

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR1213-000533 / Case Ref No: 0513-06132

Appellant Landlord:	Michael O'Donohue (Snr)
Respondent Third Party:	Michael Cookland, Joe Kenny, Brian Curley, Padraig Higgins
Address of Rented Dwelling:	125 Meadowbrook, Willow Park, Athlone , Westmeath
Tribunal:	Finian Matthews (Chairperson) Thomas Reilly, Vincent P. Martin
Venue:	Ante-Chamber, Floor 1, Athlone Civic Centre, Church Street, Athlone, Co. Westmeath
Date & time of Hearing:	08 April 2014 at 11:00
Attendees:	Michael Cookland, Tribunal Respondent, Third Party (First Named) Joe Kenny, Tribunal Respondent, Third Party (Second Named) Brian Curley, Tribunal Respondent, Third Party (Third Named) Padraig Higgins, Tribunal Respondent, Third Party (Fourth Named) Michael O Donohue(Snr), Appellant Landlord
In Attendance:	Gwen Malone, Stenographers

1. Background:

On 31/05/2013 the Third Party 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 13/11/2013. The Adjudicator determined that The Respondent Landlord shall pay the total sum of €4,500 to the Third Party Applicants being €2,000 to Michael Cookland, €1,000 to Joseph Kenny, €1,000 to Brian Curley, and €500 to Patrick Higgins in respect of the failure of the Landlord to enforce the Tenant's obligations in breach of Section 15(1) of the Act within 56 days of the date of the issue of the Determination Order by the Board in respect of the tenancy of the dwelling at 125, Meadowbrook, Willowpark, Athlone, Co. Westmeath.

Subsequently the following appeal was received:

Landlord : received on 11/12/2013. The grounds of the appeal: Breach of landlord obligations ; Approved by the Board on 17/12/2013

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, Thomas Reilly, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Finian Matthews to be the chairperson of the Tribunal ("the Chairperson").

On 27/02/2014 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 08/04/2014 the Tribunal convened a hearing at Ante-Chamber, Floor 1, Athlone Civic Centre, Church Street, Athlone, Co. Westmeath.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

none

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Landlord against a determination made following an adjudication held on 13 November, 2013 in the case of a dispute between the Landlord and the Third Parties in respect of a tenancy at 125 Meadowbrook, Willowpark, Athlone, Co. Westmeath. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. He confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received and understood the PRTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Landlord would be invited first to present his case; this would be followed by an opportunity for cross-examination by the Respondent Third Parties; that the Respondent Third Parties would then be invited to present their

case, followed by an opportunity for cross-examination by the Appellant Landlord. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant Landlord and the Respondent Third Parties would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

All persons giving evidence to the Tribunal were then sworn in.

5. Submissions of the Parties:

Appellant Landlords Case:

The Appellant Landlord told the Tribunal that he had disposed of the dwelling at a huge financial loss in the last few weeks and that the dwelling had caused him nothing but hardship and great financial strain.

The Appellant Landlord said that he got a call from a person residing in the area on Sunday evening 23 June, 2013 informing him that the dwelling had been destroyed by fire. He said that neither the tenant nor his parents who were living nearby had bothered to let him know about the fire. He said that on the following day he made arrangements to secure the dwelling by locking the gates to the rear garden and preventing access to a shed being used by the tenant's father to stable horses. He said that on the next day he had the roof and door of the shed/stable removed.

The Appellant Landlord said that the second-named and fourth-named Respondent Third Parties had contacted him by phone on 28 May, 2013, their main complaint being the level of noise from the shed/stable at the rear of the dwelling. He said that he would do what he could about this and that he was confident that the Third Parties would inform the PRTB that they were withdrawing their complaints, which were only received by the PRTB on 31 May, 2013.

The Appellant Landlord told the Tribunal that the first time he actually met the second and fourth-named Respondent Third Parties was on 19 November, 2013. He was of the view that, through combined efforts between him and those parties, the case could have been resolved. He also said that when the second-named and fourth-named Respondent Third Parties advised him that the Adjudication hearing had gone ahead on 13 November, 2013 he wrote to the PRTB and asked that his correspondence be passed on to the Adjudicator. He said he believed that if this had happened the outcome of the adjudication would have been more favourable to him. He added that in wrongly presuming that there was no need for the adjudication hearing on 13 November, 2013 and therefore not attending, he had not meant to show any disrespect to the PRTB or to the Adjudicator.

