

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0315-001061 / Case Ref No: 1214-15879

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| Appellant Tenant: | Elena Kuznetsova |
| Respondent Landlord: | Kennedy Wilson, registered as KW Real Estate Public Limited Company |
| Address of Rented Dwelling: | Penthouse, 1003 Vantage East, Building 3, Central Park, Leopardstown Road , Dublin 18, |
| Tribunal: | Gene Feighery (Chairperson) Anne Colley, Roderick Maguire |
| Venue: | Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2 |
| Date & time of Hearing: | 30 June 2015 at 10:30 |
| Attendees: | Cliona Fagan Agent on behalf of Kennedy Wilson, Respondent Landlord, Edyta Gozdziowska, Landlord's Representative Elena Kuznetsova, Appellant Tenant Karl Gill, Advocate for Appellant Tenant |
| In Attendance: | Gwen Malone Stenographers |

1. Background:

Background:

On 19 December 2014 the Landlord made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 6 February 2015. The Adjudicator determined that:

1. Pursuant to section 115(2)(e) of the Residential Tenancies Act 2004 I direct that the Respondent Tenant and all persons residing at Apt 1003 Vantage East, Building 3, Central Park, Leopardstown Road, Dublin 18 vacate the property within 14 days of the date of this Determination Order.

2. Pursuant to section 115(2)(a) I direct the Respondent Tenant to pay to the Applicant Landlord the sum of €4,950 being arrears of rent within 28 days of the date of this Determination Order.

Subsequently the Tenant applied to appeal against the Adjudicator's determination, which application was received on 9 March 2015 and approved by the Board of the PRTB on 20/03/2015. The grounds for the appeal related to :

Request for a means Test Assessment on which to base payment arrangements.

Tenant is a single mother, solely dependent on Department of Social Welfare allowances and has no means to comply with the time frame directed by the Adjudicator.

The PRTB constituted a Tenancy Tribunal and appointed Gene Feighery, Anne Colley and Roderick Maguire 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 30 June 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:

1. PRTB File

3. Documents Submitted at the Hearing Included:

Both parties submitted new and previously unseen documents at the Tribunal hearing. The parties were given an opportunity to examine the documents and there being no objection from either party, the Tribunal exercised its discretion and allowed the documents to be submitted into evidence.

From the Tenant:

- Incomplete SWA RS 1 Supplementary Welfare Allowance Rent Supplement Form
- E-mail correspondence between Karl Gill, Public Representative for Dun Laoghaire Rathdown County Council and MABS on behalf of the Tenant.
- E-mail correspondence between Department of Social Protection and MABS which was copied to Karl Gill in his capacity as Public Representative for Dun Laoghaire Rathdown County Council on behalf of Tenant.
- Correspondence from Department of Social Protection to Tenant confirming the Tenant's income from the Department.
- Completed Apartment Sharing Agreement dated 2014.
- Tenant's Online Permanent TSB bank Summary Statement

From the Landlord's Representative:

- Kennedy Wilson statement of up to date rental figures to 30-06-2015

4. Procedure:

The Chairperson asked the Parties to identify themselves and to identify the capacity in which they were attending the Tribunal. She asked the Parties to confirm that they had received the relevant papers from the PRTB 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 referred the dispute to the Tribunal (the Tenant in this case) would be

invited to present her case first; that there would be an opportunity for cross-examination by the Respondent Landlord's representatives; that the Respondent Landlord's representatives would then be invited to present their case, and that there would be an opportunity for cross-examination on behalf of the Appellant Tenant. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson clarified that Tribunal was a fresh hearing of the case and while it had regard to the Adjudicator's report, it was not bound by it and the parties were required to present their evidence afresh to the Tribunal. She further said that Tribunal hearings were conducted in public, and that any member of the public who wished to attend the hearing as an observer was entitled to do so.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both.

Finally, the Chairperson 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 Act).

The Parties intending to give evidence were then sworn in.

5. Submissions of the Parties:

Appellant Tenant's Case:

Evidence of Elena Kuznetsova

The Appellant Tenant stated that she lived in the three bedroom dwelling with her six year old daughter. She stated that at around Christmas 2014 or January 2015 she went to the Management Company of the apartment complex in which the dwelling is located, who also acted as agents for the Respondent Landlord, and she explained that her financial position had changed and that she was experiencing financial difficulties. In order to afford the rental payment, it was necessary for her to split the rental payment with another tenant. She said that this arrangement required two documents to be completed and submitted to the Department of Social Protection so that her claim for Rent Supplement could be processed. The first document was an up to date tenancy agreement and the second document was a completed application form for Rent Supplement by the Landlord of the dwelling. She said the management company verbally agreed to provide her with same. Based on the verbal agreement, the Appellant Tenant stated that she advertised on a property website for a new tenant with whom she would share the dwelling and the rental payments.

