

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0515-001156 / Case Ref No: 0315-17192

Appellant Tenant:	Przemyslaw Stankiewicz
Respondent Landlord:	Angella Darcy
Address of Rented Dwelling:	1A Westway Close, Blanchardstown , Dublin 15, D15RH79
Tribunal:	John Tiernan (Chairperson) Finian Matthews, Orla Coyne
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	27 July 2015 at 2:30
Attendees:	Przemyslaw Stankiewicz, Tribunal Appellant, Tenant; Malgorzata Grudzien, (Interpreter/Advocate).
In Attendance:	Gwen Malone Stenographers

1. Background:

On 10/03/2015 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 a Mediation which took place on 10/03/2015. The Mediator reported on the matter of Przemyslaw Stankiewicz (Applicant Tenant) and Angella Darcy (Respondent Landlord) the Mediator, in accordance with section 95 of the Act, reports that:

No matters have been agreed to by the parties which resolve in whole or in part the dispute in respect of the tenancy of the dwelling at 1A Westway Close, Blanchardstown, Dublin 15.

Subsequently the following referral to Tribunal was received: Tenant: Approved by on the Board on 22/05/2015.

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, John Tiernan, Orla Coyne as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Tiernan to be the chairperson of the Tribunal ("the Chairperson").

On 18/06/2015 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 27/07/2015 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, 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:

None

4. Procedure:

The Chairperson asked the Party in attendance to identify himself and to identify the capacity in which he was attending the Tribunal. He asked the Party in attendance to confirm that he had received the relevant papers from the PRTB and that he 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 party who requested to refer the Dispute to the Tribunal, the Appellant would be invited to present his case first; and that if there is an appearance on behalf of the Respondent 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 the Tribunal members would ask questions from the Party in attendance to amongst other things clarify evidence or to elicit information on relevant aspects of the case. The Chairperson explained that following this, the Party in attendance 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 he reminded the Party in attendance that knowingly providing false or misleading statements or information to the Tribunal is an offence punishable by a fine of up to €4,000 and/or up to 6 months imprisonment.

The Chairperson also reminded the Party in attendance 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 Chairperson also informed the party in attendance that in event of an appearance on the part of the Respondent if it seemed that they might be able to resolve their dispute by agreement, the Tribunal would facilitate any such negotiations.

The Party in attendance was then sworn in.

The Interpreter was also sworn.

5. Submissions of the Parties:

Jurisdiction:

The Respondent Landlord had submitted in writing that the Tribunal did not have jurisdiction to hear the case on the grounds that the Appellant Tenant was a Licensee rather than a tenant, that he did not rent the entire dwelling and did not have a joint tenancy with other co-tenants. She submitted that each bedroom was rented individually

and that the occupants were selected by herself. She submitted that the property has always been her primary residence. She further submitted that recently due to ill health it had become necessary to receive treatment and aftercare from a relative which necessitated absences from the property. She said that she also keeps a room available on the property for her own use for accommodation/office purposes.

She cited text taken from the PRTB web-site wherein it is stated that exemption from the jurisdiction of the Act may apply in respect of: 'Persons occupying accommodation in which the owner is not resident under a formal licence arrangement with the owner where the occupants are not entitled to its exclusive use and the owner has continuing access to the accommodation and/or can move around or change the occupants.'

The Respondent Landlord also submitted that all accommodation agreements in the dwelling are for a period of 12 months and that some of the occupants are there for many years.

Evidence of the Appellant Tenant

The Appellant Tenant described the dwelling as being a 2 storey 3 bedroomed house with a shared kitchen/dining area and shared utility area as well and a shed that was shared with an adjacent house. He said that his room which was an adapted living room had an en-suite shower and toilet, a double bed, 2 bedside lockers, a table at which he occasionally ate, a coffee table, a sofa, 2 armchairs and a built in wardrobe.

Evidence was adduced that the agreement signed with the Respondent Landlord's Agent included a monthly rent of €430 and provisional contribution of €80 towards utilities including gas, electricity, cable TV, TV licence, broadband and bin charges which sum would be adjusted when actual usage was reckoned. Under the agreement the Appellant Tenant was also required to pay a deposit of €510.

