

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0114-000569 / Case Ref No: 0913-07554

Appellant Landlord:	Henry O'Sullivan
Respondent Tenant:	Lucinda Casey, Breda Casey
Address of Rented Dwelling:	13 Westbury Estate, Wilton , Cork
Tribunal:	Gene Feighery (Chairperson) Thomas Reilly, Vincent P. Martin
Venue:	Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork
Date & time of Hearing:	15 April 2014 at 11:00
Attendees:	William Hunter (First Named Witness for the Appellant Landlord) Triona Dunlea (Second Named Witness for the Appellant Landlord) Breda Casey (Respondent Tenant) Lucinda (Witness for the Respondent Tenant)
In Attendance:	Gwen Malone Stenographer

1. Background:

On 14 September 2013 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 adjudication which took place on 18 December 2013. The Adjudicator determined that the notices of termination issued on behalf of the Landlord on the Tenant dated 26 August and 10 September 2013 are invalid. Subsequently a valid appeal was received from the Landlord by the PRTB on 28 January 2014.

The Board, at its meeting on 7/02/2014, approved the referral to a Tenancy Tribunal of the appeal. The PRTB constituted a Tenancy Tribunal and appointed Gene Feighery, Vincent P. Martin and Thomas Reilly as Tribunal members, pursuant to Section 102 and 103 of the Act and appointed Gene Feighery to be the chairperson of the Tribunal ("the Chairperson").

On 10/03/2014 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 15 April 2014 the Tribunal convened a hearing at 11am at Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

Application for Rent Supplement Payment signed by the Second Named Witness for the Respondent Landlord on behalf of the Applicant Tenant.

Copy of the Rent Book recording rental payments made by the Tenant to the Witness which corresponded with the schedule of rental payments on the PRTB file.

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 Appellant Landlord in this case) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant Landlord's Witness.

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 of €4,000 or up to 6 months 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 [reference section 123(3) of the 2004 Act].

5. Submissions of the Parties:

Appellant Landlord's Case:

Evidence of William Hunter, Witness on behalf of the Respondent Landlord

In his direct evidence to the Tribunal the first named witness stated that he acted as letting agent for the dwelling and that he had sourced the Tenants on behalf of the Appellant Landlord and that a 12 month fixed term lease was signed on Tuesday 20 August 2013. The Respondent Tenant took possession of the dwelling on Friday 23 August 2013. He said that the following day, he received a telephone call from the Respondent Landlord indicating that he wished to terminate the fixed term tenancy forthwith. The witness said he waited until Monday 26 August 2013 to telephone the

Respondent Tenant to inform her that she would be receiving a 28 day Notice of Termination wherein she was expected to give up possession of the dwelling. The Notice of Termination subsequently issued, together with a covering letter and these said documents were adduced in evidence to the Tribunal. No reason for terminating the tenancy was given in either the covering letter or the Notice of Termination. However the witness stated that the Appellant Landlord had told him that he wished to sell the dwelling. He said that the Landlord was spurred on to sell the dwelling by the fact that a house across the road from the dwelling had very recently sold, indicating to him that the market for house sales had improved following the slump in the sales market. The witness further stated that the Appellant Landlord was unaware of this said very recent sale of the nearby property at the material time that the tenancy agreement commenced. The witness confirmed that the Appellant Landlord did not specifically engage him as the Agent to manage the sale of the Dwelling.

The witness further stated that on 10 September a second 28 day Notice of Termination was issued on behalf on the Appellant Landlord to the Respondent Tenant. The said notice cited the requirement for the vacant possession for the purposes of selling the dwelling within the proceeding three months as the reason for the termination the tenancy. He stated that, on this occasion, he had been engaged by the Appellant Landlord as Agent to manage the sale of the dwelling. He said that it was a "chicken and egg" situation, where he could not sell the house without vacant possession. He stated that the dwelling was not advertised and that there is no 'for sale' sign, but that any enquiries received about house sales in the area would be directed towards the dwelling. He stated that he believes the said second Notice of Termination is valid and that in such circumstances, the Respondent Tenant is overholding since 9 October 2013. Copies of the covering letter and Notice of Termination were adduced in evidence to the Tribunal in support of his case.