The Appellant Tenant explained that having a young daughter in the dwelling limited the suitability of any co-tenant, however in February she did find a suitable co-tenant. She said she approached the Management Company to process the necessary documentation as orally agreed. She said the Management Company provided her with a letter dated 12 February 2014, but that they failed to provide her with the required tenancy agreement. A copy of the said letter submitted in evidence stated, inter alia, that the Appellant Tenant intended splitting her monthly rental payment and would now be

paying €950 and her co-tenant would be paying €700. The letter included the tenancy agreement for the period up to 23 January 2014 however it stated that until the Appellant Tenant paid outstanding rent from October 2013, a new tenancy agreement, including details of the co-tenant, would not be provided by the Management Company to the Department of Social Protection.

The Appellant Tenant stated that in late February she cleared her rent arrears and returned to the Management Company seeking the new tenancy agreement to include her co-tenant. She said she was told by the Management Company that the dwelling was in the course of being sold and that they were currently processing the necessary paperwork for the sale and that no new lease agreements were being drawn up. She said she was told to return to them in two to three weeks time.

She said she later returned to the offices of the Management Company again and sought the necessary paperwork to process her claim for allowances, however she was told that further paperwork had to be processed by them. She said that a pattern of refusals and excuses for not providing her with the requisite forms to facilitate her Department of Social Protection claim by the Management Company ensued. She said that she was under enormous pressure from the Department to provide them with the necessary documents and her financial situation became critical. She sought assistance from MABS. Copies of the Appellant Tenant's bank statement and correspondence from MABS were submitted in evidence in support of this claim.

She said that the Management Company failed to take account of the fact that she had been a tenant for a period of four years in their consideration of a proposed co-tenant, and sought bank statements from her and from her new co-tenant for the previous six months. Based on these statements, the Management Company indicated that they would make a decision on whether or not to grant a new tenancy agreement. The Appellant Tenant stated that she considered it her right to make a decision about the person with whom she and her young daughter will share their family home based on criteria that had nothing to do with a person's bank account.

The Appellant Tenant stated that in July 2014, the Department of Social Protection met with her and carried out a means assessment. They stated that because there was a co-tenant in the dwelling without having a lease drawn up, the Department regarded any monies paid by the co-tenant to her as personal income. Based on the combined incomes from her Job Seekers allowance payment and her rental assistance payments the Department forthwith deducted €137 from her weekly rental supplement of €147. The Appellant Tenant stated that despite this she paid her full rental payment for the months of July and August 2014, putting herself and her child in severe financial difficulties as a result. She said that she asked the Management Company if she could use her security deposit as a rental payment for September 2014. She said that all of the difficulties she experienced could have been avoided if the Management Company had complied with their undertaking to provide her with the relevant documentation.

The Appellant Tenant said that her co-tenant moved into the dwelling in February 2014, but for personal reasons she left in May 2014, and it took her a month to replace her. She said the next co-tenant moved in in June 2014 and remained in the dwelling until early September 2014. During this period the Appellant Tenant said she made efforts to submit all the necessary documentation to the Management Company to formulate a shared lease, however they would not accept it. She said that the co-tenant left the

dwelling directly as a result of the Management Company's failure to provide him with a lease which he required for tax relief purposes.

The Appellant Tenant stated that she found it extremely difficult to meet her rental payment obligations and that she sought alternative accommodation. She said she asked the Management Company if they could provide her with a smaller apartment with a lower rental sum, but this was not forthcoming. In addition, she stated that the Department of Social Protection considered that an overpayment in the sum of €2,572.50 had been paid to her for the period from 6 February 2014 to 7 July 2014 and a further deduction of €10 per week is being made from her allowances to repay that sum.

In September 2014 the Tenant stated that a further assessment of her allowances, including Lone Parent, Rent Supplement and Job Seekers Allowance was carried out by the Department of Social Protection. She said that Rent Supplement would only be payable to her on the basis of a maximum rent of €950. However, as there was no co-tenant, she was required to pay the entire rental payment of €1,650. She said that this amount exceeded her entitlement, so the rent allowance supplement was cut off. Therefore she is now only receiving job seekers allowance of €200, from which €10 per week is deducted in order to reduce the debt of €2,572.50.

