

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0214-000585 / Case Ref No: 1113-08841**

<b>Appellant Tenant:</b>	Michael Bergin
<b>Respondent Landlord:</b>	Peter Egan, Caitriona Egan
<b>Address of Rented Dwelling:</b>	Bohoona, Spiddal , Galway
<b>Tribunal:</b>	Patricia Sheehy Skeffington (Chairperson) John FitzGerald, John Tiernan
<b>Venue:</b>	Room G01, Galway County Council, Aras an Chontae, Prospect Hill, Galway.
<b>Date &amp; time of Hearing:</b>	29 April 2014 at 2:30
<b>Attendees:</b>	For the Appellant: Michael Bergin (Appellant Tenant)  For the Respondent Peter Egan (first named Respondent Landlord) Paul Tully (Respondent Landlords' Agent) John Higgins (Respondent Landlords' witness)
<b>In Attendance:</b>	Gwen Malone Stenographers

**1. Background:**

On 12 November 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 14 January 2014. The Adjudicator upheld the Tenant's claim that the Landlords had failed to ensure his enjoy peaceful occupation of the dwelling and had breached obligations in respect of the standard and maintenance of the dwelling. However the Tenant's claims in respect of the notification of the authorised agent were not upheld and the Landlords' claims in respect of rent arrears and overholding pursuant to a valid Notice of Termination were upheld. Consequently an order for vacant possession and payment of rent arrears in the sum of €2,404.24 was made against the Tenant.

Subsequently the Tenant appealed against the Adjudicator's determination, which appeal application was received by the Board on 28 February 2014. The Tenant cited among his grounds of the appeal anti-social behaviour, breach of fixed term lease, breach of landlord obligations, invalid Notice of termination and the standard and maintenance of the dwelling. The appeal's application was approved by the Board on 7 March 2014.

The PRTB constituted a Tenancy Tribunal and appointed John FitzGerald, Patricia Sheehy Skeffington and John Tiernan as Tribunal members pursuant to Section 102 and

103 of the Act and appointed Patricia Sheehy Skeffington to be the chairperson of the Tribunal ("the Chairperson").

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 29 April 2014 the Tribunal convened a hearing at Room G01, Galway County Council, Aras an Chontae, Prospect Hill, Galway.

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

1. PRTB File

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

A final case file was submitted to the PRTB shortly before the hearing date.

## **4. Procedure:**

The Chairperson asked the Parties 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 Tenant in this case) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent Landlords; that the Respondent Landlords would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant Tenant.

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 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.

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 (pursuant to section 123(3) of the Residential Tenancies Act, 2004, hereafter referred to as the RTA).

The Chairperson also informed the parties that if it seemed that they might be able to resolve their dispute by agreement, the Tribunal would facilitate any such negotiations.

An issue arose in respect of the late submission of the final case file, a copy of which had been seen by the Respondent Landlord on the PRTB portal but his agent had not had a copy of it or had the opportunity to consider it fully. The Chairperson indicated that where a document from that file was sought to be relied upon the Respondent Landlords would

be given time and opportunity to consider the particular document as it arose and make any relevant submissions at that point.

The Parties were then sworn in.

## **5. Submissions of the Parties:**

The parties agreed that the matters in dispute and which fell under the jurisdiction of the Tribunal comprised:

- (a) Whether the notice of termination dated 15 October 2013 was valid;
- (b) Whether the Respondent Landlords allowed the Appellant Tenant peaceful enjoyment of the tenancy;
- (c) Whether rent arrears had accrued and if so, in what sum. Related to this is whether the Appellant Tenant was entitled to withhold any sum from the rent for Revenue purposes or the for the purposes of purchasing furniture;
- (d) Whether the Respondent Landlords were in breach of their obligations under the tenancy regarding the standard and maintenance of the dwelling;
- (e) Whether the Appellant Tenant was in breach of his obligations to facilitate an inspection of the dwelling; and
- (f) Whether the Respondent Landlords breached their obligation to notify the Appellant Tenant of the identity of his authorised agent.