In response to questions from the Tribunal the Appellant Landlord said that he had spoken to the Tenant, who had asked him who had made the complaint. He said that the tenant made threatening remarks targeted at whoever was complaining. The Appellant Landlord also said that he called to the dwelling every week, cut the grass and kept it generally maintained. He also described the basis on which the letting of the subject of the complaints was put in place.

In response to questions from the Third Parties the Appellant Landlord maintained that he was a good landlord. He denied that the tenancy, which was in place for some years, was a loose arrangement, but admitted that no deposit had been paid, that there was no lease, and that while the HSE had paid rent supplement directly to him, the tenant had never at any stage paid his contribution towards the rent. He agreed that a bale of hay had appeared in the front garden of the dwelling in April 2013, and accepted that the tenant's father had put it there because he could not put it in his own garden. He also said that he was aware that horses were being kept in the garden of the dwelling, but that he had not been overly concerned about this on the basis that no one was affected because the houses at either side of the dwelling were boarded up. He said that he did not think people living in houses to the rear of the dwelling would be affected in the same way. The Appellant Landlord also denied that the dwelling had ever been subject to notices under the Derelict Sites Act. When his attention was drawn to a photograph of the dwelling with the front windows boarded up, he confirmed that the tenant was still living in the dwelling at the time.

Respondent Third Parties' case

The Respondent Third Parties stated that in January, 2013 they made contact by phone with the Appellant Landlord to appraise him of the stabling of horses in the dwelling and the problems this was causing including noise, dumping of manure and accumulation of waste generally resulting in rat infestations. The Landlord had said he would look into the matter but nothing had happened. They said that in March, 2013 and again in April or May two of the Third Parties went to Coosan near Athlone, where the Appellant Landlord lived, to speak to him about the problems the horses being kept in the dwelling were causing. They stated that they had spoken to some of the Landlord's relatives who lived in adjacent houses in the area but had not succeeded in contacting the Appellant Landlord himself. They felt that the latter was attempting to avoid them.

When they eventually managed to contact the Appellant Landlord by phone on 28 May, 2013 the Respondent Third Parties said that they put the problems the tenant was causing to the Landlord again, but he did not seem to take these seriously. They said that the Landlord would not undertake to do anything about the problems and seemed to be of the view that what was happening was what was to be expected when horses are being kept in an estate. They said that the Appellant Landlord seemed to have a different view than theirs about the standards required for neighbours to live peacefully with each other. They said that the tenant's activities had destroyed the dwelling and was destroying the neighbourhood in which the dwelling was located. The Respondent Third Parties also referred the Tribunal to various photographs showing the effects of the tenant's activities both in the dwelling itself and in the vicinity of the dwelling.

Each of the Respondent Third Parties gave details of the effect on them of the behaviour of the tenant in the dwelling.

The first-named Respondent Third Party said that the whinnying or neighing noises from the horses being kept in the shed at the rear of the dwelling was having a severe impact on his ability to sleep and was keeping him awake at night. He also described how the activities associated with the keeping of horses, including dumping of manure etc were affecting his peaceful enjoyment of his own home and garden at the rear of the dwelling.

The second-named Respondent Third Party stated that he too was living in fear and described how he also had been affected by the tenant's activities, including rat infestations and dumping etc.

The third-named Respondent Third Party said that the tenant's behaviour was extremely dangerous and was having a serious impact on his life. He described rat and blue-bottle infestations he has had to contend with and said that he felt under constant threat in his own home.

The fourth-named Respondent Third Party said that he was Chairperson of the Willow Park Residents Association, did not himself live close to the dwelling and was not himself directly affected by the activities of the tenant. He said however that he often had to visit the area where the dwelling is located in attempts to resolve the on-going issues there.

The Chair thanked the Appellant Landlord and Third Parties for attending and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the PRTB of that Determination.

6. Matters Agreed Between the Parties

None

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.

1. Finding: The Tribunal finds that the tenant of the dwelling failed to fulfil his obligations under section 16(h) of the Act.

