**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0215-001039 / Case Ref No: 1114-15199**

**Appellant Landlord:** Anne Davy

**Respondent Tenant:** John Gallagher

**Address of Rented Dwelling:** 66 Dalcassian Downs, Glasnevin , Dublin 11

**Tribunal:** Orla Coyne (Chairperson)

Ciara Doyle, Eoin Byrne

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

**Date & time of Hearing:** 02 June 2015 at 2:30

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| **Attendees:** | Anne Davy, Appellant Landlord  John Gallagher, Respondent Tenant  Wesley Orlick, Second named Tenant |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 11/11/2014 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 16/12/2014. The Adjudicator determined that:

1. The Respondent Landlord shall pay the total sum of €1,000 to the Applicant within 14 days of the date of issue of the Order being damages for the Respondent Landlord’s breach of duty owed to certain third parties in failing to enforce tenant’s obligations in respect of the tenancy of the dwelling at 66 Delcassin Downs, Glasnevin, Dublin 11.

Subsequently the following appeal was received by the Landlord on 23/02/2015. The ground of the appeal was Other. The appeal application was approved by the Board on 06/03/2015.

The PRTB constituted a Tenancy Tribunal and appointed Orla Coyne, Ciara Doyle, Eoin Byrne as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Orla Coyne 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 02/06/2015 the Tribunal convened a hearing at Tribunal Room, 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 as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant.

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:**

The Appellant Landlord stated that she had spoken to both tenants and although there is a third tenant who also resides in the dwelling the dispute is between Mr. Gallagher and Mr. Orlick. The third tenant is a student in college and has not raised any issues with her regarding either the Respondent Tenant or the second tenant. An issue was raised by the Respondent Tenant to her about the toilet seat being left up by the second tenant. The Respondent Tenant also complained about the bathroom window being continuously left opened even in winter by the second tenant. She stated that she had met with both of them and did try to discuss with them the difficulties that had arisen between them to sort this matter out.

She believed that the dispute had arisen approximately 2 years ago and was brought to a head because the second tenant had stopped paying his contribution towards the satellite tv cable channels and while this may have been the catalyst she thought that the Respondent Tenant was now bringing up other matters as well.

After she had received a complaint from the Respondent Tenant, she first approached the second tenant. In response he said he was going to leave the dwelling but was not able to do so because of a health issue that he has and needed to have his accommodation beside the Mater Hospital. She sat and listened to each of them separately but found it difficult to sort the matter out because she does not live there in the dwelling. The matters complained of by the Respondent Tenant occur she said periodically. She wanted the best for her tenants but was looking to the PRTB to sort this matter out for her. The issues as already stated are between the two tenants and not the third tenant as she has had no complaints from him.

She further stated that the letter written by the Respondent Tenant to the PRTB stating that the behaviour of the second tenant is anti-social, she did not agree with and she did not accept that the second tenant’s behaviour would be regarded as anti-social but believes that there is an issue that has arisen between them that is causing the Respondent Tenant difficulty.

She said she did receive a call on the 13th January 2015 whereby the Respondent Tenant was very upset because he claimed that the second tenant had accused him of being in his room and the second tenant further stated that if he went into his room again he threatened to poison him. However, the Appellant Landlord stated that she also had been accused of being in the second tenant’s room.

She said she did not know what to do about this situation as there seemed to be some personality clash between the two tenants, she once again was asking the PRTB to assist her in solving this matter. She said both tenants were good tenants. She believed that when requested by her tenants to deal with matters she believed she had done her best to resolve them.

**Respondent Tenant’s Case:**

The Respondent Tenant stated that on the 6th February 2015, the Appellant Landlord had asked the second tenant to leave the dwelling but he refused to leave. He further gave evidence that the second tenant continuously opened the bathroom window and turned off the heating in the dwelling. He said that on the 20th March 2015 the dwelling was broken into and he believed it was as a result of the window in the bathroom being left open by the second tenant. The second tenant subsequently admitted that he had left the window open. He further stated, in relation to the break in, because the window was left open he claimed the insurance was deemed to be invalid on the dwelling. In his further evidence he went on to give a list of occasions where the window had been left open by the second tenant from that date. He had texted the Appellant Landlord advising her of these occurrences but had received no response from the Appellant Landlord to his texts.

He was asked by the Tribunal how he believed that access was gained to the dwelling and he said the Gardai had told him there was a footprint outside the bathroom window and it was assumed that this is how the person gained access into the dwelling

He further stated that the Respondent Landlord had arranged for a handyman to carry out works to the bathroom window after the break in whereby the handle of the bathroom window was taken off and therefore the window could not be opened. However, what subsequently occurred, he alleged, was that the second tenant commenced opening the window on the landing of the dwelling. While he closed it on numerous occasions the second tenant kept re-opening it. He said he also sent texts to the Respondent Landlord advising her of what the situation was within the dwelling but he rarely received an answer from her.

