenant) and Phyllis Hegarty, Mejra Ibisevic, Senad Ibisevic (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notices of Termination served on 1 November 2014 and 27 February 2015 by the the Respondent on the Applicants in respect of the dwelling at 8 Castleknock Elms, Castleknock, Dublin 15 are invalid.

2. The Respondent Landlord did not breach her obligations in failing to advise the Applicant Tenants of any rights they may have had under the Housing (Private Rented Dwellings) Act 1982.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 30/08/2015.

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| **Signed:** | H:\Common\Signatures\Adjudicators\Roderick Maguire.png |

**Roderick Maguire Chairperson**

For and on behalf of the Tribunal.