

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0214-000582 / Case Ref No: 0913-07557

Appellant Tenant: Iuliana Burcea

Respondent Landlord: Brian Kehoe

Address of Rented Dwelling: 91 College View, Ballymun , Dublin 11

Tribunal: Tim Ryan (Chairperson)
Vincent P. Martin, Finian Matthews

Venue: Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2

Date & time of Hearing: 20 May 2014 at 10:30

Attendees: Iuliana Burcea, Appellant Tenant
Brian Kehoe, Respondent Landlord

In Attendance: Gwen Malone Stenographers.

1. Background:

On 04/09/2013 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 23/01/2014. The Adjudicator determined that:

The Applicant Tenant's application, regarding the Respondent Landlord's breach of his obligations under the Act, in respect of the tenancy of the dwelling at 91 College View, Ballymun, Dublin 11, is not upheld.

Subsequently an appeal was received from the Tenant on 20/02/2014. The grounds of the appeal were: anti-social behaviour, breach of landlord's obligations and standard and maintenance of the dwelling. The appeal was approved by the Board on 07/03/2014.

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

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 20/05/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, 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:

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 Tenant) would be invited to present her 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 their 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 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 settlement. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal and thus become enforceable through the Courts.

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 under Section 123(3) of the Residential Tenancies Act (RTA).

The Parties giving evidence were then sworn in and the hearing commenced.

5. Submissions of the Parties:

Appellant Tenant's case:

Opening her evidence, the Appellant Tenant said she and her partner had been unhappy with the tenancy from the beginning. It was situated on the first floor of the building with a balcony and was directly over a supermarket. The reason she was unhappy was because the Respondent Landlord allegedly ignored his responsibilities in regard to ongoing problems as they arose.

On 23 November 2011 shortly after moving in to the apartment, the Appellant Tenant said she wrote a letter to the Respondent Landlord outlining a number of problems with the apartment. These included mould on some walls, broken bathroom fans, a broken toilet

seat, a malfunctioning dishwasher, a broken freezer door and a broken lamp in one of the bedrooms. However, under cross-examination she admitted that the Respondent Landlord had attended to a number of these problems but insisted the dishwasher was never fixed.

In summer 2013, she said she noticed mice on the balcony and had also found bird mites in the apartment somewhat earlier than this - in or around March 2013. She laid a mouse trap and caught one mouse. However, she found this process very distasteful and did not do it anymore. She said she contacted the Respondent Landlord but he said it was not his responsibility but rather that of the management company. After that she said he refused to answer any calls or texts or registered letters.

The Appellant Tenant said she met a service man from the management company who told her the balconies were the responsibilities of the individual landlords and the company was only responsible for the communal areas. She said she again tried to contact the Respondent Landlord but he did not respond. She said her new born son was constantly scratching all over his body and she went to see a doctor. She said the doctor prescribed a treatment for lice.

About this time, the Appellant Tenant said she contacted the Citizens' Information Centre who advised she write to the Respondent Landlord by registered post. She also contacted the Health Services Executive (HSE) and they responded that, as it was a private apartment, they had no role. However, a HSE environmental officer came to the apartment and took a sample of a bird mite and later furnished a report concerning the lifecycle of the mite. She said she also contacted Dublin City Council who advised her to contact the PRTB as did the Citizens' Information Centre.

The Appellant Tenant said the problems with the mice and mites continued and she had to block the balcony door to try to prevent anything from entering the apartment. She also had to dry the clothes in the apartment which caused an increase in mould growth.

She said representatives from two pest control companies came to inspect the apartment but neither had got the go-ahead to tackle the problems from the Respondent Landlord. She said a lady named Joan had contacted her and told her the price quoted was too expensive.

The Appellant Tenant said the problems with the mice and mites continued and eventually in November 2013 she issued a 28-day Notice of Termination and vacated the dwelling.

Respondent Landlord's case:

The Respondent Landlord said it was very unfair to say he had neglected the apartment as he had attended to many of the issues raised by the Appellant Tenant. However, he admitted he missed some calls and texts. He said the majority of the problems raised in November 2011 were dealt with swiftly and in regard to the dishwasher, he said he had tested it and it appeared to work perfectly although he did not stay to establish if it completed its full cycle.

He said the problem with the mice had been raised with him in October 2013. He had spoken to a representative of the management company who suggested that the problem may have arisen from the removal of roof gardens on the building where it was known there were nests of mice.

In regard to the mites, he said this problem seemed to arise where people were feeding pigeons on the balconies despite warning notices to the contrary from the management company.

He said that the representatives from both pest control companies had told him they would prefer not to carry out any works because of the volume of concerns expressed by the Appellant Tenant to them in regard to chemicals, safety procedures and so on. One company had quoted €2,500 but clearly inferred they did not wish to undertake the job.

