

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0215-001034 / Case Ref No: 1014-14715

Appellant Landlord:	Mary Sherry
Respondent Tenant:	Anthony Brew, Angelika Mayer-Brew
Address of Rented Dwelling:	22 Donnybrook Manor, Donnybrook , Dublin 4
Tribunal:	Gene Feighery (Chairperson) Orla Coyne, Gerard Murphy
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	12 June 2015 at 2:30
Attendees:	Padraig Sheridan, Appellant Landlord's Representative Angelika Mayer-Brew, Respondent Tenant Anthony Brew, First Named Respondent Tenant
In Attendance:	Gwen Malone Stenographers

1. Background:

On 10/10/2014 the Tenants 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 26/11/2014 . The Adjudicator determined that:

1. The Applicant Tenants' application regarding breach of landlord obligations in not being adequately contactable is not upheld;
2. The Respondent Landlord shall pay the sum of €1,500 to the Applicant Tenants within 42 days of the date of issue of the Order, being damages for failure to offer the Applicants a tenancy of the dwelling at 22 Donnybrook Manor, Donnybrook, Dublin 4.

Subsequently a valid appeal was received from the Landlord by the PRTB on 18/02/2015. The ground of the appeal was Invalid notice of Termination. The appeal application was approved by the Board at its meeting on 06/03/2015.

The PRTB constituted a Tenancy Tribunal and appointed Gene Feighery, Orla Coyne and Gerard Nicholas Murphy 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").

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 12/06/2015 the Tribunal convened a hearing at 14.30 at the offices of the PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2 .

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

None

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 an informal manner: that the person who appealed (the Appellant Landlord in this case) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant. The Chairperson said that members of the Tribunal might ask questions of both Parties from time to time.

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 or affirmation and be recorded by the official stenographer present and she reminded the Parties that to knowingly provide 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.

Parties were told that hearings are held in public and that any member of the public or the press who wished to attend were entitled to do so.

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].

The Chairperson asked the Parties if they had any queries about the procedure. There were none. The parties giving evidence were then sworn.

5. Submissions of the Parties:

Appellant Landlord's Case:

Evidence of Pdraig Sheridan:

The Appellant Landlord's representative said that he was the son-in-law of the Appellant Landlord and it was in that capacity that he was attending the Tribunal. He said that he

was the former owner of the dwelling and he was also the original Landlord for the tenancy. He said that during the period of the tenancy he sold the dwelling to his mother-in-law and that he had acted as Agent on her behalf up until the time she issued the Respondent Tenants with a notice of termination on 14 January 2014. He said that he did not inform the Respondent Tenants that he had ceased to act as their Agent in respect of the tenancy and he confirmed that he continued to show prospective tenants around the dwelling on behalf of the Landlord but only in his capacity as son-in-law and not as Agent.

He said that the main point of his appeal related to the Notice of Termination issued by the Appellant Landlord to the Respondent Tenants on 14 January 2014. He said that the validity of the notice could not be challenged in circumstances where the Respondent Tenants' failed to refer it to the PRTB within the 28 day statutory period specified under the Act.

On behalf of the Appellant Landlord, he rejected the Adjudicator's finding wherein he stated that the Landlord had breached her obligations by not offering the Respondent Tenants first refusal on the re-letting of the dwelling. He said that in a letter from the Respondent Tenants dated 19 June 2014 the Tenants' indicated that it was their intention to purchase a new home. He said that following receipt of the Notice of Termination the tenants had requested an extended period of time in the dwelling to which the Appellant Landlord had agreed. He said that therefore the termination of the tenancy and date for vacating the dwelling was agreed between the parties. He said that there was no further contact from the Respondent Tenants until 8 August of that year when the Appellant Landlord received a threatening e-mail from the Tenants indicating that they intended contacting the PRTB and the newspapers.

The Appellant Landlord's Agent said that at no stage between January and August 2014 did the Respondent Tenants express an interest in a new tenancy in the dwelling.

In relation to the family member's occupation of the dwelling, he confirmed that the Appellant Landlord's daughter, who had been occupying the dwelling, had vacated within the six month period. He said that under Section 34(4)(b) the Appellant Landlord is only required to offer a tenant a tenancy of the dwelling if the contact details requirement is complied with and that the Respondent Tenants had failed in this regard. Furthermore he said that S.35(5)(a) requires a tenant to notify the Landlord in writing of such contact details within 28 days from the service of notice of termination and that the Respondent Tenants had failed in this respect also. He said there was no requirement for the Landlord to request the contact details.

The Appellant Landlord's representative said that the rental amount of €1,400 per month remained the same throughout the Respondent Tenant's tenancy, however the dwelling was subsequently re-let at a higher rent that reflected the current market rate.

In response to questions from the Respondent Tenant, the Appellant Landlord's representative confirmed that contact between the parties during the tenancy was almost exclusively via telephone with the exception of the notice of termination which was issued by the Appellant Landlord herself in writing.