He said that he had agreed to rent the accommodation on the basis that he would be in a position to be visited by his 7 year old daughter, where she would be safe and had advised the Respondent Landlord's Agent of this who had agreed the arrangement. The Appellant Tenant said that it was intended that she would visit him on 2 nights each month. He said that he paid his rent on 23rd November 2014. He gave evidence that the rent for due in late December 2014 in respect of January was not paid due to other direct debit payments and when he was contacted on the matter by the Respondent Landlord he promised to pay by the end of that week.

The Respondent Landlord in the written submissions on her behalf alleged that the Appellant Tenant had failed in his obligations in respect of his conditions of occupancy in the dwelling. The Tribunal probed and questioned the Appellant Tenant in regard to each of these matters. These matters comprised:

- 1) That he had not paid the rent that was due on 23rd January 2015.

He responded that the problem had originally arisen in regard to the payment of the rent that was due on 23rd December 2014. He said that when he had been advised by the Agent of the Respondent Landlord in the 2nd week of January 2015 that this payment had not been made he initially thought that the Agent was wrong but later on checking his account agreed with him. He said that due to direct debits on his bank account and other Christmas related expenses the payment had not been made. He said that he had promised the Agent that he would have the money within a week and sought consent to pay it in two tranches. He said that the December 2014 rental payment was paid on 23rd

January 2015. He said that in the meantime the Agent presented himself and the other residents with a huge bill of €796.92 for internet services and other services with which he did not agree.

2) That despite the conditions of his occupation of the room he had brought his young daughter to the dwelling which was inappropriate in a dwelling in which young males also resided.

He responded that this had been agreed verbally with the Agent of the Respondent Landlord and that when his daughter was there she remained in his room.

3) That he had removed the television from the communal area and placed it in his room. The Appellant Tenant stated that on the occasion of his daughter's visit he had agreed with the other residents in the dwelling that the television could be placed in his room for the 2 days of her visit. He said that the Agent of the Respondent Landlord had observed this and had no objection.

4) That he had displayed anti-social behaviour towards other residents in the dwelling.

He denied any intimation that he had engaged in anti-social behaviour and said that there was no evidence of this.

5) That he had removed property that did not belong to him from the dwelling on departure.

He denied that he had removed any items that were not his own from the dwelling on being evicted. He said that the only items over which there could be confusion was in relation to two bedside lockers that had been removed from the dwelling by the Agent and that may have been inadvertently taken by the persons assisting him.

6) That not only is the Appellant Tenant in rent arrears but that he also owes €116.65 in respect of unpaid utility bills.

He said that he disagrees that he is liable for this amount.

The Appellant Tenant said that on 23rd January 2015 the Agent told him that the Respondent Landlord did not want hassle and that he would have to leave. He said that he told the Agent that he would require a month to secure new accommodation. He said that he subsequently found new accommodation which was to commence on 23rd February 2015.

The Appellant Tenant said that on 16th February 2015 he was away in Sligo. He said that he was alerted by text that the locks to the dwelling had been changed. He said that his girlfriend had spoken with the Respondent Landlord and that he told her that he was to collect his belongings by Friday 20th February 2015 and that if he didn't do so they would be left on the street. He said that following some further contact it was agreed that his items would be collected on 18th February 2015. He said that when he arrived the Agent had just completed moving his things and that all his belongings were left outside the dwelling in the front yard in big bags. He said that important documents of his were destroyed in the operation due to a left-over cup of coffee being thrown into one of the bags. He said that his dining table was also destroyed.

The Appellant Tenant submitted that following the eviction items to the value of €1,024 were missing and that this included 6 jig-saws, an outfit for his daughter, a sewing machine, an artificial Christmas tree, a bathroom rug, various lights and a quantity of food. He did not submit any independent verification of such items.

He said that the Respondent Landlord had retained his deposit and had told him that even if he had been up to date with his rent he would not have returned the deposit due to the condition of his room following the termination of the tenancy and outstanding utility amounts.

