

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0114-000563 / Case Ref No: 1013-08552

Appellant Tenant:	Anna Wilczewska
Respondent Landlords:	Robert Boland, Linda Farrell
Address of Rented Dwelling:	Chalet 1, Hyde Park, Inch, Gorey , Wexford
Tribunal:	Aidan Brennan (Chairperson) Gene Feighery, Vincent P. Martin
Venue:	Conference Room, Department of Environment, Community and Local Government, Newtown Road, Wexford
Date & time of Hearing:	15 May 2014 at 2:30
Attendees:	Anna Wilczewska, Tribunal Appellant, Tenant Robert Boland, Tribunal Respondent, Landlord Linda Farrell, Tribunal Respondent, Landlord Patrick Moorehouse witness for the respondent Landlords
In Attendance:	Gwen Malone stenographers

1. Background:

On 24/10/2013 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 16/12/2013. In the matter of Anna Wilczewska & Austin Branagan (Applicant Tenants) and Robert Boland & Linda Boland (Respondent Landlords) the Adjudicator, in accordance with section 97(4) of the Act, determined that:

1. The Notice of Termination served on 15 October 2013 by the Respondent Landlords on the Applicant Tenants in respect of the tenancy of the dwelling at Chalet 1, Hyde Park, Inch, Gorey, Co Wexford, is invalid:
2. The Respondent Landlords shall pay the total sum of €170.00 to the Applicant Tenants within 21 days after the issue of a Determination Order by the Board being the cost incurred by the Tenants for the inspection of a gas appliance in respect of the tenancy of the above dwelling.

Subsequently the following appeal was received:

Tenant : received on 23/01/2014. The grounds of the appeal: Deposit retention, Standard and maintenance of dwelling, Unlawful termination of tenancy (Illegal eviction) ; Approved by the Board on 07/02/2014

The PRTB constituted a Tenancy Tribunal and appointed Aidan Brennan, Gene Feighery, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Aidan Brennan to be the chairperson of the Tribunal ("the Chairperson").

On 22/04/2014 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 15/05/2014 the Tribunal convened a hearing at Conference Room, Department of Environment, Community and Local Government, Newtown Road, Wexford.

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 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 their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present their 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. (Parties giving evidence were sworn in.)

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 [reference section 123(3) of the 2004 Act].

The Chairperson also reminded the Parties that the Tribunal was limited to matters covered by the Residential Tenancies Act and would hear and consider relevant evidence which related to such matters and would not allow the parties evidence to stray into any other matters in dispute that did not come within the ambit of the Act. The Chairperson observed that some matters which appeared to have been previously agreed in the Adjudication report did not now appear to be agreed and he asked the parties to address these matters early on in their submissions. The Chairperson said that the tribunal would

like to establish the following facts; the dates of commencement and cessation of the Tenancy, amount of rent and the amount of deposit and by whom and to whom paid.

5. Submissions of the Parties:

Evidence of Mr Pat Moorehouse: (expert witness called by the respondent landlords):

The parties agreed to interpose the evidence of Mr Moorehouse at the commencement of the hearing.

Pat Moorehouse gave evidence that he knew the property the subject of the tenancy dispute; that he had been called out by a Calor gas supervisor; that he had been given a telephone number to call and advised to "talk to Anna". He said that he called to the property and examined the gas supply, the hob and the oven. He said that he found a leak on the line to the hob and that he disconnected the gas hob as it was old and did not have a safety device of the kind on newer hobs and that he left the gas oven connected. The gas supply was from a 25lb cylinder of butane gas connected by a flexible hose which connected separately from a T joint to the hob and the oven. He disconnected the supply to the hob at the T joint. He said that he detected a slight smell but that he didn't consider the leak serious. He said that the pungency of the odour of gas varied as the cylinder emptied the smell being most pungent when the gas supply was nearing exhaustion. He gave an opinion that one could become used to the smell when at its least pungent. He said that he left the gas hob safe but inoperable and the gas oven safe and operable. He said that the oven was safe to use but suggested that it be upgraded and he said that the estimated cost of upgrading the gas connection to present day building standards would be about €200. He said that he dealt with the tenant on the day and that he gave her a copy of the documentation (4 of 6) notifying her of the hazard and that he spoke to the landlord on the day (19 October 2013). In summary he confirmed that he considered himself to be an independent expert witness; he outlined his qualifications that he was RGI registered and his experience was that he was working with gas for 42 years and he had trained on mainline gas systems. The Tribunal found his evidence to be clear and concise.