The witness on behalf of the Appellant Landlord stated that subsequent to the Adjudication hearing a third notice of termination was issued on behalf of the Appellant Landlord to the Respondent Tenant. This notice was dated 11 February 2014 and it was preceded by a 14 day warning notice of rent arrears in the sum of €2,080.00. He stated that he made no contact whatsoever, with the Appellant Tenant about the alleged accumulation of rent arrears in advance of the 14 day warning notice in writing and that this 14 day warning notice was followed by a 28 day notice of termination. Copies of the 14 day warning notice and the notice of termination were adduced in documentary evidence to the Tribunal.

Responding to questions put to him by the Respondent Tenant, the witness for the Appellant Landlord stated that as soon as a problem in any property is reported to his Letting Agency, it is always recorded and dealt with directly by maintenance contractors engaged by the Letting Agency. He stated that when he was informed that there was a leak affecting the kitchen ceiling of the dwelling it was attended to promptly. He said that the ceiling was repaired but not repainted yet because the plaster needs to dry out first. He stated that he attended to a fault in the washing machine as soon as it was reported to him in November and he adduced in documentary evidence an invoice from the engineer for carrying out repairs.

In response to an allegation by the Respondent Tenant that the Appellant Landlord's witness stopped her from calling to his office to make her rental payments, he categorically denied this and stated that he never visited to the dwelling of the

Respondent Tenant at any time during the tenancy to collect rent in cash and for which he did not issue a receipt. He said that there was no circumstance in which the Respondent Tenant would ever part with money without receiving a receipt. He stated that all payments were made to his office where they were recorded in the rent book held in his office. Copies of the rent book were adduced in evidence to the Tribunal in support of this contention. The witness further strongly refuted an allegation by the Respondent Tenant that he accepted supplementary rental payments from her unbeknown to the Appellant Landlord and that he failed to pass this payment to the Appellant Landlord. He adduced a Supplementary Welfare Allowance application form, signed by the Respondent Tenant and the second named witness for the Appellant Landlord. He stated that any supplementary welfare payment requires details and authorisation by a Landlord and that the Appellant Landlord was fully conversant with all aspects of the tenancy agreement.

When the Respondent Tenant stated that she was prepared to enter into an agreement with the witness for the Respondent Landlord wherein she would leave the dwelling on foot of a payment in the sum equivalent to 6 weeks rent plus the return of her deposit stated that he was not authorised to enter into an agreement by the Appellant Landlord. In addition, he said that he was not prepared to enter into an agreement where there were outstanding, serious and unsupported allegations by the Respondent Tenant in relation to his conduct surrounding rental payments.

Evidence of Triona Dunlea (Second named witness for the Appellant Landlord)

In her direct evidence to the Tribunal the second named witness for the Appellant Landlord stated that she was employed in the Letting Agency along with the first named witness and that it was a very small and reputable firm. Consequently she was familiar with every aspect of client portfolios and that all financial transactions with the Appellant Tenant were carried out when she called to their offices when these transactions were recorded and signed for. She said that any issues arising in the dwelling were dealt with promptly.

She said that following a period of three weeks during which time the Respondent Tenant failed to call to the office to make her rental payments, a 14 day notice of arrears was issued on behalf of the Appellant Landlord to the Respondent Tenant and this was followed up with a 28 day notice of termination. She stated that no contact was made during the preceding three weeks during which time the arrears accumulated. She said that the last payment she received from the Respondent Tenant was in January 2014 in the sum of €200. She said that at no stage had her office ever refused to take any payments from the Respondent Tenant. She said that this would be counter productive in circumstances where their fee is calculated as a percentage of rental payments.

Respondent Tenant's Case

Evidence of Breda Casey

In her direct evidence to the Tribunal the Respondent Tenant stated that she moved into the house on Friday 23 August, and that by the following Monday 26 August, she had received a telephone call from the first named witness for the Appellant Landlord telling her she was to leave the dwelling. She said that this telephone call was followed up by a

28 notice of termination instructing her to give up possession of the dwelling. She said that no reason was given for the termination and to this day (the day of the Tribunal) she still has not been given a satisfactory reason or justification for the notice of termination. She told the Tribunal that the said notice of termination has caused great distress to herself and her family. She said she has never met the Appellant Landlord in person and she was disappointed he did not attend the Tribunal Hearing because she wanted to know the reason for the termination of the tenancy within three days of taking it up.

