

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0114-000567 / Case Ref No: 1013-08528**

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|------------------------------------|--|
| <b>Appellant Tenants:</b>          | Ildiko Lorincz, Viktor Madarase  |
| <b>Respondent Landlord:</b>        | Frank McDonagh   |
| <b>Address of Rented Dwelling:</b> | Flat 4, 107 Lower Beechwood Avenue, Ranelagh ,<br>Dublin 6   |
| <b>Tribunal:</b>                   | Orla Coyne (Chairperson)<br>Finian Matthews, Thomas Reilly   |
| <b>Venue:</b>                      | Tribunal Room, PRTB, Floor 2, O'Connell Bridge<br>House, D'Olier Street, Dublin 2  |
| <b>Date &amp; time of Hearing:</b> | 16 April 2014 at 10:30   |
| <b>Attendees:</b>                  | Ildiko Lorincz, Tenant,<br>Viktor Madarase, Tenant<br>Frank McDonagh, Respondent Landlord<br>John McDonagh (son of the Landlord) |
| <b>In Attendance:</b>              | Gwen Malone Stenographer   |

**1. Background:**

On 23/10/2013 the Landlord 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 06/12/2013. The Adjudicator determined that:

The Notice of Termination served on 3rd October 2013 by the Applicant Landlord on the Respondent Tenants, in respect of the tenancy of the dwelling at Flat 4, 107 Lower Beechwood Avenue, Ranelagh, Dublin 6 is valid.

The Respondent Tenants and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 28 days of the date of the issue of the Determination Order by the Board.

The Respondent Tenants shall pay the sum of €1,731 to the Applicant Landlord within 28 days of the issue of the Determination Order by the Board, being €320 in respect of rent arrears and €1,411 in respect of electricity charges.

The Respondent Tenants shall also pay any further rent outstanding from 7th December 2013 at the rate of €610 per month or €20 per day, 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 they vacate and give up possession of the above dwelling.

The Applicant Landlord shall refund the entire of the security deposit of €400 to the Respondent Tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received:

Tenants : received on 24/01/2014. The grounds of the appeal were Rent arrears, Overholding, Other. The appeal application was approved by the Board on 07/02/2014

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

On 11/03/2014 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 16/04/2014 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:**

No new documents were submitted at the hearing.

## **4. Procedure:**

The Chairperson asked the parties to identify themselves and to identify in what capacity they were attending the Tribunal. She 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 Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be as informal as possible; that the parties must follow the instructions given by the Chair, that evidence would be given under oath or affirmation and would be recorded by the stenographer present and based on that a transcript could be made available to the Tribunal, if necessary to assist 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 any person giving evidence to refuse to take the oath or affirmation, to refuse to produce any document in their control required by the Tribunal, to refuse to answer any question put by the Tribunal or to knowingly provide false or misleading statements or information to the Tribunal. The Chairperson 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 €4,000.00 and/or up to 6 months imprisonment or both.

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

members of the Tribunal might ask questions of both parties from time to time. She also directed that neither party should interrupt the other when direct evidence was being given.

The Chairperson explained that, following this, both parties would be given an opportunity to make a final submission should they so wish.

The Chairperson also reminded the parties that, as a result of the Hearing that they, 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.

The Parties giving evidence were then sworn in.

## **5. Submissions of the Parties:**

The Submission of the Tenant, Viktor Madarase

The Tenant stated that on the 17th September 2013 he received a letter from the Landlord stating that he was in arrears of rent for August 2013 and September 2013 together with outstanding utility charges for electricity. However, the Tenant went on to state that he paid the rent after he received this letter. A Notice of Termination (NOT) issued on the 3rd October 2013 from the Landlord but he regarded that it was invalid as the rent was then paid up to date. He referred to the rent book which the Landlord had completed which showed that the rent was up to date when the Notice of Termination was issued.

The Tenant also stated the Landlord was alleging that the Dwelling was being used for their business. He said that they did not use the Dwelling for business purposes or to trade from. He did accept that they had registered the address of the business as the address of the Dwelling as they had no other option at that time. The Tribunal had before it a copy of the current registration of the Tenant's business which showed that it was now registered at a different address. He agreed that certain boxes in relation to their business had arrived at the Dwelling but that it had happened only once; the boxes were stored in the Dwelling in the laundry room.