The Appellant Tenant stated that she is currently homeless. She has registered with homeless agencies and her local County Council for housing. She stated that she vacated the dwelling on 17 February 2015 however she still holds the keys to the dwelling.

Cross Examination:

The Agent for the Respondent Landlord asked the Appellant Tenant when had she attempted to furnish details of her co-tenant to the Management Company. She replied that as soon as she had cleared her rent arrears in February 2014 she asked for an appointment for herself and her new co-tenant, but that the appointment was never scheduled.

The Agent asked the Appellant Tenant if she was not living in the dwelling since February 2015, how could she explain CCTV footage of her coming and going from the dwelling in the week previous to the hearing. She further asked why, when she met the Appellant Tenant at the dwelling had she confirmed to her that she was living in the dwelling. The Appellant Tenant stated that she visits friends in the complex and sometimes stays with them, and that she was making arrangements to move her car from the car park which had not been used for some considerable period of time.

The Agent asked the Appellant Tenant to explain why she had never requested a second key for her co-tenant at any stage. She replied that her partner had formerly lived at the dwelling and he had a second key which was given to the co-tenant.

Respondent Landlord's Case:

Evidence of Cliona Fagan:

At the outset Ms. Fagan commented on a document submitted by the Appellant Tenant at the hearing entitled Apartment Sharing Agreement. She said it was the first time the document had ever been seen by the Management Company despite having requested it on numerous occasions over a period of months.

Ms. Fagan drew the Tribunal's attention to the rental payments schedule which indicated that the last rental payment made by the Appellant Tenant to the Landlord was on 17 August 2014. She said the Appellant Tenant never informed them that she had vacated the dwelling. She said she noticed that the Appellant Tenant was absent from the dwelling for a period of time, however she said that she had subsequently returned and that she continues to occupy the dwelling. She said that she has personally seen the Appellant Tenant coming and going in the complex. She said she met her in the apartment complex and spoke directly to her and asked her whether she was living in the dwelling and the Appellant Tenant confirmed that she was but that there was no gas or electricity in the dwelling. She said the Appellant Tenant retains the keys to the dwelling and there is CCTV footage to show the Appellant Tenant's comings and goings in the complex. Additionally, the Appellant Tenant's Mercedes car, which was parked across the two designated parking spaces for the dwelling in the car park for an extended period had recently been cleaned and moved into a single space.

She stated that at no stage was the Appellant Tenant refused a lease with a co-tenant. She said that when the Appellant Tenant first approached her to discuss her financial difficulties, in around September/October she offered to work with her and suggested that she relocate her from the three bedroom penthouse dwelling on the 11th floor to a smaller apartment within the complex at a lower rent. Ms. Fagan stated that a one bedroom dwelling within the complex was not readily available but she undertook to hold onto one for the Appellant Tenant should it become available. Again, she said that the Appellant failed to pursue the matter and that her arrears began to get progressively worse and currently stand at €15,609.45.

She stated that the rental payments should have increased from €1,650 to €2,500 in September 2014 to bring them in line with current market rates but they held off sending a notice of rent increase to the Appellant Tenant.

She said the Appellant Tenant continues to hold the keys to the dwelling and this fact, together with the reinforcements of extra steel plated security fittings she has added to the door means that they are unable to gain access to the dwelling. She said the Appellant Tenant is in rent arrears and has been issued with a 14 day notice of arrears and a valid notice of termination and is currently overholding. She said that the Respondent Landlord seeks vacant possession of the dwelling and his rental payment which currently stands at €15,609.45

Evidence of Ms Edyta Gozdziewska

Ms. Godzdziewska stated that the Appellant Tenant never informed them that their correspondence was insufficient for her to process her claim for allowances. She said that the Appellant Tenant did not seek appointments with the Management Company to prepare a new lease, nor did the Management Company seek a record of 6 month bank statements from her, however in her later testimony Ms. Godzdziewska confirmed that the Appellant Tenant had called to the office on three occasions seeking a new lease to include a co-tenant. She said that the Appellant Tenant never supplied them with the requisite details for her co-tenant and therefore no lease could be drawn up.

She further rejected the Appellant Tenant's contention that she discussed the sale of the dwelling in February 2014 as she was not in a position to do so and would not disclose details of any sale of the dwelling with the Appellant Tenant. She said that all Tenants in the complex were informed of the sale by letter on 28 March 2014. She confirmed that

following the letter the Appellant Tenant sought the renewal of her lease at the same rental payment, however this was not possible with the new Landlord who intended reviewing rents in his property. In addition she stated that no renewal would be forthcoming in circumstances where the Appellant Tenant was in rent arrears.