He said the Appellant Landlord had told him that she was going to give notice to the second tenant to leave but this never happened. He also claimed that the second tenant used bad language outside his bedroom and further recounted an incident where the second tenant stared at him causing him to feel intimidated by him.

He also complained about washing he had placed on the radiator in the dwelling when the second tenant turned off the radiator and he was unable to dry his clothes and that the second tenant had placed a separate post box outside the patio door of the dwelling for his post as the second tenant believed he had stolen post belonging to him. He also said that the reason he closed the kitchen door was not to prevent the second tenant gaining access to the kitchen but when it is open you can look right through the dwelling from the street from front to the back of the dwelling.

He also said he did not accept that the Appellant Landlord had done her best to resolve the problems between him and the second tenant, because when he texted her nothing was done. He said that if the tenancy was to continue the second tenant had to move out.

**Mr. Orlick’s evidence (The second tenant):**

He stated that he took up residence in the dwelling in June 2006. He only started to learn English in 2011. He had been working on a building site before then. However, after the property crash the company he had been working for lost their contracts and he has been out of work since 2009. He further stated that in relation to the payment for the satellite channels it became too expensive. The cost was €70 for 2 months but he stopped paying it in March 2010 as he never watches television. He gave evidence that he believed this is when the problems started in the dwelling because he would not make a contribution to the satellite television channels.

He admitted that he opened the window in the bathroom. However he said the window could not be opened all the way the way due to how it was made. He opened the bathroom window as he alleged that there was a lot of bad air around the bathroom and fresh air was needed. When the bathroom window could not be opened after the works had been carried out to it, he then started opening the landing window to let in fresh air .

He also complained about the Respondent Tenant being responsible for putting the kitchen stools in such a way around the freezer in the kitchen which prevented him from opening the door of the freezer.

He also regarded the Respondent Tenant as being disrespectful to him when he looked for money for his contribution towards certain items in the dwelling - he would not hand the money to him but would throw the money onto the floor and he then had to pick it up.

He also had to put a lock on his door as he believed that someone had gained access to his room at some stage. He claimed that some of his post has gone missing in the dwelling as a prior tenant had told that post had arrived for him but then it went missing. This is the reason why he put a separate letter box beside the door of the dwelling for himself.

He further gave evidence that there is a dish drainer on the sink in the kitchen but it was covered by the Respondent Tenant’s towel as a result of which he could not use it and the Appellant Landlord had to put in a second drainer so that he could use it. He also accused the Respondent Tenant of closing the kitchen door as if he did not want him to gain entry.

When asked by the Tribunal about the alleged threat the Respondent Tenant claimed he made against him, he replied that he did not remember any threat of attempting to poison the Respondent Tenant and in relation to him allegedly cursing and using bad language outside the Respondent Tenant’s door he denied this as well. He also alleged that statements were made by the Respondent Tenant against him about being a non-national.

**Summation:**

The Appellant Landlord replied in response to the Respondent Tenant’s claim that the insurance was refused that this was not the situation as she did not make a claim on her insurance as the tenants items would not have been covered under her insurance.

The Landlord said that both tenants are model tenants. She had tried to listen to both sides. She also did try to get into the middle of the disputes but to no avail as each of their behaviours continued. She said that there also were threats made by the second tenant to her.

**6. Matters Agreed Between the Parties**

1. The tenancy of the dwelling commenced on the 11th March 2005 and is still in existence.

2. The Respondent Tenant’s rent is €400 per month.

3. Deposit is held by the Appellant Landlord in the sum of €437.

**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 behaviour of the Second Tenant Mr. Orlick was not such that it came within the definition of “behave in a way that is anti-social” as set out in Section 17 (c) (i) of the Act.

**Reason:**

The Tribunal did not believe that there was sufficient evidence that the second tenant engaged persistently in behaviour that interferes with the peaceful occupation by the Respondent Tenant of dwelling who also resided in the dwelling.

In relation to the alleged threat of poisoning the Respondent Tenant the Tribunal is not satisfied that the Landlord was notified about it. There was a complete conflict of evidence whether the Respondent Tenant contacted the Appellant Landlord about this matter. The Tribunal accepts the Appellant Landlord’s evidence that she met with the tenants and did request the second tenant to leave the dwelling. However for this to be effective the Appellant Landlord, which she did not, had to serve a notice of termination on the second tenant. The Tribunal believes that there appears to be a personality clash between the two tenants but does not criticise the Appellant Landlord in dealing with the matter as she is to balance the interests of all her tenants including the third tenant who appears not to have any complaints against the Respondent Tenant or the second tenant

**8. Determination:**

**Tribunal Reference TR0215-001039**

**In the matter of Anne Davy (Landlord) and John Gallagher (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Respondent Tenant’s application regarding the Appellant Landlord’s breach of her duty owed to him (the Respondent Tenant) in failing to enforce a Tenant’s obligations, in respect of the tenancy of the dwelling at 66 Dalcassian Downs, Glasnevin, Dublin 11, is not upheld.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 17/07/2015.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\Orla Coyne.png |

**Orla Coyne Chairperson**

For and on behalf of the Tribunal.