In relation to the electricity bills initially when Ms. Lorincz moved into the Dwelling the rent included the electricity. However, when Mr. Madarase moved into the Dwelling for the second time in June 2012 the Landlord then requested that the electricity be paid in addition to the rent. He said that the house of which the Dwelling formed part of received one electricity bill which included the electricity for each of the other flats contained in the house. The bill for the whole house is in the Landlord's name. The Tenant was of the opinion that some of the other flats in the house did not have to pay electricity which he regarded as being unfair. He believed only 2 out of the 4 flats were paying electricity in addition to the rent.

He gave evidence that there are separate meters in relation to each of the flats in the hall way in a closed box but that they had no access to it. It was the Landlord who decided what each flat had to pay and although they asked for separate billing directly from the utility provider the Landlord was not willing to do this. The Tenant did accept that they had to pay for the electricity they used but it was the way it was calculated he objected to. However since February 2014 the Landlord had meters installed into the Dwelling and they now were responsible for them.

The Tenant also had a difficulty as to how the charge for units to use the communal washing machine and dryer are calculated. The system works by placing coins into the machine it also has a standing charge of 50c the day which added up to €15 extra per month.

The washing machine and dryer were always separate and distinct from the electricity charges. They worked on coin meters which are situated in the laundry room not within the Dwelling. However, having looked at the calculation of the electricity that these appliances use they believe that if they had their own separate washing machine and dryer within the Dwelling it would not cost them as much. He claimed that they were over charged by approximately €3,160 for the units during the 5 years they had been living in the Dwelling. He believed that it can be seen clearly that, having looked at the time allocated, when you insert your money how much time is being used. He stated that they are happy with the system for the washing machine/dryer which is a pre-paid system but he believed that they are being over charged per unit.

He also mentioned the heating within the Dwelling. He says it is an oil heating system which is turned on twice a day for 2 hour periods which is very little during the winter period. They have no control over this at all and would like to have control over their heating. They also have two temporary heaters but they use a lot of electricity and provide very ineffective heating. He said the Landlord had supplied these heaters to them.

They contacted Dublin City Council who came out to look at the heating involved. As a result of this heaters were put into the Dwelling by the Landlord which are wall mounted. He stated that they are much better and adequately heat the Dwelling. These, in conjunction with the heat coming on and off for the 2 hour period the situation is now much better. However, the usage for the small heaters mounted on the wall also use up a lot of electricity. He said because of the difficulty in calculating the electricity correctly because they do not have a separate bill, they have not paid electricity since 2012. He believed that the Landlord is claiming €1,400 for arrears of electricity. He did accept that he has to pay for electricity but how it is calculated he objected to.

#### CROSS EXAMINATION

The Landlord asked the Tenant when he signed the lease he agreed that he would "cover bills" as under paragraph 3.2 of the lease he agreed,

"to observe the obligations specified in Section 16 of the Residential Tenancies Act 2004 in respect of the Property in addition to any applicable obligations arising by or under any other legislation or common law"

The Tenant accepted that they had to pay electricity. The Tribunal pointed out to the Landlord that it was an unusual situation as Tenants normally had utilities in their own names. The Landlord also asked the Tenant whether they believed that according to their documentation he owed them over €3,000 for alleged over charging for the washing machine and dryer units and for electricity. However, when he checked the coin counters on both the meters for these machines €3,600 approximately in total had been taken in the meters for 5 years which covered the whole house, yet of that sum the Tenants were claiming €3,000 of it was theirs. The Tenant replied again that they were being overcharged for the units that they used.

Evidence of Ms. Lorincz.

Ms. Lorincz said that they had paid the rent up until the end of March 2014. She said that it was a bit unclear if they were in arrears at any given time as they were not too sure whether the rent had to be paid a month in advance. However, she did refer to the Lease where it did say the rent had to be paid a month in advance. But she pointed out that there was never a set date for the rent to be paid though they had been asked for a period of time by the Landlord to pay the rent on the 1st of each month.

She accepted that the NOT was served on Thursday 3rd October 2013. She agreed that one of the reasons stated in the NOT was her failure to pay rent. However, after the 14 day notice of the 17th September 2013 was served, she believed €610 rent was due on the 1st September which was paid by the time the NOT was issued, therefore the rent had been paid up to date and the NOT should not have been served.