In relation to the second 28 day Notice of Termination issued on behalf of the Appellant Landlord citing the sale of the dwelling within the proceeding three months as the reason for terminating the tenancy, she said that this reason is not supported by any of the normal indications that a house is for sale. For example, she said that there is no 'for sale' sign on the dwelling, and that her enquiries found that the dwelling is not registered for sale with an estate agent. She stated that she keeps the dwelling immaculately and that any prospective purchaser wishing to view the dwelling at any time is welcome to do so, however nobody has visited to view the dwelling. She said her occupation of the dwelling is not hindering its sale. In fact she said that the dwelling is in better condition now than when she took up occupation of the dwelling.

The Respondent Tenant rejected the content of the 14 day warning notice of rent arrears in the sum of €2,080. She alleged that there was only two weeks rent arrears and that any other arrears were because the first named witness for the Appellant Landlord called to the dwelling and took cash payments from her in lieu of rent and for which he did not issue her with a receipt. The Appellant Tenant stated that she paid a security deposit in the sum of €1,200 at the commencement of the tenancy and not €850 recorded on the lease and signed by her. She said that she gave the balance to the first named witness in cash. In her later evidence, the Appellant stated that she had paid €1,000 as a security deposit. She stated she will be in a position to clear the two weeks rent arrears on the Thursday following the Tribunal hearing when she gets paid.

The Respondent Tenant said that the reason there are rent arrears is that the first named witness keeps telling her that he is not her Landlord, and in such circumstances he would not accept rental payments from her. This resulted in an accumulation of rent arrears.

The Respondent Tenant stated that there were a number of issues that arose within the dwelling which were not attended to by the first named witness for the Appellant Landlord. She stated that before Christmas she reported a leak in the ceiling in the kitchen and that it was only attended to at the end of March when the ceiling actually collapsed. She stated that repairs have been carried out, however that the ceiling has not been repainted yet. She said that the washing machine malfunctioned due to a rotting pipe and that it took 6 weeks to have this attended to by the first named witness for the Appellant Landlord. She said that the electrical arrangement within the dwelling was dangerous because plugs for appliances were overloaded, including the washing machine, fridge, radio and other appliances.

The Appellant Tenant said that she was no longer happy in the dwelling. She said that her formerly good relationship with the first named witness for the Appellant Landlord no longer existed and that she was prepared to leave the dwelling if she received the equivalent of six weeks rental payments plus her deposit payment.

6. Matters Agreed Between the Parties

The Tenancy was a Fixed Term 12 month Tenancy commencing on 20 August 2013.

The monthly rental payment was recorded as €850 on the lease but reduced to €800 thereafter.

The Tenant remains in occupation of the dwelling.

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.

7.1 Finding: The Tribunal finds that the notices of termination issued on behalf of the Appellant Landlord to the Respondent Tenant dated 26 August and 10 September 2013 are invalid.

Reason: A twelve month fixed term lease dated 20 August 2013 and signed by the said witness on behalf of the Landlord and the Respondent Tenant existed between the parties. Under Section 58(3) of the Residential Tenancies Act 2004 a fixed term tenancy shall only be terminated by a Landlord for breach of Tenant Obligations. There is no allegation of any such breach and accordingly, the Notices of Termination are deemed to be invalid. A Landlord cannot rely on the provisions of s34 of the Act to terminate a fixed term tenancy during the fixed term.

7.2 Finding The Tribunal finds that the 14 day notice of rent arrears dated 28 January 2014 and the subsequent notice of termination dated 11 February are invalid.

Reason: Section 58(3) of the Act provides that a landlord may not terminate a fixed term tenancy, unless there has been breach of obligations on the part of the tenant. In circumstances where the tenant has failed to comply with their obligation to pay rent under S. 16(1) of the Act, the following steps are required to validly terminate a tenancy by the landlord.

Step 1

The landlord must notify the tenant that arrears of rent exist and that the tenant is allowed a reasonable time to remedy that breach of obligation. In such circumstances the landlord is entitled to terminate the tenancy if the tenant fails to remedy that breach of obligation within the period specified. This first notification does not need to be in writing. A landlord can give a tenant verbal notice of the rent arrears but must ensure that the tenant is aware that failure to pay the rent arrears within a reasonable time will result in the landlord terminating the tenancy.