Appellant Tenant's Case:

Evidence of Anna Wilczewska

The appellant tenant gave evidence as follows. She said that her tenancy commenced on 28 December 2009. She said that she did not pay a deposit and that the rent was €500 per month and was paid up to October 2013. She said that she did not give up the tenancy notwithstanding that she moved out at the end of October 2013 on the advice of her doctor, and that she removed her furniture; that she retained a key and returned from time to time to feed cats but that she did enter the dwelling after October 2013. She said that she moved to accommodation provided by a friend and that she was not paying rent. She said that the problem with the gas arose in August or September 2013 and that she contacted the landlords who said that they would take care of it, but they didn't. She said that Austin Branagan called the landlords to enquire about the gas leak on 13 October 2013. She said that while the landlords had told her that they would fix up her chalet, no work was done on her chalet from May 2013 to October 2013. She had given the landlords permission, in the middle of September 2013 to enter the roof space of her chalet as this was the access point to the roof space of the adjoining chalet. An examination of the roof space indicated that there was no firewall in the attic. She said

that work was going on in the adjoining vacant chalet during October 2013. Her point was that work should have been done on her chalet first. Her evidence continued to the effect that she did not have a tenancy agreement with the respondent landlord as she had never been approached on that subject; that she was the sole tenant in occupation of the dwelling since December 2009; that she had paid the rent to Austin Branagan who in turn passed it to the landlords and that had been the situation with the previous landlord/owner; she could not say that she paid rent directly to either the previous landlord or the respondent landlords. She said that she was aware at the time that the property was for sale and that she would have a new landlord(s). She agreed that there was a discussion with the landlords as early as the 12 October 2013 about fixing the gas leak but she said that she did not want an unqualified person dealing with it.

Respondent Landlords' Case:

Evidence of Mrs Boland also known as Linda Farrell.

She said that Hyde Park was purchased at auction in November 2012 and that she and her husband took possession of the property on 1 May 2013 and took up occupation on 1 June 2013. She was quite clear that the property was purchased subject to vacant possession, she did not know at that time the position about the appellant tenant but she knew the appellant tenant was in chalet 1, and she understood Austin Branagan to be the caretaker. She said that she was very busy during June and July moving in with four children and attending to the main house particularly the ceilings which were in danger of collapse. (Earlier evidence indicated that the main house was built in 1690 and is a listed building).

She said that in August 2013 Austin Branagan came into the kitchen and rent was discussed; she accepted a cheque for €500 rent and €100 electricity and the cheque was cashed on 15 August 2013. She said that the 12 October 2013 was the first time she heard of the gas leak and that Robert Boland attended on the 13 October to deal with the gas leak but the appellant tenant would not allow this. She said that after numerous attempts to meet the tenant they met on the Tuesday before the gas repair man called and she said that she suggested that the tenant should leave the property but not for good. She did not offer alternative accommodation. The landlords served a notice of termination on Anna Wilczewska and Austin Branagan on the 15 October 2013. The landlords evidence concerning the actual vacating of the dwelling by the tenant was not clear but she was clear in saying that after the tenant had vacated everything was gone and even the shelves were gone off the walls. In response to questions put concerning rent arrears the landlords said that they did not accept a dresser in lieu of rent for the three months May, June and July of 2013.

She said that they, the landlords, were accepting the dresser as a gift from Austin Branagan until its provenance came into question.

The Chairperson asked each side to summarise their case and say what it was that they were asking of the Tribunal. The appellant tenant's summary was to the effect that the problems that arose could have been easily rectified and that she wanted compensation for lack of notice, reimbursement of the €170 outlay for the gas examination and to be allowed to enter the property, chalet1, again on the basis that her tenancy had never ended. The Chairperson asked had consideration been given to the point that if the tenancy had not ended in October 2013 then a rent arrears issue might arise from October 2013 to date. Cf. section 115(2) g

The respondent landlords' summary was to the effect that rent was outstanding for May, June, July, October and half of November 2013; electricity bills came to €840 (disputed by tenant) and legal costs were €1476. The dresser was not accepted in lieu of rent; and they would not be in a position to restore the tenancy as a family member would be living in chalet1 when it was renovated. In view of the clarity of what each side was looking for, the Chairperson invited the parties to discuss whether there were grounds for settlement by agreement. The parties held a brief discussion and advised the Tribunal that they were too far apart.

The Chairperson advised the parties that the Tribunal was now at an end; that the Tribunal would consider the evidence and make a report to the Board of the PRTB and that a Determination Order of the Board would issue as soon as possible thereafter.

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 are set out hereunder.

7.1 Finding: The Tribunal finds that the appellant tenant had a valid tenancy which commenced on 28 December 2009; this tenancy became a part 4 tenancy on the expiration of 6 months after 28 December 2009 cf. section 28 of the Act. The Tribunal finds that the tenancy ended at the end of October 2013.