In this report Caitriona Egan, the wife of the first named Respondent Landlord Mr Peter Egan, who was not in attendance but was mentioned in evidence at the Tribunal is referred as the 'second named Respondent Landlord'

### **APPELLANT TENANT'S SUBMISSIONS**

- (a) Whether the notice of termination dated 15 October 2013 was valid

The Appellant Tenant's main submission in respect of the Notice of Termination bearing the date 15 October 2013 was that it was invalid because the Respondent Landlord had not properly appointed his agent at the material time. Submissions in respect of the validity of the appointment of the agent are set out below. The Appellant Tenant submitted that, pursuant to section 62 of the Act, a Notice of Termination had to be signed by the landlord or his/her authorised agent. As, in his opinion, the agent was not properly authorised he submitted that the Notice was invalid.

In respect of the service of the Notice of Termination, the Appellant Tenant said that a letter post-marked 16 October 2013 and which he said he received on 17 October 2013 could have been posted on 15 October 2013.

- (b) Whether the Respondent Landlords had allowed the Appellant Tenant peaceful enjoyment of the tenancy

The Appellant Tenant said that he received an inordinate number of telephone calls from the first named Respondent Landlord between the 30 September 2013 and the 3 October 2013. He referred specifically to an email dated 2 October 2013 in which the first named Respondent Landlord who resides abroad asked why the Appellant Tenant had not paid rent and was not returning his calls or any other form of contact and stated "My family and family in law will be calling for an explanation and for rent as you know I am in the UK".

The Appellant Tenant further referred to a voicemail received on his mobile phone around the 3rd October 2013, which he submitted was the fifteenth call of that day, in which the first named Respondent Landlord seemed to address a third party who may have picked up the message and indicate to the listener that the Appellant Tenant was living in his dwelling without paying rent despite promises to pay it. The voicemail, a recording of which was supplied to the Tribunal, seemed to then address the Appellant Tenant stating that the caller (the first named Respondent Landlord) would post his picture around businesses in the locality indicating that the Appellant Tenant had not paid rent. The Appellant Tenant also referred to a voicemail in which he said the Respondent Landlord had told him that he would be evicted in two day's time but he did not have a recording of this.

The Appellant Tenant agreed on questioning that no pictures of him had in fact been put up in the locality but stated that he had concerns as to from where such pictures could have been sourced. He agreed that a person might become frustrated if no reply had been given to numerous phone calls over the previous days but he said that the response was inappropriate and wrong and it had threatened him.

(c) Whether rent arrears has accrued and if so, in what sum and what deductions could properly be made from the rent

The Appellant Tenant stated that the rental amount he owed to the date of the Tribunal hearing was €4,400 taking into account a table and chairs in the sum of €499 which he said he had bought with the agreement of the Respondent Landlords and, also with their agreement, had deducted from his rental payment due in May 2013. He said that the reason that the invoice that he had supplied to the Respondent Landlords was not in the format of a normal Merlin Park Furniture invoice was because he had bought another item from that business on the same day and so had replicated an invoice which featured only the items which he had agreed with the Respondent Landlords that he could purchase for the dwelling. He said that that the invoice he sent to the Respondent Landlords was created by him for that reason.

In respect of the remaining amount of rent due, the Appellant Tenant stated that in late September 2013 he had learned that because the Respondent Landlords were not resident in Ireland he was obliged to withhold 20% of the rent in order to pay the relevant tax to the Revenue Commissioners. He gave evidence that the Respondent Landlords had first notified him by letter dated 8th October 2013 that a sister of the second named Respondent Landlord was being appointed to act as the Respondent Landlords' agent. He said that he had asked for details of completion of the Tax Registration Collection Agents form relating to this person and did not receive a reply. Instead he said that he received a letter from Mr Paul Tully advising that he had been appointed as agent on behalf of the Respondent Landlords and advising that all rents and arrears should be paid to his office. He stated that he was stymied from paying both the rent and tax because it was not clear who the correct payee was given the queries he had over which agent had authority to act.

He said that in any event he did not have the first named Respondent Landlord's PPS number which he needed to pay the tax to the Revenue Commissioners. He said that he was advised verbally by the Revenue Commissioners that having the name, address and bank details of his landlord did not suffice as they did not have a record of the first named Respondent Landlord connected to the dwelling because its folio indicated it was fully owned by the second named Respondent Landlord. He said he did not have the PPS

number of the second named Respondent Landlord. He said that the landlord's provision of a PPS number was a requirement of the Rent Book Regulations.