The Appellant Landlord's representative rejected that the Respondent Tenant's did not have the Landlord's contact details in circumstances where the Notice of Termination contained her address and that the Respondent Tenant had communicated with her on both her e-mail and home addresses. He cited as an example the fact that Respondent

Tenants' had written to her at her home address on 19 January 2014 requesting an extension of the term of the tenancy. He said that the Respondent Tenants also communicated with the Appellant Landlord's daughter who was occupying the dwelling for the purposes of re-directing post.

Finally, the Appellant Landlord's Representative said that the Landlord had shown flexibility by affording the Respondent Tenants the statutory notice period which caused her inconvenience. He further said that there was no issue relating to the Respondent Tenant's deposit.

Respondent Tenants' Case:

Evidence of Anthony Brew:

The Respondent Tenant told the Tribunal that when he saw the advertisement offering his former home, which he had vacated 15 weeks previously, offered for rental by the Appellant Landlord, he was very annoyed. He said his tenancy was terminated on the grounds that the dwelling was required for a family member of the Appellant Landlord.

He said he misunderstood the role of the PRTB, considering them to be a watchdog for the residential sector and he sought to report this breach. His dispute application was motivated by the need to raise awareness of what he perceived to be an abuse of process wherein it was possible for a Landlord to terminate a tenancy on the false premise that the dwelling was required for a family member and he wished to use his dispute application to strengthen tenancy laws.

He said that the Appellant Landlord and her Agent, (to whom she is related) are professionals with an extensive property portfolio and that they are fully aware of their legal obligations. Nevertheless, he said that the Appellant Landlord set herself above the tenancy laws by failing to offer him first refusal of the dwelling after 15 weeks when her family member vacated the dwelling within the six month period. He said she did not supply him with her contact details nor was he informed that her Agent no longer acted on her behalf.

He said that on 14 January 2014 the Appellant Landlord issued them with an invalid notice of termination, allowing his family only 6 weeks to vacate their home. He said he became aware that he was legally entitled to a minimum notice period of 12 weeks. He said he made numerous unsuccessful attempts to make contact with the Appellant Landlord's Agent and on 19 January 2014 he wrote to the Appellant Landlord requesting that he be afforded the statutory period. He said that the Appellant Landlord agreed to the extended notice period which she communicated to him in a 'without prejudice' letter dated 21 January 2014, but which only arrived on 28 January 2014.

The Respondent Tenant confirmed that he did not challenge the validity of the Notice of Termination dated 14 January 2014 within the statutory 28 day period. He said that he had contacted Threshold for advice, but it was a stressful period, with family, employment and travel pressures which meant that he was unable to pursue the matter at the time. He said they vacated the dwelling on 18 April 2014.

In response to the Appellant Landlord's contention that she was not obliged to offer him the dwelling within 6 month period because he had informed her that he intended to purchase a house, he said that the decision to purchase a house followed receipt of her notice of termination. He said that it was a shock to receive such a notice and he was determined that his children would not suffer the consequences of such a disruption

again, and therefore he decided to buy a house rather than having to rent. A copy e-mail seeking a meeting with a mortgage broker dated 21 January 2014 was adduced in evidence to the Tribunal in support of this claim.

He said that he became aware that the Appellant Landlord's family member, on whose behalf his tenancy was terminated, had left the dwelling after 15 weeks occupation. He said that during this period the property was significantly renovated and the advertised rental sum for the re-advertised dwelling was 80% higher than his monthly rental figure. The property website advertisement requesting a monthly rental sum of €2,500 was submitted in evidence to support this claim.

The Respondent Tenant said that their attempts to purchase a house were very stressful for his family in circumstances where they were under pressure to find a new home and they were the second highest bidder for a house of their choice. They continued their search for a new home when the original house of their choice subsequently became available again. In July 2014 they were committed to contracts for the purchase of the house and in August 2014 the purchase was completed. However in the interim, while their new home was being renovated, it was necessary for them to move in with their parents for a period of two weeks and to enter into a six month fixed term tenancy agreement for accommodation at a higher rental amount of €1,900 per month. He said that this extra move could have been avoided had the Appellant Landlord and/or her Agent complied with their obligations by offering them the dwelling during the six month period instead of re-advertising it on the open market.

The Respondent Tenant stated that arising from the Appellant Landlord's failure to provide him with her contact details despite his written request, together with the refusal of her Agent to respond to his calls, he and his family suffered unnecessary distress and inconvenience. He said he has young children were placed in local schools and the disruption to their lives proved to be a very difficult time.

The Respondent Tenant stated that the tenancy was 5 weeks 'shy' of a four year tenancy and he believed that this may contributed to the motivation for the termination of the tenancy. He rejected the Appellant Landlord Representative's argument that they had not been supplied with his contact details. He said the Appellant Landlord's family member who was occupying the dwelling after he vacated kindly forwarded on his post to him for which she was supplied with the address. Furthermore he said that communication between the parties during the tenancy was predominantly carried out via the telephone and that the Appellant Landlord and her Agent had his contact number.

Finally, the Respondent Tenant said that the Appellant Landlord had failed to comply with multiple obligations and that the Notice of Termination did not inform them of their rights. He confirmed that there was no issue relating to the return of their security deposit.