She further said that there was no business being run from the Dwelling. They had given the address of the Dwelling initially as at that time they had no other option but to give their home address. In any event the business that they have does not lend itself to be run from the Dwelling. The address of the business was given on Google maps as the address of the Dwelling but that this was taken down immediately when the Landlord brought this to their attention. No individual had ever come to the Dwelling relating to their business. She also stated that the Landlord had carried out works to the house, he was in the house while they were being carried out and he would have noticed if there was a business being run from the Dwelling. She agreed that one box was delivered to the Dwelling which contained flyers for advertising their business. This box was placed in the laundry room but it was removed when they were asked to for fire safety reasons. They have not placed anything else in the laundry room since its removal. No other boxes have been delivered to the Dwelling relating to their businesses except boxes of a personal nature.

The Tenant said that initially they did not have to pay electricity, this arose in June 2012 and coincided with the time when she advised the landlord that the other tenant, Viktor Madarase moved back into the Dwelling. She raised the matter of the heating and the amount of electricity being charged with the Landlord. She said the Landlord produced written notes with the amount of units being used for the Dwelling to her. She told the Landlord she did not accept the figures as she believed it was too much and that it didn't show the actual or factual electricity consumption. However, since the meters were installed into the Dwelling in February 2014 this has helped and justified her raising the matter with the Landlord. She also said that when they had the convector heaters in the Dwelling they heated the dwelling quickly. However, in order to keep the Dwelling heated you had to keep them running non-stop as otherwise the Dwelling would quickly go cold. However, their new heaters give an overall heat to the Dwelling and are much better than the older convector heaters.

She agreed with Viktor Madarase that it was impossible to check the meters as they were closed in a box in the hall. They did not have access to them and therefore she could not see whether the meters were faulty. Plus there were no separate bills in relation to each of the Dwellings in the house.

She stated that the washing machine and dryer were introduced in late 2008 to the house. Before that time they went to the village laundry. Initially they did not question the consumption, namely €1 for the wash and €2 for the dryer. She was asked by the

Tribunal as to whether or not it was cheaper to go to the village to wash her clothes she said she did not remember. She thought it might have been about the same cost. She also blamed low water pressure in the house for the washing programme taking longer which meant that more coins had to be put in for a wash. She also pointed out that from her inspection of the usage there is certain usage that she was not getting credit for and other usage she calculated she only used a certain amount of but yet was being charged more for it.

#### CROSS EXAMINATION.

The Landlord asked the Tenant whether or not there was more than one delivery of boxes to the Dwelling that there may have been up to five or six. The Tenant replied that there were not 5 or 6 deliveries there may have been one or two smaller deliveries in relation to personal boxes but not in relation to anything relating to a business.

The Landlord asked whether or not she had access to the meters under the stairs where the meters for each flat in the house were situated. He also said that when he asked the Tenant to inspect these meters in June 2012 she would not look at the meters to read and take a note of the reading. However, the Tenant denied that she had access to the metres nor was she asked to take the reading in June 2012.

The Landlord also asked the Tenant how many other flats she believed in the house did not have to pay electricity. The Tenant replied that there were only 2 flats paying electricity, namely their flat and another one. The Landlord replied that there were 3 flats in the house that paid electricity. He said there was only one flat that did not have to pay electricity which was at the rear of the house because it did not receive much sunlight.

#### LANDLORD'S EVIDENCE

The Landlord agreed that the rent for September although late had been paid after the 14 day notice issued on the 17th September 2013. However, this rent ought to have been paid on the 1st September not on the 23rd September.

He agreed that he had accepted the rent being paid at the end of the month but then he subsequently requested that it be paid at the beginning of the month. When the Tenants took up occupancy of the Dwelling the rent was initially paid at the commencement of the month but then it went into arrears as much as 3 months at one stage. Because he had to obtain the rent on time he started requesting the Tenants to bring the rent up to date as per the Lease and pay it at the start of the month as initially had been done. The Landlord stated that at the time of the hearing the Tenants were not in arrears although the Landlord stated that April's rent had not been paid as at the date of hearing.

He stated that when the Tenants first took occupancy in the Dwelling 4 subsequent electricity bills had been paid by them. He believed he was within his rights to request the payment for electricity as he was relying on paragraphs 3.2 and 3.3 (x) of the Lease which states the Tenant inter alia "to pay and discharge Rates in respect of the Premises and to pay and discharge all applicable charges in respect of any Services used or consumed on the Premises". He believed that these paragraphs covered electricity bills. He was relying on these clauses plus section 16 of the Act. He said that initially when the Tenant was living on her own he did not request the electricity to be paid as the recession was in full swing However when the other tenant joined her again he introduced the payment of electricity because there were 2 people in the Dwelling and therefore more usage.