It was put to the Appellant Tenant that he could pay the full rent without deduction to the Respondent Landlords' agent without the necessity of withholding or paying any tax. The Appellant Tenant said he could not do this as he was unsure which agent to pay and in any event he had not got the requisite PPS number. It was put to the Appellant Tenant that even if he withheld €110 from the monthly rent (equating to 20%) for Revenue purposes he could still pay the remaining €440. The Appellant Tenant said that he was not able to because he needed a landlord's PPS number for rent allowance, but conceded that there was no obligation on the Respondent Landlords in this case to accept rent allowance payments.

Under cross examination the Appellant Tenant agreed that he had paid rent into the first named Respondent Landlord's account at the beginning of the tenancy. He was asked why he had not alerted the Respondent Landlords as to any difficulty he had paying rent in early August and he said that he had had back problems. He agreed that he had told the first named Respondent Landlord that he would pay the outstanding rent by 30th September 2013 during a telephone conversation on 24 September 2013.

The Respondent Landlord's agent asked the Tenant whether he had received a letter from him dated 10 December 2013 in which he asked for a R185 form recording withheld tax paid on behalf of a non resident landlord. The Appellant Tenant agreed that he had received this letter and stated that he had not paid the rent or tax because the PPS and agent issues had not been adequately clarified. The Respondent Landlords' Agent drew the Appellant Tenant's attention to an extract from a Revenue Commissioner's Guidance note on the taxation of non-resident landlords, with a highlighted portion stating that 'where rents are paid to a person whose usual place of abode is in the State, for example to an Irish based estate agent, acting on behalf of a non-resident landlord, the tenant is not obliged or entitled to deduct income tax'. The Appellant Tenant reiterated his concerns over the validity of the agent's appointment.

Among the later documents submitted by the Appellant Tenant to the Tribunal was a fuller version of the same Revenue Commissioner's Guidance note on the Taxation of Non Resident Landlords. It states at paragraph 2.2 that tenants may be unaware of their obligation to deduct tax from residential tenancy rents and that the tenant should be asked to provide details of the landlord's name and address, bank account into which rent is paid and details of the rents paid to the non resident landlord for all years in which the landlord was resident abroad. This document states that an assessment can then be made on the landlord but the tenant should be made aware of the obligation to deduct tax from future payments of rent.

(d) Whether the Respondent Landlord was in breach of his obligations under the tenancy regarding the standard and maintenance of the dwelling.

The Appellant Tenant submitted that an odour from the bathroom had arisen and that a vent which was clear from a photograph the Respondent Landlord had submitted was obstructed by exterior pipes. He said that he had not notified the Respondent Landlords of this issue.

The Appellant Tenant also submitted photographs of the exterior garden area which had become overgrown. The Appellant Tenant said that he had not notified the Respondent Landlords of this issue.

In respect of the fire blanket and fire extinguisher which was required in the dwelling, the Appellant Tenant said that he notified the Respondent Landlords' agent of this issue on about 23 October 2013. In the course of the Tribunal hearing the Appellant Tenant agreed to be available at the dwelling on Tuesday 6 May 2014 to take delivery of these items and in the alternative agreed they could be left for collection at Spiddal post office.

(e) whether the Appellant Tenant was in breach of his obligations to facilitate an inspection of the dwelling

The Appellant Tenant said that he had received two letters in December 2013 from the Respondent Landlords' agent which gave short notice of an inspection which would take an hour to complete. He said that neither proposed arrangement was convenient and that rather than waiting for him to contact the agent to organise another time the agent imposed a further unilateral date upon him in early January. The Appellant Tenant said that he had agreed to an inspection in late February and that this had in fact occurred in March 2014. It was put to the Appellant Tenant that the time elapsing between December and March, even taking into account Christmas, was a lengthy period. The Appellant Tenant cited a personal circumstance in respect of the cancellation of the final February appointment to the date in March.

(f) whether the Respondent Landlord breached his obligation to notify the Appellant Tenant of the identity of his authorised agent

The Appellant Tenant stated that when he raised the non resident tax issue, the Respondent Landlords had told him by email of 8 October 2013 that Brid Ni Chonghaile would act as their agent. He said that he then queried her qualifications and registration as an agent but got no real response to this. He said that he was therefore surprised to receive the Notice of Termination on 17 October 2013 (dated 15 October 2014) which stated that Paul Tully was acting as the Respondent Landlords' agent. He said that on 24 October 2013 he received an email from the Respondent Landlords stating that Bridge House Properties (Mr Tully's firm) were acting as their agent.