Reasons: Under section 16(h) of the Act the tenant of a dwelling must not behave within the dwelling, or in the vicinity of it, in a way that is anti-social, within the definition of such behaviour in sections 17(1)(a)(b) or (c) of the Act. On the basis of the evidence before it the Tribunal finds that the Tenant of the dwelling engaged persistently in behaviour that interfered with the peaceful occupation of their dwellings by persons residing in dwellings in the vicinity of the dwelling occupied by the tenant. Accordingly, the Tenant of the dwelling was in breach of the requirements of section 16(h) of the Act.

2. Finding: The Tribunal finds that the Respondent Landlord was in breach of his obligations under section 15 of the Act.

Reasons: Under section 15(1) of the Act, the landlord of a dwelling owes to each person who could be potentially affected a duty to enforce the obligations of the tenant under the tenancy. On the evidence before it the Tribunal is satisfied that the tenant of the dwelling behaved over a prolonged period in a way that was anti-social within the meaning of section 17(1)(c) of the Act, that the tenant was thus in breach of his obligations under

section 16(h) of the Act and that the Landlord failed to take adequate action to enforce the tenant's obligations not to behave in a way that was anti-social within the meaning of the said section 17(1)(c).

3. Finding: The Tribunal finds that the first-named, second-named and third-named Respondent Third Parties were directly and adversely affected by the Appellant Landlord's breach of this duty to enforce the obligations of the tenant of the dwelling.

Reasons: The evidence before the Tribunal clearly demonstrated that the anti-social activities engaged in by the tenant of the dwelling have had direct and adverse effects on the first-named, second-named and third-named Respondent Third Parties in the manner in which such activities have seriously and persistently interfered with the peaceful occupation by those parties of their own neighbourhood dwellings.

On the evidence before it the Tribunal finds that the anti-social activities referred did not have any direct or adverse impacts on the fourth-named Respondent Third Party.

4. Finding: The Tribunal finds that the Third Party Respondents have met the requirements of section 77(2)(b) of the Act

Reasons: The Tribunal is satisfied that the Respondent Third Parties, in accordance with section 77(2)(b) of the Act, by communicating with or attempting to communicate with the parties to the tenancy, took all reasonable steps to resolve matters before referring their complaints that the landlord had breached the duty owed to them under section 15(1) of the Act to the Board for resolution.

5. Finding: The Tribunal finds that the first-named Respondent Third Party is entitled to damages in the amount of €2000 and the second-named and third-named Respondent Third Parties are entitled to damages in the amount of €1000 each because of the failure by the Appellant Landlord to enforce the obligations of his tenant under section 16(h) of the Act.

Reason: The Tribunal is satisfied that the first-named, second-named and third-named Respondent Third Parties have suffered distress, anxiety, severe loss of residential amenity and inconvenience as a result of the failure by the Appellant Landlord to enforce the obligations of his tenant not to behave in a way that was anti-social. Having regard to the degree and extent to which each of those Third Parties was directly and adversely affected, the Tribunal considers that the appropriate quantum of damages to award in the circumstances of this case is €2000 to the first-named Respondent Third Party and €1000 each to the second-named and third-named Respondent Third Parties.

In exercise of its powers, therefore, under section sub-section (1)(d) of section 115 of the Act the Tribunal directs that damages in the amount of €4,000 shall be paid by the Appellant Landlord to the first-named, second-named and third-named Respondent Third Parties.

8. Determination:

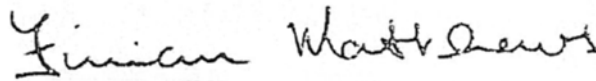
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In the matter of Michael O'Donohue (Snr) (Landlord) and Michael Cookland, Joe Kenny, Brian Curley, Padraig Higgins (Third Parties) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall, within 28 days of the date of the issue of the determination order by the Board, pay the total sum of €4,000 to the first-named, second-named and third-named Third Party Respondents, being €2,000 to Michael Cookland, €1,000 to Joseph Kenny and €1,000 to Brian Curley, in respect of the failure of the Landlord under the provisions of section 15(1) of the Act, to enforce his Tenant's obligations under section 16(h) of the Act, not to behave in a way that is anti-social within the meaning of section 17(1)(c) of the Act in respect of the tenancy of the dwelling at 121, Meadowbrook, Willow Park, Athlone, Co. Westmeath.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 14/04/2014.

Signed:

A handwritten signature in dark ink, appearing to read 'Finian Matthews', is written over a horizontal line.

Finian Matthews Chairperson

For and on behalf of the Tribunal.