Reasons:

There was no evidence to say that the appellant tenant had not been in occupation since 28 December 2009. The respondent landlords were aware that chalet 1 was occupied when they purchased the property. A cheque for rent had been accepted from Austin Branagan. The notice of termination issued by the respondent landlords referred to the appellant tenant and her tenancy. When the appellant tenant vacated at the end of October 2013, she moved all her possessions and furniture from the chalet and obtained rent free accommodation from a friend. No further rent was paid and the landlords were never advised of any intention to resume occupation of the chalet.

7.2 Finding: The Tribunal finds that the Notice of Termination issued by the respondent landlords on the 15 October 2013 is invalid.

Reasons:

The Notice of termination does not comply with section 62 of the Act in particular section 62(1) e, in that it does not specify a reason, as set out in section 34 of the Act, for the termination of the tenancy.

7.3 Finding: The Tribunal finds that the respondent landlords were in breach of their obligations in that they did not serve a valid Notice of Termination and by not remedying defects to the cooker in a timely manner. The Tribunal finds that the appellant tenant is entitled to be reimbursed the call-out charge of €170 relating to the gas leak.

Reasons:

Finding 7.2 gives the reasons why the Tribunal found the Notice of Termination to be invalid. The evidence clearly showed that the cooker gas leak was a source of annoyance to the tenant; that she felt compelled to attend to matters herself in reporting the gas leak and paying the contractor who remedied the leak. The tenant was left without the benefit of a cooker hob from the 19 October 2013 until she vacated the tenancy at the end of October 2013. The landlords were obliged to remedy the defective equipment under the provisions of section 12 (1) (b) (ii) of the Act. The landlords acknowledged that they were prepared to pay the €170.

7.4 Finding: The Tribunal finds that a deposit was not paid to the respondent landlords. A determination is not required in respect of that part of the appeal relating to the return of the deposit.

Reasons:

The appellant tenant's evidence was that she did not pay a deposit to the respondent landlords accordingly there is nothing to either retain or return.

7.5 Finding: The Tribunal finds that the appellant tenant was in breach of her obligations under section 16(a) (i) of the Act in respect of rent and section 16(a) (ii) in respect of electricity charges; that rent is owed by the appellant tenant to the respondent landlord in the sum of €750. The rent arrears are calculated as follows, rent for May, June, July October and half of November 2013 at €500 per month= €2250 - €1500, value of the dresser, net rent due €750.

The Tribunal finds that the appellant tenant owes the respondent landlords an amount of €420 in respect of electricity charges.

Reasons:

The evidence given by both parties was quite clear that cash payment had not been made in respect of the rent for the months in question. The appellant tenant's evidence was that a dresser had been accepted by the respondent landlords in lieu of rent for three months. Evidence concerning the dresser was conflicting as to whether it was offered as a gift or in lieu of rent. The appellant tenant's evidence was supported by copy text messages which discussed the possible monetary value of the dresser and its offer in lieu of rent. Documentation was available in support of the claim by the respondent landlords for electricity bills. This was disputed by the appellant tenant. Other than €100 paid by Austin Branagan the appellant tenant could not say that she had ever paid an amount in respect of electricity, the meter account was never in her name. The Tribunal decided that based on the evidence the dresser had been accepted in lieu of €1500 rent and that a fair and reasonable estimation of the electricity account would be 50% due by the tenant €420.

Finding 7.6: The Tribunal finds that the appellant tenant is entitled to damages of €1500, as provided by, and within the meaning of, section 78(l), section 78(m) and section 115(d) of the Act.

Reasons:

The appellant tenant vacated the tenancy on foot of an invalid Notice of Termination. The invalid notice did not invoke any of the provisions of section 34 which are cited in section 56(1) (b) of the Act. Accordingly the Tribunal relied on section 115(d) in the matter of

damages. The appellant tenant did not give evidence as to any monetary loss as a result of the invalid Notice nor did she ask the Tribunal to award a particular amount, but rather she left it to the Tribunal to decide whether an amount was due and what that amount might be. Accordingly the Tribunal, based on its collective knowledge and experience decided on an amount of damages in the sum of €1500.

8. Determination:

Tribunal Reference TR0114-000563

In the matter of Anna Wilczewska (Tenant) and Robert Boland, Linda Farrell (Landlords) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The respondent landlords shall pay to the appellant tenant the sum of €500 within 28 days of the date of issue of this Order, being €1500 damages for the landlords failure to comply with their obligations under the Act, together with reimbursement of €170 gas repair costs; having deducted €750 arrears of rent and €420 arrears of electricity costs due by the appellant tenant in respect of the tenancy at Chalet 1, Hyde Park, Inch, Gorey, Co. Wexford.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 05/06/2014.

Signed:



Aidan Brennan Chairperson

For and on behalf of the Tribunal.