He said that he did not deem the line in the Notice of Termination stating 'Paul Tully on behalf of Mr Peter Egan' as constituting a notice of an agent given that no response had been provided to his queries in respect of Ms Ni Chonghaile some days beforehand. In any event he said his landlords were both the first and second named Respondent Landlords, not solely the first named Respondent Landlord. He further asserted that the first named Respondent Landlord did not have the right to act as the landlord of the dwelling as he was not the owner of it according to the land registry folio which named the second named Respondent as its owner. Thus he submitted that if Paul Tully was only acting on behalf of the first named Respondent Landlord he was not an agent of his actual landlord, who was either both Respondents acting together or the second named Respondent Landlord.

The Appellant Tenant stated that the Respondent Landlords' Agent had used various professional association logos without permission and he queried his status. He further queried whether the Respondent Landlords' Agent had benefitted from a proper letter of engagement under section 43 of the Property Services Regulation Authority Act of 2011 ("the PSRA Act"). He submitted that under section 43, where an agent did not receive a returned letter of engagement within 7 days that agent was precluded from further acting on behalf of the property owner. He emphasised his contentions over the dwelling's

ownership and stated that the first named Respondent Landlord was not the owner and thus in his view could not be the landlord.

He further queried whether an effective letter of engagement could have issued in the given short 7 day timeframe for the turnaround of post from the United Kingdom. He stated that by tracking the read-receipt of his emails, the second named Appellant Landlord had received his queries over Ms Ni Chonghaile's appointment on 14 October 2013 but that the Respondent Landlords in their submission had stated that Mr Tully was appointed on 14 October 2013 and that Mr Tully had received the signed PSRA document on 21 October 2013. The Appellant Tenant stated that the information required in a letter of engagement coupled with what he characterised as probable inefficiencies in Mr Tully's office in regard to late receipt of post rendered it very unlikely that the engagement letter had been sent and returned in the time stated by the Respondent Landlords. He submitted that this matter would be resolved easily if the Respondent Landlords' Agent produced the letter of engagement and requested that it be put on the record that this letter was not produced.

It was put to the Appellant Tenant that an office dealing in such engagement letters regularly would expend less time than people not in the trade in compiling engagement letters. The Appellant Tenant stated that the time frames remained too tight. It was put to the Appellant Tenant that the PSRA Act had not amended the Residential Tenancies Act 2004 in any way and thus the definition of 'authorised agent' in the latter act arguably applied. The Appellant Tenant stated that if the letter of engagement was not properly sent the agent was precluded from acting and thus could not send a Notice of Termination. It was put to the Appellant Tenant by the Respondent Landlords' agent that prior to the return of the letter of engagement an agent could act, and only on non-return of the letter could he not act further, and in this case the 15 October 2013 (the date of the Notice of Termination) was within the period in which the return of the letter was awaited. The Appellant Tenant stated that this did not allay his scepticism over the existence or adequacy of the letter of engagement which had not been produced by the Respondent Landlords or by their agent.

#### RESPONDENT LANDLORDS' SUBMISSIONS

##### (a) Whether the notice of termination dated 15 October 2013 was valid

The Respondent Landlord's Agent submitted that the Notice of Termination was valid because in accordance with section 62 of the Residential Tenancies Act it was in writing; was signed by him as the Respondent Landlord's authorised agent; specified that it was sent on the 15 October 2013 (being the date of service); required no reason for the termination of the tenancy because it fell within the first six months of the tenancy; specified the termination date and gave the Appellant Tenant the full 24 hours to vacate and it notified the Appellant Tenant of his right to challenge the Notice to the PRTB within 28 days.

The Respondent Landlord's Agent stated that he had written the Notice of Termination of 15 October 2013 and that he could have posted it on 15 October 2013 or on the 16 October 2013. He said that sometimes post collection at the local post box was effected early and that a letter posted prior to the last collection time advertised would then in fact be collected from the post box on the next day.

He further said that as two clauses in the lease agreement allowed both the landlord and tenant to terminate the lease with 28 day's notice to the other party, the lease was not in reality a fixed term lease.