He said he had met the Appellant Tenant's partner on the day they moved out. He had suggested to them that they could agree terms themselves rather than go to the PRTB. When the Appellant Tenant asked her partner about this she replied by asking what did the Respondent Landlord fear. She said she wished to go to the PRTB. He said the tenants left before the expiry date of the Notice of Termination and he had to hire a security guard to monitor the apartment over the Christmas period and he did not manage to relet it again until February 2014. He said he had cleaned the apartment but saw no evidence of mites or mice. The new tenants had not made any complaints since moving in. The Respondent Landlord confirmed that he had retained the deposit of €750.

In her final summary the Appellant Tenant accused the Respondent Landlord of having an "inhuman attitude". She said she was seeking compensation of €1,000 for loss of many items which she had to throw out because of the problems with the mites. These included children's toys, a fur coat, blankets, pillows and two laptops. She said she was also seeking damages of €2,000 for the stress and inconvenience caused by the Respondent Landlord's attitude as a result of which she said she was very upset and suffered from depression.

In his final summary, the Respondent Landlord objected strongly to being described as having an "inhuman attitude". He said he was always courteous in his dealings with the Appellant Tenant, something which could not be said of her attitude and he instanced a conversation in which a plumber had received verbal abuse.

He said the notion of discarding two laptops because of an allegation of mite infestation was a total overreaction to the situation.

6. Matters Agreed Between the Parties

1. Tenancy commenced on 1 November 2011
2. Tenancy terminated on 12 December 2013.
3. The Respondent Landlord retains the deposit of €750.

7. Findings and Reasons:

Finding 1:

The Appellant Tenant's application in regard to the Respondent Landlord's breach of obligations is not upheld.

Reasons:

Section 12(1)(b) of the Residential Tenancies Act obliges a landlord to carry out such repairs as are necessary from time to time during a tenancy.

Contradictory evidence was given to the Tribunal by both parties. The Appellant Tenant said she had made numerous complaints to the Respondent Landlord about various problems and while some were attended to, she found it increasingly impossible to make contact with him. On the other hand, the Respondent Landlord outlined a number of issues which he had dealt with and various repairs that had been undertaken. He also cited a number of examples where maintenance persons did not wish to undertake any work in the apartment because of the Appellant Tenant's lack of co-operation.

In regard to the mice and bird mites, while the Appellant Tenant put forward credible evidence of the problem and her efforts to deal with it, the Tribunal finds that, on the balance of probabilities, she had a tendency to exaggerate the scale of the problem.

The Tribunal finds the evidence given by the Respondent Landlord compelling and is satisfied that he generally made reasonable efforts to rectify the problems when notified. However, the Tribunal finds that these efforts were hindered by the lack of co-operation shown by the Appellant Tenant to the various repair and maintenance crews sent to the apartment. Under section 16(e) of the Act, a tenant must allow the landlord, or any person or persons acting on the landlord's behalf, reasonable access to the dwelling for the purposes of allowing any works for which the landlord is responsible to be carried out.

Finding 2:

The Respondent Landlord is in breach of his obligation to return the deposit to the Appellant Landlord.

Reasons:

Under Section 12(4) of the RTA a landlord may only withhold the deposit on two grounds, firstly, if there are outstanding rent arrears equal or greater than the amount of the deposit or secondly, where there is wear and tear to the apartment beyond normal.

The Tribunal finds that the Respondent Landlord has therefore unjustifiably withheld the deposit. However, the evidence provided to the Tribunal was that the Appellant Tenant and her family vacated the apartment on 12 December, 2013. The 28 Notice of Termination served by the Appellant Tenants was dated 28 November 2013 and this was would have been due to expire on 26 December, 2013. Therefore, the Tribunal finds that the Appellant Tenants vacated 14 days in advance and are therefore found liable for an amount in lieu of the landlord's loss in rental payment for 14 days in the sum of €345.10 ($€750 \times 12/365 = 24.65 \times 14 = €345.10$).

Finding 3:

The Notice of Termination served by the Appellant Tenant is invalid.

Where a landlord is not in breach of his obligations in regard to the repair and maintenance of a dwelling, a tenant must serve notice in accordance with Table 2 of Section 66(3) of the RTA. As the tenancy was in place for more than two years, the notice period required is a minimum of 56 days. However, as the 28 day notice period was accepted by the Respondent Landlord and he voluntarily received back the keys, the Tribunal does not make any finding in the circumstances.

8. Determination:

Tribunal Reference TR0214-000582

In the matter of Iuliana Burcea (Tenant) and Brian Kehoe (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall pay the Appellant Tenant the sum €404.90 within 14 days of the date of the issue of this Determination Order by the Board being part of the unjustifiably retained deposit of €750 less the sum of €345.10 being money in lieu of rent owed for vacating the dwelling prematurely in respect of the tenancy of the dwelling at 91 College View, Ballymun, Dublin 11.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 29/05/2014.

Signed:

A handwritten signature in black ink, appearing to read 'Tim Ryan', is written over a horizontal line.

Tim Ryan Chairperson

For and on behalf of the Tribunal.