Cross Examination:

The Appellant Tenant asked if the Management Company had ever approached her with an alternative dwelling. In response Ms. Fagan said that when the offer was made that the Appellant Tenant said she would think about it but that she never reverted.

When asked by the Appellant Tenant was the Management Company aware that the door was reinforced following a burglary that took place when the Appellant Tenant was on holiday they replied that they were not informed of this and they were not aware of any burglary.

Asked what arrangements the Management Company had made to get information from the Appellant Tenant in circumstances where the Appellant Tenant's co-tenant was not happy to hand over personal and financial information to her and that getting third party information was a problem for the Appellant Tenant, the Management Company replied that the Appellant Tenant was in rent arrears and the onus was on her to address the issue and that she had not paid rent since August 2014.

6. Matters Agreed Between the Parties

Tenancy commenced on 14 December 2010

Monthly rental figure €1,650

A security deposit in the sum of €1,800 was paid to Devano Developments in December 2010.

A security deposit of €1,650 was transferred to the Respondent Landlord on 28 March 2014 from the tenancy of the previous apartment occupied by the Appellant Tenant.

7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence presented to it by the attending parties, the Tribunal's findings and reasons are set out hereunder:

Finding 1.

The Tribunal finds that the Appellant Tenant is in breach of her obligations under section 16 of the Act arising from her failure to pay to the Landlord, or his appointed Agent, the rent as it becomes due.

Reason:

The Appellant Tenant did not dispute the fact that she had failed to make her monthly rental payments in the sum of €1,650 with effect from September 2014. Her appeal grounds related to the fact that she was unable to comply with the Adjudicator's payment schedule and she sought a means test assessment so that the payment schedule could be reviewed.

Despite the fact that the Appellant Tenant apportioned blame on the Management Company for her deteriorating financial situation by failing to supply her with a new signed lease, she had an obligation to make her monthly rental payments. In addition, whereas there was evidence of attempts made by the Agent for the Management Company to work with the Appellant Tenant in finding a solution to her difficulties, it was not the responsibility of the Respondent Landlord to ameliorate the Appellant Tenant's financial difficulties and further there is no obligation on a Landlord to issue a renewed lease to a Tenant, particularly in circumstances where a valid 14 day notice of arrears and a termination notice had been issued to the Tenant.

Finding 2. The Tribunal finds that the Appellant Tenant is overholding since 21 November 2014, which was the termination date notified to her by a validly issued Notice of Termination dated 20 October 2014.

Reason:

The evidence of the Agent in respect of the Respondent Landlord regarding the Appellant Tenant's continued occupation of the dwelling is accepted by the Tribunal. It is supported by the fact that the Appellant Tenant confirmed that she retains the keys to the dwelling, the acknowledgement of the Appellant Tenant that she visits the complex and sometimes stays there, and that she maintained the use of the designated car space for the dwelling to keep her car there.

8. Determination:

Tribunal Reference TR0315-001061


In the matter of Elena Kuznetsova (Tenant) and Kennedy Wilson registered as Kennedy Wilson Real Estate Public Limited Company (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served 20 October on 2014, by the Respondent Landlord on the Appellant Tenant, in respect of the tenancy of the dwelling at Penthouse Apartment 1003 Vantage East, Building 3, Central Park, Leopardstown, Dublin 18 is valid.
2. The Appellant Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling within 7 days of the date of issue of the Order.
3. The Appellant Tenant shall pay the total sum of €13,809.45 to the Respondent Landlord, in 27 consecutive payments of €500 per month on the 28th day of each month, commencing the next month after the issue of the Order together with one final payment of €309.45. This sum represents rent arrears of €15,609.46, having deducted the entire of the justifiably retained security deposit of €1,800, in respect of the tenancy of the dwelling at Penthouse Apartment 1003 Vantage East, Building 3, Central Park, Leopardstown, Dublin 18;
4. 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 €500

made to the Respondent Landlord on each due date until the sum of €13,809.45 has been paid in full;

5. For the avoidance of doubt any default in the payment of the monthly instalments of €500 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.
6. The Appellant Tenant shall also pay any further rent outstanding from 30 June 2014 (date of hearing), at the rate of €54.24 per day, (i.e. €1,650 X 12 months, divided by 365 days) 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 24/08/2015.

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.