**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0715-001260 / Case Ref No: 0415-18092**

**Appellant Landlord:** Geraldine Martin

**Respondent Tenant:** Beata Kusnierz

**Address of Rented Dwelling:** 8 Meadow Drive, Hollyhill , Cork, T23XEN0

**Tribunal:** Dervla Quinn (Chairperson)

Ciara Doyle, Andrew Nugent

**Venue:** Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork

**Date & time of Hearing:** 16 September 2015 at 2:30

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| **Attendees:** | Geraldine Martin (Appellant Landlord)  Beata Kusnierz (Respondent Tenant) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 27 April 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 an Adjudication which took place on 11 June 2015. The Adjudicator determined that:

1. The Notice of Termination dated 15th April 2015 and served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at 8 Meadows Drive, The Meadows, Hollyhill, Cork, is invalid;

2. The Respondent Landlord shall pay the total sum of €2,500 to the Applicant Tenant, within 28 days of the date of issue of this Order, being damages for breach of landlord obligations under s. 12(1)(a) of the Residential Tenancies Act 2004 by unlawfully interfering with the Applicant Tenant's right to peaceful occupation of the above dwelling.

Subsequently the following appeal was received from the Landlord on 07 July 2015. The grounds of the appeal were Breach of tenant obligations, Anti-social behaviour, Invalid Notice of termination and another. The appeal was approved by the Board on 17 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Ciara Doyle, Andrew Nugent, Dervla Quinn as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Dervla Quinn to be the chairperson of the Tribunal (“the Chairperson”).

On 11 August 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 16 September 2015 the Tribunal convened a hearing at Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork.

**2. Documents Submitted Prior to the Hearing Included:**

* 1. PRTB File

**3. Documents Submitted at the Hearing Included:**

Letter from Cork County Council to the Tenant. The Tenant asked that the Tribunal read the letter. Having looked at the letter the Landlord did not object to the letter being submitted. The Tribunal read the letter and returned the letter to the Tenant.

**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 stated that the Appellant Landlord would be invited first to present her case; this would be followed by an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case, followed by an opportunity for cross-examination by the Appellant Landlord. She said that members of the Tribunal would ask questions of both Parties from time to time. She also said that at the end of the hearing, both the Appellant Landlord and the Respondent Tenant 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.

Finally, she indicated that if, at any stage during the proceedings, the parties felt that a settlement might be reached between them that the Tribunal could adjourn to facilitate negotiation discussions.

Prior to the start of the hearing the Parties spent a few minutes outside of the hearing to discuss the matter with a view to exploring a settlement. This was unsuccessful and the Tribunal hearing began at 2.50pm.

The Parties were then sworn in.

**5. Submissions of the Parties:**

The Appellant Landlord’s Evidence:

The Appellant Landlord confirmed to the Tribunal that she accepted the Notice of Termination dated 15 April 2015 which she served on the Respondent Tenant was invalid.

The Landlord outlined to the Tribunal what had taken place when she called to the Dwelling firstly on the night of 11 April 2015 and then again on 15 April 2015 when she attached a notice of termination to the Dwelling. The Landlord stated that on the night of 11 April 2015 she had entered the Dwelling when invited to enter by a man who opened the door to her. She stated that she did not enter the Dwelling on the second occasion. At that time she said she had a short but very heated exchange with the Tenant at the front of the Dwelling. The Landlord also gave evidence of the large amount of rubbish that was found in the back yard of the Dwelling.

The Respondent Tenant’s evidence:

It was the Tenant’s evidence that the Landlord had used her key to enter the Dwelling on the night of 11 April 2015. The Tenant confirmed the Landlord’s account of what had taken place on 15 April in that the parties had a short but very heated argument in front of the Dwelling. The Tenant acknowledged that there had been black bags in the yard but stated that these had now been removed.

The Parties then gave closing statements setting out the effect the dispute had had on them.

**6. Matters Agreed Between the Parties**

1. The letting had begun on 19 February 2015.

2. Rent was €850 per month.

3. No deposit was paid.

4. The Tenant is still in occupation.

5. The Notice of Termination dated 15 April 2015 served by the Appellant Landlord on the Respondent Tenant was invalid.

**7. Findings and Reasons:**

Having considered all the evidence, including the documentary evidence and the oral testimony of each of the Parties herein, the Tribunal's findings and reasons therefor are set out hereunder:

Finding:

The Tribunal finds that the evidence presented during the hearing was insufficient to support the Tenant’s claim that her right to peaceful and exclusive occupation of the Dwelling had been breached by the Landlord’s behaviour. The Tribunal does accept that both Parties were and remain deeply upset by the dispute.

Reasons:

The Tribunal finds that the accounts given by the parties of what took place on the night of 11 April 2015 were contradictory as to whether or not the Landlord had been invited in and unclear as to what exactly had taken place. The Tribunal is satisfied on the evidence of both of the Parties that a very unpleasant and heated exchange took place in front of the Dwelling on 15 April 2015. Both parties confirmed that the duration of this exchange was short and lasted no more than a few seconds. The Tribunal is not satisfied that such a short exchange by itself would amount to a breach of the Tenant’s right to peaceful enjoyment as set out in section 12 (1)(a) of the Act.

**8. Determination:**

**Tribunal Reference TR0715-001260**

**In the matter of Geraldine Martin (Landlord) and Beata Kusnierz (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination dated 15th April 2015 and served by the Appellant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at 8 Meadows Drive, The Meadows, Hollyhill, Cork, is invalid;
2. The Landlord did not act in breach of her obligations pursuant to section 12 (1)(a) of the Act to allow the Tenant to enjoy peaceful and exclusive occupation of the Dwelling at 8 Meadows Drive The Meadows Holyhill Cork.
3. The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on this 16 day of September 2015.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 21 September 2015.

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

**Dervla Quinn Chairperson**

For and on behalf of the Tribunal.