The Appellant Tenant said that subsequent to being locked out of the dwelling he slept in his car for 3 nights and had claimed he had contracted pneumonia. He said that he is a lorry driver and during that period that he went to work from his car. He clarified that he gained access to his new dwelling on 20th February 2015 some days earlier than had previously been arranged.

The Appellant Tenant was questioned by the Tribunal whether he had had a row with and was abusive towards the Agent of the Respondent Landlord on 23rd January 2015 in regard to the late payment of his rent that had been due on 23rd December 2014 together with his daughter staying at the dwelling. He agreed that there had been an argument but denied that he had been abusive.

The Appellant Tenant was asked by the Tribunal arising from the submission of the Respondent Landlord whether following his failure to vacate the dwelling that on the 8th February 2015 in the course of a telephone conversation with the Agent he had been given some extra time until 13th February 2015 to vacate and whether he had agreed to this. He said that he had not agreed to this.

6. Matters Agreed Between the Parties

None

7. Findings and Reasons:

Findings and Reasons:

Finding No.1

The Tribunal finds that the Residential Tenancies Act 2004 applies to the tenancy of the dwelling and that the Tribunal therefore has jurisdiction to determine the dispute between the parties herein.

Reason 1:

The Tribunal refers to s.3(1) of the Act which states that the Act applies to every dwelling, the subject of a tenancy unless expressly excluded. The Tribunal has considered the categories of exclusion that have been set out in s.3(2) of the Act and is satisfied that none such apply in this case and that the form of tenancy both as described in the written submissions on the part of the Respondent Landlord and by the Appellant Tenant is not so excluded.

Reason 2:

The Tribunal considers that whereas even in the circumstances that as in the instant case each tenant was recruited individually by the Respondent Landlord thus giving rise to a set of individual agreements with the Respondent Landlord and that the various tenancies commenced at varying points in time these factors do not in themselves collectively or individually preclude such tenancies in the dwelling from the jurisdiction of the Act. The Tribunal considers that there is no requirement within the Act of 2004 that requires

tenants to have a relationship amongst themselves and also notes that at s.48 and s.49 of the Act it contemplates multiple tenants with tenancies of differing periods of duration. Furthermore the Tribunal considers that where each tenant has his/her individual room assigned at the time of coming in to being of each such individual tenancy he/she also has been assigned the use of the common areas in the dwelling and that collectively the body of tenants share a control of the common areas which when considered along with the individual room assignments yields in effect a control in common over the entire dwelling. The Tribunal considers that the fact that each tenant in a dwelling could lock the door to his/her bedroom but shares the common areas makes no material difference to that control in common and therefore does not preclude the application of the Act to the tenancy.

Reason 3:

The Tribunal probed and cross examined the Appellant Tenant in regard to the layout of the dwelling in detail at the Tribunal Hearing and is satisfied on the balance of probabilities that the written submission on the part of the Respondent Landlord wherein it is asserted that 'I also keep a room at the property for my own use for accommodation/office purposes.' is not factual in respect of the dwelling at 1A Westway Close, Corduff, Blanchardstown, Dublin 15. The Appellant Tenant denied that the Respondent Landlord had reserved any part of the dwelling as she had submitted to the Tribunal for accommodation/office purposes and to which the occupants were not entitled to its exclusive use either individually or collectively. The Tenant further stated that he had challenged the Respondent Landlord's Agent in regard his access to the common area's of the dwelling.

Reason 4:

The Tribunal has also had regard to the written lease agreement signed between the parties on 23rd October 2014 and notes that it does not provide for access on the part of the Respondent Landlord and notes where at Clause 7 it is stipulated that: 'You are obliged to take care of your room and the common areas. It is every tenant's obligation to keep the communal areas of the house clean and tidy, ie living room, kitchen, hallways and stairs.' The Tribunal notes that it is the responsibility of the tenants in common to keep the communal areas clean and tidy thus demonstrating such control in common to be in place.