(b) Whether the Respondent Landlord has allowed the Appellant Tenant peaceful enjoyment of the tenancy

The First Named Respondent Landlord acknowledged that the words used in a recorded voicemail were inappropriate but he said that they were borne out of frustration after not receiving any rent for two months, a broken promise to pay the rent and having received no communication in response to repeated phone calls and emails. While the First Named Respondent Landlord said that the language used was wrong he said that he was attempting to get the Appellant Tenant's attention and to prompt him to engage on the matter. He said that at no point had he taken or obtained any pictures of the Appellant Tenant.

The First Named Respondent Landlord refuted that an email sent on 2 October 2013, which read that 'my family and family in law will be calling for an explanation and for my rent as you know I am in the UK' was threatening. He said that this simply reflected that he was outside the jurisdiction and due to the Appellant Tenant's failure to contact him, some family who were local were in a better position to do so.

The First Named Respondent Landlord stressed that at all times the Respondent Landlords had attempted to be accommodating, reasonable and good landlords. He cited the agreement to buy furniture for the house at the Appellant's behest and the forbearance over two months of rent arrears. He indicated that conversely the Appellant Tenant had failed to pay rent and then had engaged in what he viewed as an intimidating and distressing campaign of reporting him and his wife to multiple authorities in circumstances whereby he said that he and his wife were good people who were trying to abide by the law.

(c) Whether rent arrears has accrued and if so, in what sum, and whether any sums were properly deducted

The Respondent Landlords' witness said that the invoice for furniture which had been submitted by the Appellant Tenant did not emanate from his shop. However he said that he did sell tables and chairs of the type depicted in the case file photograph of the dwelling and it may well have cost €499.

The First Named Respondent Landlord said that the invoice which had been given to him as purportedly from a particular business was not in fact from that business and he therefore questioned it. However he agreed that if furniture of a particular standard and value were in the dwelling and left there at the end of the tenancy, this accorded with his agreement with the Appellant Tenant. The First Named Respondent Landlord did state however that while he had agreed that the dwelling could be supplied with these items of furniture he had envisaged that he either would have been consulted on the items and cost prior to final purchase or would pay the company directly himself and that he had been taken by surprise that the sums for the furniture had been deducted from the rent due for May 2013.

The Respondent Landlords' Agent stated that as he had been duly appointed, the concerns raised by the Appellant Tenant in respect of withholding non resident landlord tax did not arise. He referred to a Revenue Guidance note on section 1041 of the Taxes



Consolidation Act in this regard, which read "Where rent are paid to a person whose usual place of abode is in the State, for example to an Irish based estate agent, acting on behalf of a non-resident landlord, the tenant is not obliged or entitled to deduct income tax". He said that no payment of rent had been made to him. When asked whether account details had been provided, he said that they had not been requested but that he would accept the rent in any form.

The Respondent Landlord's Agent stated that if the Appellant Tenant withheld income tax on rental payments, he was obliged to give the landlord a certificate of tax deducted (a R185) such that the landlord could claim tax relief. The Respondent Landlord's agent stated that despite the request of 10 December 2013 no R185 form had been supplied to him. The Respondent Landlord's Agent stated that no attempt to pay rent with or without the 20% had been made.

The First Named Respondent Landlord stated that he paid tax on his rental income through his Irish-based accountant and supplied a tax clearance certificate.

The Respondent Landlord's Agent submitted a schedule of rent arrears which showed rent arrears accruing from May 2013 to the date of the Tribunal Hearing on 29th April 2014 in the total sum of €4,899, which arrears were calculated without the deduction of the cost of the table and chairs of €499 in circumstances whereby the validity of the invoice for the furniture was contested.

(d) Whether the Respondent Landlord was in breach of his obligations under the tenancy regarding the standard and maintenance of the dwelling.

The Respondent Landlord's Agent said that it was in response to a comment that he had made that the fire safety equipment had been ordered by the Respondent Landlords. He said that the items in question had been purchased but despite a number of attempts to arrange delivery to the Dwelling at an agreed time that it had not been possible to organise a time for their delivery with the Appellant Tenant. At the Tribunal hearing it was agreed that the extinguisher and fire blanket would be delivered on Tuesday 6 May 2014 or alternatively left at Spiddal post office.

The Respondent Landlord and his agent said that the Appellant Tenant had not notified them of any complaint in respect of the standard and maintenance of the dwelling.