6. Matters Agreed Between the Parties

- The Tenancy commenced on 4 June 2010
- The Tenancy Terminated on 18 April 2014
- Rental Payments were €1,400 per month
- A Security Deposit of €1,400 was paid by the Tenants to the Landlord at the commencement of the Tenancy, and has been refunded to the 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 therefor are set out hereunder.

7.1 Finding:

The Tribunal finds that the tenancy of the dwelling was a Part 4 Tenancy under the Act.

Reasons:

The Respondent Tenants had been in occupation of the dwelling for a continuous period of 6 months affording them statutory protections under the Act.

7.2 Finding:

The Tribunal finds that any issue as to the validity of the Notice of Termination is statute barred.

Reason:

Section 80 of the Act provides that a dispute relating to the validity of a notice of termination cannot be referred to the PRTB at any time after the period of 28 days has elapsed from the date of receipt of that notice. The Respondent Tenants confirmed that they failed to challenge the validity of the said notice within the statutory period.

However, the main issue is not the validity of the Notice of Termination, but whether the Respondent Tenants should have been offered a tenancy of the Dwelling in accordance with section 34 of the Act. This is separate from the validity of the Notice of Termination.

Finding 7.3.

The Tribunal finds that the Appellant Landlord is in breach of her obligations under section 34 of the Act by reason of her failure to contact the Respondent Tenants and offer them a tenancy of the dwelling when the Appellant Landlord's family member moved out of the dwelling within 6 months.

Reason:

The notice period given by the Appellant Landlord to the Respondent Tenants in the Notice of Termination dated 14 January 2014 was challenged by them. Subsequently, following a letter dated 21 January 2014 an agreement was reached between the parties that the statutory period would apply extending the termination date from 28 February 2014 to 18 April 2014. Although this agreement was reached between the parties, it cannot be disputed that the Part 4 tenancy was terminated because the Appellant Landlord required the dwelling for her family member.

Notwithstanding the fact that the Respondent Tenants were not informed under Section 34.4(b) of the Act of the need to supply their contact details to the Appellant Landlord, the Tribunal is satisfied that both parties had full knowledge and details of each parties contact details. For example, the Respondent Tenant explained that his mobile number was included on the letter he sent to the Appellant Landlord in January 2014 requesting additional notice of 12 weeks. The Appellant Landlord's representative also accepted at the hearing that he had the Respondent Tenants' mobile phone number.

Finding 7.4.

The Tribunal finds that the Tenant's were deprived of possession of the dwelling and consequently suffered distress and inconvenience and under section 56(3)(a) of the Act the Tribunal awards them an amount of damages in the sum of €750 for the unjust deprivation of possession.

Reasons:

Section 56(2) of the Act provides that a tenant may make a complaint to the PRTB that he or she has been unjustly deprived of possession of the dwelling where the following three criteria are satisfied:

- (a) that the tenant under a Part 4 tenancy has vacated possession of the dwelling on foot of a notice of termination served under section 34;
- (b) that the notice of termination cites as the reason one or more of the grounds specified in paragraphs 3 to 6 of section 34;
- (c) that, where the ground relied upon is that contained in paragraph 4, the landlord does not comply with the requirement to make to the tenant an offer of a tenancy of the dwelling where the family member vacates the dwelling within a period of 6 months.

The Tribunal is satisfied that those three criteria are complied with in this case.

Although by the time the Appellant Landlord's family member had moved out of the dwelling and it was available to be re-let, the Respondent Tenants had signed a contract for the purchase of a house, their evidence to the Tribunal was that they had to move in with their parents for two weeks before they could move into their new house, and the new house required renovations when they moved in.

Had the Appellant Landlord contacted the respondent tenants at the end of July 2014 to offer them a tenancy of the dwelling, as required under section 34 of the Act, the Respondent Tenants may well have been assisted by moving back into the dwelling at that time, avoiding the need to enter into a 6 month fixed term lease at an increased rent while the purchase of their new house was being completed and while it was being renovated.

In the circumstances the Tribunal is satisfied the Respondent Tenants were deprived of possession of the dwelling, and they suffered a certain amount of inconvenience as a result of the failure by the Appellant Landlord to offer the Respondent Tenants a new tenancy.

8. Determination:


Tribunal Reference TR0215-001034

In the matter of Mary Sherry (Landlord) and Anthony Brew, Angelika Mayer-Brew (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Appellant Landlord is in breach of her obligations pursuant to section 34 of the Residential Tenancies Act 2004 in respect of the tenancy of the dwelling at 22 Donnybrook Manor, Donnybrook, Dublin 4.
2. The Appellant Landlord shall pay the sum of €750.00 to the Respondent Tenants, within 28 days of the date of issue of the Order, being damages for breach of landlord obligations in failing to offer the offer the Respondent

Tenants occupation of the dwelling within 6 months following termination of the tenancy on the grounds that the dwelling was required for a family member and during which time her family member vacated the dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08/07/2015.

A handwritten signature in black ink, appearing to read 'Gene Feighery', written over a horizontal line.

Signed:

Gene Feighery Chairperson

For and on behalf of the Tribunal.