Reason 5:

The Tribunal refers to s.4(1) of the Act wherein a definition of a 'self-contained residential unit' as cited in the definition of the word 'dwelling' at s.3 of the Act includes the form of accommodation commonly known as 'bedsit' accommodation which accommodation usually took the form of an exclusive bedroom and cooking facilities along with shared bathroom stairways and hallways to which shared areas the landlord had a general right of access. Even accepting the position as submitted by the Respondent Landlord that she and/or her Agent had the right to access the common areas, which position had not been accepted by the Appellant Tenant, the Tribunal considers that the description on the part of the Respondent Landlord of the form of accommodation in the subject dwelling in her submissions to the Tribunal being comprised of both exclusive and shared areas the latter of which provided for access by the landlord reflects no material difference to that of the traditional 'bedsit' type accommodation which is stated to be within the jurisdiction of the Act of 2004 and therefore even in those circumstances the tenancy of the dwelling

falls within the jurisdiction of the Act of 2004. On the basis of the above the Tribunal considers that, as it has been constituted under the provisions of the Act, it has jurisdiction to determine the case.

Reason 6:

The Tribunal has considered the submission on the part of the Respondent Landlord citing an extract from the content of the PRTB website in the form of a guidance note to explain the differences between 'a tenant' and 'a licensee' wherein it is advised that licensees include: 'Persons occupying accommodation in which the owner is not resident under a formal licence arrangement with the owner where the occupants are not entitled to its exclusive use and the owner has continuing access to the accommodation and/or can move around or change the occupants.' The Respondent Landlord has submitted that the occupant of the dwelling the subject of the instant dispute falls in to this category and that therefore the Tribunal does not have jurisdiction.

The Tribunal notes that the stated purpose of the leaflet/Guidance Note is to help outline for landlords and tenants and other occupants of rental accommodation the distinction between tenants and licensees. It states that it is a general guide only and not an interpretation of the law and that it does not necessarily make reference to all relevant provisions.

The Tribunal notes that it is further stated therein that its aim is to deal with another form of licensee being a person resident in a dwelling at the invitation of a bona fide tenant.

The Tribunal considers that it is not sufficient to rely upon the text of the Guidance Note alone and that it must be viewed in the context of the provisions of the Act itself and the particular circumstances of each case. The Tribunal further notes that it has been denied by the Appellant Tenant that the Respondent Landlord had reserved any part of the dwelling as she had submitted to the Tribunal for accommodation/office purposes and to which the occupants were not entitled to its exclusive use either individually or collectively. It is also noted that the relevant agreement did not include a provision that the Respondent Landlord had the right to 'move around or change the occupants'. The submissions on the part of the Respondent Landlord include reference to the practice whereby the Agent on her behalf accessed the common areas but the Tribunal also notes and accepts that this access was challenged by the Appellant Tenant and not accepted as part of the accommodation agreement. It is also noted that no such access provision was cited in the agreement signed between the parties.

Reason 7:

The Respondent Landlord has further submitted that whereas the signed agreement refers to itself at Clause No 1 as a 'lease' and uses the term 'tenant' in respect of the occupants throughout its text the use of these terms should not be used to defeat her case on the same grounds as stated in the PRTB web-site that the Courts or PRTB would not accept the reference to an agreement as being a 'licence' and not a 'lease' or a 'tenancy agreement' merely on the use of such words on the document. The Tribunal can accept this argument in principle but any such acceptance is subject to the principles of contra proferentem whereby the Respondent Landlord on her own submission was the party who drew up the agreement and presented it to the Appellant Tenant and that in

such circumstances the benefit of any consequential doubt or ambiguity in interpretation of any specific term of that agreement should fall to the Appellant Tenant.

Finding No.2:

The Tribunal finds that the termination of the tenancy of the dwelling at 1A Westway Close, Corduff, Blanchardstown, Dublin 15 was unlawful and awards the sum of €2,500 to be paid by the Respondent Landlord to the Appellant Tenant in damages for the consequences of the illegal eviction.