(e) whether the Appellant Tenant was in breach of his obligations to facilitate an inspection of the dwelling

The Respondent Landlords' Agent stated that several letters had been sent seeking to effect an inspection. The letters commenced in December 2013 and an inspection had eventually occurred in March 2014.

(f) whether the Respondent Landlord breached his obligation to notify the Appellant Tenant of the identity of his authorised agent

The Respondent Landlord's Agent stated that he had been appointed by the Respondent Landlords on 14 October 2013. He pointed out that on the letter of termination dated 15 October 2013 it stated that he was acting on behalf of the Respondent Landlord. He said that the requisite engagement letter was sent to the Respondent Landlords immediately. The First Named Respondent Landlord said that he signed the letter of engagement on 17 October 2013. The Respondent Landlords' Agent said that he received the returned, signed PRSA engagement letter on 21 October 2013. The Respondent Landlord's agent stated that this was a contractual document between an agent and a landlord which was

not for a third party's perusal. He said however that he had registered as the agent of the tenancy with the PRTB on 24 October 2013.

The First Named Respondent Landlord stated his agent had authority to act on his behalf and his wife's, the Second Named Respondent Landlord. He said that as a married couple they acted in partnership and shared the mortgage over the dwelling in question. He said that they had appointed Mr Tully as their agent on 14 October 2013.

## **6. Matters Agreed Between the Parties**

- (a) The tenancy commenced by a lease agreement dated 11 May 2013;
- (b) The monthly rent reserved was €550 per month;
- (c) The Appellant Tenant paid a deposit in the sum of €550 to the Respondent Landlord;
- (d) The Appellant Tenant remains in residence at the dwelling;
- (e) The Respondent Landlords would arrange for the delivery of a fire extinguisher and fire blanket to the Appellant Tenant at the dwelling on Tuesday 6 May 2014 or alternatively at Spiddal Post Office.

## **7. Findings and Reasons:**

Finding One:

The Respondent Landlords appointed Mr Tully of Bridge Properties to act on their behalf on 14 October 2013 and were not in default of their obligation to notify the Appellant Tenant of the name of their authorised agent.

Reasons

1. Section 4 of the Residential Tenancies Act 2004 states that a 'authorised agent' must be construed in accordance with section 12(1)(e) of the Act, which is "the person ... who is authorised by the landlord to act on his or her behalf in relation to the tenancy for the time being".
2. The Tribunal heard and accepted sworn testimony that Mr Paul Tully of Bridge properties was the person authorised by the landlord to act on their behalf on 14 October 2013. The Tribunal accepts that this authorisation was on behalf of both landlords acting together.
3. The Tribunal notes the Appellant Tenant was informed of this authorisation by the Notice of Termination of 15 October 2013 which stated he acted 'on behalf' of the First Named Respondent Landlord; and email from the Respondent Landlords to the Appellant Tenant of 24 October 2013 and by interactions had between the Appellant Tenant and the Respondent Landlord in October 2013 in respect of the fire extinguisher and blanket.
4. The Tribunal notes that the obligation of a landlord under section 12 of the Act is to notify a tenant of the name of the authorised agent and to supply adequate contact details. The Tribunal finds that these elements were fulfilled for the purposes of the Residential Tenancies Act definition of an authorised agent.
5. The Tribunal further notes that the RTA does not set a time frame after which the appointment of the authorised agent is communicated to the tenant. The Tribunal finds that as a practical matter the events should be close in time to secure the objective that

the tenant is properly aware of who is acting for his landlord. The Tribunal finds that if any ambiguity over who the agent was arose in this case, the matter was adequately clarified in a short amount of time, and in any event prior to the Appellant Tenant referring question of the Notice of Termination's validity to the Board on 12 November 2013.

6. The Tribunal rejects that any provisions of the Property Service Regulatory Authority Act 2011 operate to modify or amend the definition of an authorised agent for the purposes of the Residential Tenancies Act, 2004. In this regard it notes that the language used in section 43 of the PSRA act is 'licensee' and a 'person' to whom a property service is provided, whereas the RTA uses the language of 'landlord' and 'agent'. Further, no part of the PSRA Act relates back to or amends the RTA. The Tribunal does not accept that the PSRA Act, which may regulate landlord-agent affairs, operates to curtail or limit rights and obligations of parties which are governed by the RTA, who are primarily landlords and tenants.