The Landlord stated that the house was re-wired in 1997 and that checked meters were installed. These were cheaper than having ESB meters. He believed that the cost per unit for electricity was less coming through the checked meters rather than ESB meters.

In respect of the washing machine and dryer he said he was asked by the Tenant possibly in early 2009 to extend the time on the washing machine meter which he did. It was in 2012 or possibly 2013 he was requested again by the Tenants to increase the times on the dryer and on the washing machine which he also agreed to and did. He also reduced the cost from €2 on the washing machine to €1 and from €4 on the dryer to €2. He also stated that there is a clothes line and a clothes horse to air the clothes if Tenants do not wish to use the dryer.

The Tribunal asked him whether or not he agreed with the Tenants said that they were not getting value for the money for the units to use the washing machine and dryer. The Landlord believed that there is no legislation on how much should be charged in relation to the units. He said he was not trying to make a profit on them and that over 5 years €3,676 had gone through both meters. He believed that it was cheaper than using the laundrette. He was asked whether or not he was aware of the housing regulations for rented dwellings. He said that he was

#### CROSS EXAMINATION OF THE LANDLORD

The Tenant asked the Landlord whether or not the checked meters were closed in the box in the hall and that only the Landlord had the key to them. The Landlord said that they can be checked at any time by them but they have to be kept secured that is why the box is locked.

The Tenant also asked the Landlord about the history of the checked meters. The Landlord stated they had been installed new in 1997. The Landlord stated that they are less costly than ESB meters. The Tenant did not accept this. The Landlord also stated that since the new PIN meters were installed into the Dwelling the Tenants now have control over the usage within the Dwelling. The Landlord was asked how the total sum of €1,743.95 in unpaid electricity charges to the 6th January 2014 was calculated. He replied that this figure was based on his hand written receipts that were furnished to the Tenants prior to the new Pin meters were put into the Dwelling for the Tenants in January 2014. The Landlord accepted that the units as claimed by him had never been agreed with the Tenant. Neither had the costs of each unit at 18.38c per unit been agreed.

#### SUMMATION OF TENANTS

The Tenants stated that in relation to the Notice of Termination they had no arrears of rent as once they had received the 14 day notice they had paid their rent up to date. Therefore the Notice was invalid. In respect of the electricity bills they felt the 18.38c per unit was not correct because there was no way of calculating whether the electricity was used either during the day time or at night. They did accept that they had to pay for some electricity usage but not the amount as claimed by the Landlord. They believed the calculation was not based on correct information.

They also did not agree with the way the washing machine and dryer were being charged. Both had been hugely over paid by them and overcharged by the Landlord. They believed as a result of this over charging this would cancel out any electricity they may owe to the Landlord.

## SUMMATION OF LANDLORD

The Landlord did not accept the assertion that the money that was paid into the washing and drying meters by the Tenants was incorrect as the figures he had given of €3,676 for the whole house for a 5 year period was correct.

He acknowledged that the Tenants accepted that electricity should be paid for heating water, cooking and for lighting in the Dwelling, but no money for electricity had been paid to him since the bills were introduced in June 2012 the amount outstanding as being due is €1743.95

## 6. Matters Agreed Between the Parties

1. There were 2 fixed term Leases for 12 months entered into between the parties. The first Tenancy commenced on the 21st January 2008 and the second commenced on the 1st February 2009. Initially Ildiko Lorincz lived in the Dwelling until January 2009. From January 2009 Viktor Madarase also took up occupancy in the Dwelling until October 2010 when he left but returned again sometime later in June 2012 and currently both Tenants reside in the Dwelling.
2. Deposit of €400 was paid and is retained by the Landlord
3. The rent was initially €170 a week subsequently reduced to €140 per week. It was also subsequently agreed that the rent would be paid monthly at €610 a month.

## 7. Findings and Reasons:

The Tribunal having considered all documentation and having considered the evidence presented to it by the parties the Tribunal finds as follows:

### 1. Finding

Tribunal finds that the Notice of Termination dated and served on the 3rd October 2013 given by the Landlord to the Tenants requiring them to vacate the dwelling on the 31st October 2013 was not a valid Notice of Termination.