Reason(s):

The Tribunal accepts the evidence of the Appellant Tenant in regard to the matters that occurred on the occasion of his exclusion from the dwelling which were not contested at the Tribunal hearing. The Tribunal also notes that in the submissions of the Respondent Landlord the manner of the then alleged unlawful termination of the tenancy was not rebutted. The Tribunal considers that the tenancy was not terminated in accordance with the provisions of s.58 of the Act and that the changing of the locks and the removal of the Appellant Tenant's possessions from the dwelling amounted to an unlawful termination or illegal eviction.

The award of damages in the sum of €2,500 is made having regard to the distress and inconvenience suffered by the Appellant Tenant and takes account of any other losses including any loss of possessions.

Finding No.3:

The Tribunal finds that the Respondent Landlord has justifiably retained the sum of €339.36 from the Appellant Tenant's security deposit of €510 in respect of rent arrears in respect of the tenancy.

Reasons: The Tribunal accepts that the Appellant Tenant was in rent arrears at the time of termination of the tenancy on 16th February 2015 for a period of 24 days from 23rd January 2015 to 15th February 2015 inclusive being the last full day before the locks were changed and the Appellant Tenant's possessions were removed from the dwelling. The Tribunal has taken account of the Appellant Tenant's own evidence in this regard where he stated that the rent due in respect of the period from 23rd January to 22nd February was not paid and has calculated the sum outstanding in rent arrears to be €339.36

This sum is calculated as follows:

The monthly rent was €430

This sum is multiplied by 12 to yield an annual rate of rent = €430 X 12 = €5,160

The Annual is divided by 365 to yield a daily rate of rent = €5,160 ÷ 365 = €14.14 per day

The rent for 24 days is calculated by multiplying the daily rate by 24 = €14.14 X 24 = €339.36

Under the provisions of s.12(4) of the Act the landlord is only obliged to refund that part of a tenant's deposit where there is a default in the payment of rent the difference between the amount of rent that is in arrears and the amount of the deposit.

Finding No.4

The Tribunal finds that the Appellant Tenant is in arrears in respect of payment for utility usage in respect of the tenancy in the sum of €116.65. The Tribunal finds that this sum is due and owing by the Appellant Tenant to the Respondent Landlord.

Reason(s):

The Tribunal accepts the submission of the Respondent Landlord that the Appellant Tenant owes a sum of €116.65 in arrears of utility bills in respect of the tenancy of the dwelling. The Tribunal noted that the Appellant Tenant did not deny the existence of some amount of arrears in regard to utilities and did not accept the assertions of the Appellant Tenant that the account was erroneous particularly in the absence of any submission of an alternative account in respect of the sum outstanding. The Respondent Landlord is accordingly also entitled to deduction this amount from the Appellant Tenant's deposit.

8. Determination:

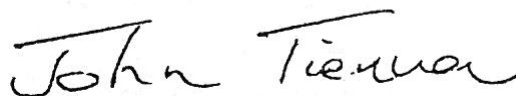
Tribunal Reference TR0515-001156

In the matter of Przemyslaw Stankiewicz (Tenant) and Angella Darcy (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

- 1) The Tribunal has jurisdiction to determine the dispute between the Parties in respect of the tenancy of the dwelling at 1A Westway Close, Corduff, Blanchardstown, Dublin 15.
- 2) The Termination of the tenancy at 1A Westway Close, Corduff, Blanchardstown, Dublin 15 that took place on 16th February 2015 was unlawful.
- 3) The Respondent Landlord shall pay the total sum of €2,553.99 to the Appellant Tenant within 28 days of the date of issue of this Order being damages of €2,500 in respect of the consequences of the unlawful termination of the tenancy and €53.99 being the unjustifiably retained portion of the Appellant Tenant's security deposit having deducted €339.36 in rent arrears and €116.65 in respect of an outstanding utility account in respect of the tenancy of the dwelling at 1A Westway Close, Corduff, Blanchardstown, Dublin 15.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 26/08/2015.

Signed:



John Tiernan Chairperson

For and on behalf of the Tribunal.