7. However even if it were not for the above, the Tribunal also finds as a matter of probabilities and based upon the sworn testimony it heard that the letter of engagement required by section 43 of the PSRA Act 2011 was signed by the Respondent Landlord on 17 October 2013 and was returned to the Respondent Landlord's agent on 21 October 2013 and thus the agent's appointment was valid.

8. The Tribunal accepts that the Respondent Landlords acted in partnership for the purposes of the tenancy and that the agent's appointment was on both of their behalf. The Tribunal declines to make any finding in respect of the Respondent Landlords' ownership of the dwelling as it is expressly precluded from so doing under section 110 of the RTA.

#### Finding Two:

The Notice of Termination dated 15 October 2013 was served on the Appellant Tenant by the Respondent Landlord's Agent on 15 October 2013 and was valid. The Appellant Tenant is overholding.

#### Reasons:

1. To be valid, a Notice of termination must be in writing, signed by the landlord or authorised agent, specify its date of service; provide a reason for the termination where the tenancy is of greater than six month's duration; specify the termination date and that the tenant has the full 24 hours to vacate possession on that date; and state that the validity of or right to serve the Notice can be referred to the PRTB within 28 days of receipt of it: section 62 of the Act.

2. The Tribunal finds that these elements were met and were not altered or amended by the lease governing the tenancy.

3. The Tribunal notes that the termination clauses benefitting both parties to the lease allowed for a 28-day termination notice period which were not inconsistent with the terms of the Act in the first six months of the tenancy.

4. The Tribunal finds on the balance of probabilities all relevant acts of service of the Notice in the Respondent Landlords' Agents' control, which must be undertaken on the day of service (pursuant to section 64 of the Act) were taken on the 15 October 2013. The Tribunal notes that while some ambiguity arose as to when the letter was posted, the Appellant Tenant agreed that this could have been done on the 15 October 2013 and obtained a post stamp of 16 October 2013. The Tribunal also notes that the Notice refers

to the 15 October 2013 as being 'today' and while there was ambiguity as to the date of postage there was no clear evidence as to postage having been on the 16th rather than the 15th.

Finding Three:

The Appellant Tenant owes rent arrears of €4,400 with no further deductions applying.

Reasons:

1. The parties' dispute over the quantum of rent arrears was limited to whether the sum of €499 could be deducted from the overall sum of €4,899 on the basis that the Appellant Tenant bought furniture of that value for the dwelling. On the balance of probabilities, the Tribunal finds that the table and chairs shown in the images of the dwelling were supplied by the Appellant Tenant and had the value of €499. It further finds that the Respondent Landlords agreed that this sum could be deducted from the rent.
2. In respect of the manner of rental payment and whether sums could be deducted as withholding tax for the Revenue Commissioners, the Tribunal takes as its starting point the primary obligation of tenants under the RTA which is to pay rent as it falls due as set out in Section 16 of the Act.
3. The Tribunal finds that as an agent was clearly in place from 14 October 2013 and this was communicated fully to the Appellant Tenant on or before 15 October 2013 and again on 24 October 2013, there was no reason to withhold any rent whatsoever from the latter of those dates and the entirety of the rent due to the Respondent Landlords must be paid to the Respondent Landlords' agent.
4. The Tribunal rejects the contention that the Appellant Tenant is precluded by the Revenue Commissioners from paying the full rent to the Respondent Landlords' Agent in default of a PPS number, which number may be supplied after such payment has been made and the relevant account set up.
5. The Tribunal further finds no statutory basis deriving from the Residential Tenancies Act or the Rent Book Regulations which require the landlord to supply the tenant the PPS number and in any event such default would not absolve the tenant from his obligation to pay rent as it fell due.

Finding Four:

The Respondent Landlords did not interfere with the Appellant Tenant's peaceful and exclusive occupation of the dwelling.

Reasons:

1. The Tribunal finds that albeit a large number of phone calls were made in late September/early October 2013 by the First Named Respondent Landlord, the quantity of phone calls was reasonable in circumstances whereby all but the first couple would not have been made had the Appellant Tenant answered any of them. The Tribunal accepts that the First Named Respondent Landlord was frustrated by the Appellant Tenant's failure to respond to his communications.
2. Having listened to the recording of a voicemail left with the Appellant Tenant by the First Named Respondent Landlord on or about 3 October 2013, the Tribunal finds that while its content was inappropriate, the tone of the message was measured and calm and in no way threatening or abusive.