### Reasons

(a) The tenancy commenced on the 21st January 2008 and consequently on the 20th July 2008 this became a Part 4 Tenancy.

(b) The Notice served on the 17th September 2013 was accepted to be the 14 day notice as a result of which the Tenants responded by subsequently paying the rent due on foot of this warning notice. Pursuant to Section 67(3) of the Act the Notice of Termination served and dated 3rd October 2013 should not have been served on the Tenants to terminate the tenancy.

### 2. Finding

We find that the Tenants were not using the Dwelling for business purposes in breach of the terms of their tenancy agreement.

### Reasons

The Landlord did not produce any evidence that the Dwelling was being used by either of the Tenants from which to run a business. When the matter of the Dwelling's address



being used as the address of the business of the Tenants was brought to their attention it was quickly rectified and subsequently the address of the business was changed to another address.

The Tribunal accepts the Tenants' evidence that following the delivery of a box relating to one of the Tenants businesses to the Dwelling when it was subsequently pointed out to him that this was not to occur again no further boxes were delivered to the Dwelling relating to their businesses.

They also had accepted after being informed by the Landlord that boxes stored in the Dwelling or in the laundry room could have been an insurance issue relating to the house as a whole that no further boxes were to be delivered.

### 3. Finding

The Tribunal finds that the sum of €850 for electricity usage by the Tenants is due and owing to the Landlord.

#### Reasons

(a) The Tenants in their own evidence stated that they accepted that there were electricity charges due and owing to the Landlord. Accordingly the Tenants are in breach of their obligations under Section 16(a)(ii) of the Act. The Tribunal assesses the amount due and owing to the Landlord in the sum of €850 of the sum of €1,743.95 being claimed by the Landlord as being due.

(b) A reading for the electric meter was not agreed between the parties. The Landlord in his own evidence stated that the meter was locked notwithstanding that it was for safety reasons. However, the Tribunal has no reason to doubt the Tenants inability to gain access to read the meter. Access ought to have been provided to read the meters and this did not occur until the recent PINenergy meters had been installed into the Dwelling as recently as January 2014.

### 4. Finding.

The Tribunal finds that in respect of the monies being claimed by the Tenants as to the alleged over charging for the the useage of the washing machine and dryer there was no expert report or any other evidence to substantiate or to support the figure that the Tenants claimed in the sum of €3160.00 to the Tribunal

#### Reason

The Tribunal accepts that the units which were set by the Landlord took into account maintenance for both the washing machine and the dryer, the installation of same and the decoration and maintenance of the area in which the machines were situated. The money as stated by the Tenants of approximately €3,160 was very similar to the money which the Landlord in his evidence gave that had been taken from the machines over the 5 year period of approx. €3,676.00, which would be the total sum for all four Dwellings within the house.

### 5. Finding

The Tribunal find that the Landlord was in breach of the Housing Regulations and awards damages in the sum of €450 to the Tenant.

## Reasons

Under the Housing (Standards for Rented Houses) Regulations 1993 the Landlord is obliged to provide in the dwelling appliance(s) capable of providing adequate heating in the dwelling. The inability of the Tenant to control the heating within their Dwelling was unacceptable. Also it was only after Dublin City council had inspected the heating that other heaters were installed into the Dwelling by the Landlord.

## 6. Finding

Finally the Tribunal does not find that the Tenants were in arrears of rent.

## Reasons

The Landlord in his evidence stated that there were no arrears of rent at the time when the Notice of Termination was served on the 3rd October 2013 and he did not claim that there were any current rent arrears in existence at the hearing of the Tribunal. Although the rent for April 2014 had yet to be paid.

## 8. Determination:

**Tribunal Reference TR0114-000567**

**In the matter of Ildiko Lorincz, Viktor Madarase (Tenant) and Frank McDonagh (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appealant Tenants shall pay the sum of €400 to the Respondent Landlord in respect of unpaid charges in the sum of €850 having deducted the sum of €450 for breach of the Landlords obligations under the Act in respect of the tenancy situated at Flat 4, 107 Lower Beechwood Avenue, Ranelagh, Dublin 6.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 17/06/2014.



**Signed:**

**Orla Coyne Chairperson**

For and on behalf of the Tribunal.