

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0214-000571 / Case Ref No: 0913-07884

Appellant Landlord: Martin Gannon

Respondent Tenant: Samim Chardiwal

Address of Rented Dwelling: Annex (a), Glenarm House, Woodside, Tivoli , Cork

Tribunal: Gareth Robinson (Chairperson)
Finian Matthews, Thomas Reilly

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

Date & time of Hearing: 21 May 2014 at 2:30

Attendees: Martin Gannon, Appellant Landlord
Samim Chardiwal , Respondent Tenant
Regina Baylor, of Access Housing, on behalf of the
Respondent Tenant
Ellie O'Beirne, on behalf of Appellant Landlord
Pat Jordan, witness for the Landlord

In Attendance: Gwen Malone Stenographers

1. Background:

On 20/09/2013 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 15/01/2014. The Adjudicator determined that:

1. The Notice of Termination dated the 8th November 2013, served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at Annex (A), Glenarm House, Woodside, Tivoli, Co Cork, is invalid.
2. The Respondent Landlord shall pay the sum of €300 to the Applicant Tenant, within 14 days of the date of issue of the Determination Order, for interference with the Applicant Tenant's peaceful enjoyment of the dwelling, in respect of the tenancy of the dwelling at Annex (A), Glenarm House, Woodside, Tivoli, Co Cork.

Subsequently the following appeal was received:

Landlord : received on 04/02/2014. The grounds of the appeal: Other ; Approved by the Board on 07/02/2014

The PRTB constituted a Tenancy Tribunal and appointed Gareth Robinson, Finian Matthews, Thomas Reilly as Tribunal members pursuant to Section 102 and 103 of the

Act and appointed Gareth Robinson 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 21/05/2014 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:

N/A

4. Procedure:

The Chairperson asked the parties to identify themselves and to identify in what capacity they were attending the Tribunal. 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 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 as informal as possible; that the person who appealed (in this case the Appellant Tenants) would be invited to present his case first, that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case and that there would be an opportunity for cross-examination by the Appellant Tenant. He also said that members of the Tribunal might ask questions of both parties from time to time.

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

He stressed that all evidence would be taken on oath or by way of affirmation 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 and/or up to 6 months imprisonment or both.

The Chairperson noted that should the parties indicate that they would be able to resolve the dispute through negotiation, the Tribunal would facilitate any such negotiation. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal and would be enforceable through the Courts.

The Chairperson also reminded the parties that, as a result of the Hearing that they would submit their findings to the Board who would make a legally binding Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only.

At this point the Representative of the Respondent Tenant objected to a witness purported to be called by the Appellant Landlord. At this point the Tribunal, adjourned for

a short period to consider if it was appropriate that this witness give evidence, and ultimately concluded that it should.

The hearing then commenced in the usual format, with the Appellant Landlord opening the case.

5. Submissions of the Parties:

Appellant Landlords evidence:

The Appellant Landlord opened the case, and gave evidence that the Tenant moved into the property around the 1st of August, 2013 and paid €550, in addition to a security deposit of €550. The Landlord referred to document 11 of 27 which is entitled , “Landlord Contact Info”, and pointed out that there had been a mistake in the advertisement and that Choices Agency had made a mistake with regard to this particular property in that the electricity was not included in the rent of €550.

In addition to this the Landlord explained that he had not appeared at the original adjudication hearing as a result of the fact that his Agent Ms Ellie O’Beirne had informed him that the matter had been resolved and that the Tenant was withdrawing his claim at the PRTB, and as a result of this he failed to appear at the adjudication hearing.

Mr Gannon gave evidence that at no point did he give the Tenant a copy of the lease, because as a far as he was concerned no lease was ever in existence between the parties.

Mr Gannon further gave evidence that he explained to the Tenant that if he did not pay the Electricity Bill, the electricity would ultimately be cut off, and he stressed this to the Tenant at all times. The Landlord gave evidence that he served a Notice of Termination on the Respondent Tenant on the 8th of November, 2013. The heating in the apartment is electrical, and the Landlord gave evidence that he only visited the apartment for the first time approximately 10 days after the Tenant moved in.

Evidence of Mr Pat Jordan

Mr Jordan gave evidence in relation to the date of the 8th of November, 2013. He gave evidence of being on the premises when the Landlord served the Notice of Termination on the Tenant. Mr Jordan gave evidence that when the Notice was served on the Tenant he tore up same and threw it on the ground, in the presence of himself and the Landlord.

Evidence of Ms Ellie O’Beirne

Mr O’Beirne referred to document 27 of 27 in the PRTB file. The said document is dated the 13/12/2013, but it was conceded on behalf Ms O’Beirne that this document should in fact be dated the 13/1/2014 and was in fact generated by her offices two days prior to the adjudication hearing on the 15/1/2014. Ms O’Beirne gave evidence that she met the Tenant in the premises and he signed the document on the basis that he was withdrawing his PRTB case in relation to this matter. It was on this basis that Ms O’Beirne communicated to Mr Gannon that he would not be required to attend the adjudication hearing on the 15th of January, 2014.

Respondent Tenants evidence:

Evidence of Ms Regina Baylor.