3. The Tribunal finds that any perceived threat could have been immediately resolved by way of a telephone conversation between the First Named Respondent Landlord and the Appellant Tenant, to which phone calls the Appellant Tenant failed to respond.

Finding Five:

The Respondent Landlords were not in breach of their obligations in respect of the standard and maintenance of the dwelling.

Reasons:

1. A landlord has obligations under section 12(1)(b) of the act to maintain the dwelling to an appropriate standard and effect requisite repairs. A tenant has an obligation under section 16 (d) of the Act to notify the landlord or agent of any required repairs such that the landlord can remediate them.

2. The Appellant Tenant stated that no notification of the gardening issue had been made and thus the Respondent Landlords were not in default.

3. In respect of the ventilation issue, the Tribunal finds that inadequate notice of any issue was brought to the Respondent Landlords and moreover insufficient evidence of any defect or damage as a consequence was adduced to the Tribunal.

Finding Six:

In pursuance of their agreement, the Appellant Tenant shall facilitate the Respondent Landlord to provide a fire blanket and extinguisher to the dwelling on 6 May 2014 at the dwelling or at Spiddal Post Office.

Reasons:

1. The Tribunal notes that Regulation 11 of the Housing (Standards for Private Rented Houses) Regulations 2008, that a dwelling must contain a fire blanket.

2. The Tribunal adopts the parties' agreement that a fire extinguisher and fire blanket be delivered to the dwelling or Spiddal Post Office on 6 May 2014 and that the Appellant Tenant shall take delivery of them. These are intended to become part of the inventory of items at the rented Dwelling.

Finding Seven

The Appellant Tenant was not in breach of his obligation to facilitate an inspection of the dwelling.

Reasons:

1. While a long delay prior to an inspection was requested and it occurred, the Tribunal notes that a lengthy inspection did occur which the Appellant Tenant facilitated.

## **8. Determination:**

**Tribunal Reference TR0214-000585**

**In the matter of Michael Bergin (Tenant) and Peter Egan, Caitriona Egan (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Appellant Tenant and all persons residing at Bohoona East, Spiddal, County Galway shall vacate and give up vacant possession of the dwelling to the Respondent Landlords within 14 days of the making of this Order.

2. The Appellant Tenant shall pay the total sum of €4,400 in two equal instalments to the Respondent Landlords' Agent Paul Tully trading as Bridge House Properties (or other agent notified to the Appellant Tenant by the Respondent Landlords or each of them), at the rate of €2,200 per month in two consecutive monthly payments commencing on the 28th day of the month immediately succeeding the issue of this Order. This total sum comprises rent arrears in respect of a tenancy at Bohoona East, Spiddal, County Galway.

3. The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the number of monthly instalments of €2,200 made to the Respondent Landlord through his agent on each due date until the sum of €4,400 has been paid in full;

4. For the avoidance of doubt any default in the payment of the monthly instalments of €2,200 shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Respondent Landlord.

5. The Appellant Tenant shall also pay any further rent outstanding from 29 April (date of hearing), at the rate of €550 per month (or any proportional part thereof at €18.08 per day), 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 he vacates and gives up possession the above dwelling;

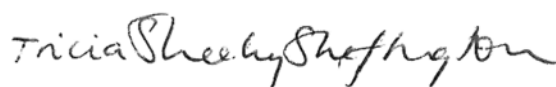
6. The Respondent Landlord shall refund the entire of the security deposit of €550 to the Appellant Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act. For the avoidance of doubt the Respondent Landlord may offset the deposit against any rent still owing under clauses 2 - 5 of this Order.

7. The Respondent Landlord shall deliver and the Appellant Tenant shall accept delivery of, for installation as part of the inventory of items in to the Dwelling, a fire extinguisher and fire blanket at the dwelling or at Spiddal Post Office on 6 May 2014.

all in respect of the tenancy of the Dwelling at Bohoona, (or Bohoona East) Spiddal, Co. Galway.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 07/05/2014.

Signed:



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**Patricia Sheehy Skeffington Chairperson**

For and on behalf of the Tribunal.