Step 2

Where a tenant falls into rent arrears, the landlord must serve a written notice on the tenant informing him or her of the amount of rent that is due. The landlord must then give the tenant 14 days to pay those rent arrears.

Step 3

If the tenant fails to pay the rent due within 14 days of receipt of the written notice as stated above, the landlord may proceed to terminate the tenancy by serving a 28 day notice of termination.

In their direct evidence to the Tribunal, the first and second named witness on behalf of the Appellant Landlord stated that they did not comply with step 1, of the requirements to validly terminate a tenancy, either orally or in writing in circumstances where the first notification the Respondent Tenant received of alleged rent arrears was when she received a 14 day warning letter. The Tribunal finds that the Appellant Landlord failed to comply with step one above which said compliance is legally essential and this failure cannot be cured by compliance with the subsequent steps.

7.3 Finding: The Tribunal finds the Respondent Tenant is in breach of her obligations under section 16(1) of the Act by failing to pay to the Landlord or his authorised Witness the rent provided for under the tenancy concerned on the date it falls due for payment.

Reason: The Tribunal is not persuaded by the oral testimony of the Respondent Tenant in circumstances where the evidence relating to rental payments and security deposit was contradictory and inconsistent. The Respondent Tenant stated that, on the one hand, the Witness on behalf of the Appellant Landlord had prevented her from paying her rent by telling her that he was not her Landlord and that this resulted in an accumulation of rent arrears, and on the other hand she stated that the Witness regularly called to her dwelling to collect cash payments from her for which he issued no receipts. Similarly, documentary evidence to the Tribunal in the form of the fixed term lease signed by the Respondent Tenant recorded that she paid a deposit in the sum of €850. However in her oral testimony she stated that the Witness requested a cash top up sum to bring this amount to €1,200 and in her later testimony this sum was given as €1,000. She stated that she had no supporting documentation, witnesses or receipts for any cash sums given by her directly to the Witness on behalf of the Appellant Landlord. The witness for the Respondent Tenant stated that she did see the Witness for the Respondent Landlord at the dwelling in relation to repairs, however she could not confirm that she witnessed him accepting payments in cash from the Respondent Tenant. The rent arrears sum as at the 19 March 2014 is €2,080.00.

7.4. Finding: The Tribunal finds that the Witness, acting on behalf of the Landlord has complied with his obligations under section 12 (1)(b)(ii) by carrying out all such repairs as are from time to time necessary and ensure that the structure complies with any standards for houses for the time being prescribed under Section 18 of the Housing (Miscellaneous Provisions) Act 1992 and to the interior of the dwelling, all such repairs and replacement of fittings as are from time to time necessary so that the interior and those fittings are maintained in, at least the condition in which they were at the commencement of the tenancy and in compliance with any such standards for the time being prescribed.

Reasons: The evidence of the first and second named Witness for the Appellant Landlord in relation to the recording and carrying out of maintenance work on dwellings for which his Agency had responsibility is credible and was supported by documentary evidence in the case of the broken washing machine in the dwelling and the fact that as soon as the leak in the kitchen ceiling was reported to him, it was attended to promptly.

The Respondent Tenant could not be specific about the time frame between reporting the leak and the ultimate repair.

8. Determination:

Tribunal Reference TR0114-000569

In the matter of Henry O Sullivan (Landlord) and Lucinda Casey, Breda Casey (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The notices of termination issued on behalf of the Appellant Landlord to the Respondent Tenant dated 26 August and 10 September 2013 are invalid.
2. The 14 day notice of rent arrears dated 28 January 2014 and the subsequent notice of termination dated 11 February are invalid.
3. The Appellant Tenant shall pay the total sum of €2,080.00 to the Appellant Landlord within 28 days of the date of issue of the Order, being rent arrears for the Respondent Tenants breach of her obligations under Section 16 (1) of the Act in respect of the tenancy at 13 Westbury Estate, Wilton, Cork.
4. The Respondent Tenant shall also pay any further rent outstanding from 19 March 2014 at the rate of €800 per month, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as she vacates and gives up possession the above dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 20/04/2014.



Signed:

Gene Feighery Chairperson

For and on behalf of the Tribunal.