Ms Baylor gave evidence of the timeline of her involvement with the Tenant. Ms Baylor also gave evidence that the Respondent Tenant was never provided with a key for the mailbox in the building, and as a result of this he was not in a position to receive all correspondence.

It was submitted on behalf of the Tenant by Ms Baylor, that the document signed by the Tenant on the 13th of January, 2014 was unfair as a result of the fact that English was not the first language of the Respondent Tenant, and he was led to believe by Ms O'Beirne that he would be provided with a copy of the lease which he had sought since the previous August.

Ms Baylor gave evidence that she offered to accompany the Tenant to the adjudication hearing but that the Landlord, and his Agent did not wish to have her included in the Adjudication hearing.

Evidence of Samin Chadiwal

Mr Chadiwal gave evidence that he originally saw the advertisement posted on the Daft.ie website. In July, 2013 he contacted Choices Letting Agency, and after some negotiation, he was informed that the Landlord was prepared to accept €550 p.m. inclusive of electricity. As a result of this, he called into the offices of Choices Letting Agency to discuss the property. He signed a lease with representatives of Choices Letting Agency, and paid a deposit of €550, in addition to one month's rent of €550. He was given possession of the key of the apartment, and was informed that he would be provided with a copy of the lease once the Landlord had signed same.

Mr Chadiwal gave evidence that he did not meet the Landlord Mr Gannon until he was in the premises approximately 10 days.

Mr Chadiwal gave evidence that he met with Ms O'Beirne at the property on the 13th of January, 2014, which was two days before the adjudication hearing of the 15th of January. He was asked to sign a document which had been generated by the letting agency, but was under the impression that he would be receiving a copy of the lease as a result of the signing of this document.

6. Matters Agreed Between the Parties

1. Tenancy commenced on the 1st August 2013 for 12 months.
2. Monthly rent is €550.
3. Deposit of €550 paid.
4. Termination Notice served on the 8th November 2013.

7. Findings and Reasons:

Findings:

At no point did the Respondent Tenant receive a copy of his Lease, in spite of numerous requests to receive same from the Landlord's Agent. Furthermore the Tribunal has analysed in detail the document of the 13/12/2014, which should actually be dated the 13/1/2014, and concludes that this is the reason the email address of the Respondent

Tenant was written across same. The Tribunal accepts the evidence of the Respondent Tenant in relation to this aspect of the case.

As a result of this, it is determined that there is still a fixed term letting in place. Accordingly, this letting can only be terminated by the Landlord if there has been a breach of tenant obligations and any Notice of Termination in respect of a fixed term tenancy must refer to the reason for terminating the tenancy.

Furthermore, the Tribunal finds as a fact that the Notice served on the 8th November, 2013 does not give any reason to terminate the Tenancy. The said Notice is invalid for a number of reasons, and in particular that s 62(f) and (g) of the Act have not been complied with. Accordingly, the purported Notice of Termination, dated the 8th November is invalid.

As regards the question as to whether or not heating/electricity is included in the rent, it must be established whether or not it is simply the heating that is included or all ESB costs. The Landlord gave evidence that the heating is electric heating. The Tribunal have considered all of the documentation furnished, including the copy advertisement submitted together with the document at p11 of Casefile 1 entitled "Landlord Contact Info" which appears to be an Agreement to Lease.

It is clear from the advertisement that the heating is included. The document provided to the Respondent Tenant by Choices Letting Agency refers to ESB as being "included in the rent" where there is a space provided to include the ESB Account details. On the basis of these documents, the Tribunal is satisfied that the Respondent Tenant was entitled to conclude that he would not incur any additional costs for heating or electricity and therefore, he should only be responsible for payment of €550 per month.

It is found as a fact, that the Landlord did not threaten to disconnect the electricity. The Landlord merely pointed out to the Tenant that if the electricity bill was not paid, the ESB would disconnect the Tenancy. The Tribunal accepts that the Landlord prevented the electricity being disconnected on a number of occasions by the electricity provider.

It is further found as a fact that the Tenant moved into the property, together with his belongings from Dublin at the commencement of the Tenancy, on the 1st of August, 2013.

The serving of an invalid Termination Notice, is deemed to represent an interference with the Tenant's right to peaceful and exclusive enjoyment of the property. The Tribunal directs that the Respondent pay the sum of €300 to the Applicant by way of damages for breach of s12(1)(a) of the Act.

8. Determination:

Tribunal Reference TR0214-000571

In the matter of Martin Gannon (Landlord) and Samim Chardiwal (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination dated the 8th November 2013, served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at Annex (A), Glenarm House, Woodside, Tivoli, Co Cork, is invalid.

2. The Respondent Landlord shall pay the sum of €300 to the Applicant Tenant, within 14 days of the date of issue of the Determination Order, for interference with the Applicant Tenant's peaceful enjoyment of the dwelling, in respect of the tenancy of the dwelling at 1, Annex (A), Glenarm House, Woodside, Tivoli, Co Cork.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 26/05/2014.

A handwritten signature in blue ink, appearing to read 'Gareth Robinson', written over a horizontal line.

Signed:

Gareth Robinson Chairperson

For and on behalf of the Tribunal.