**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0215-001029 / Case Ref No: 1014-15073**

**Appellant Landlord:** Derek Fynes

**Respondent Tenant:** Keith Synnott, Juan Liu

**Address of Rented Dwelling:** The Stables, Oldbawn, Ballygarrett, Gorey, Co.Wexford

**Tribunal:** Catriona Walsh (Chairperson)

Aidan Brennan, Thomas Reilly

**Venue:** Room G.02, Department of the Environment, Community and Local Government, Newtown Road, Co.Wexford

**Date & time of Hearing:** 15 June 2015 at 11:00

|  |  |
| --- | --- |
| **Attendees:** | Derek Fynes, Appellant Landlord  Adrienne Ward, Witness for Appellant Landlord  Keith Synnott, Respondent Tenant  Juan Liu, Wife of Respondent Tenant  Paul O’Sullivan, Solicitor for Respondent Tenant  Ciaran Carroll B.L, Counsel for the Respondent Tenant |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 31/10/2014 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 09/01/2015. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €8,100 to the Applicant Tenant within 28 days of the date of issue of the Order being the sum of €10,000 in damages for the unlawful termination of the tenancy of the dwelling at The Stables, Ballygarrett, Gorey, County Wexford less the sum of €1,900.00 being rent arrears in the sum of €2,700.00 less the entire of the justifiably retained security deposit of €800.00 in respect of the tenancy of the dwelling.

Subsequently the following appeal was received by the Landlord on 12/02/2015. The grounds of the appeal were Invalid Notice of termination, Deposit retention and Other. The appeal application was approved by the Board on 20/02/2015.

The PRTB constituted a Tenancy Tribunal and appointed Catriona Walsh, Aidan Brennan, Thomas Reilly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Catriona Walsh 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 15/06/2015 the Tribunal convened a hearing at Room G.02, Department of the Environment, Community and Local Government, Newtown Road, Co.Wexford.

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

PRTB File

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

* Affidavit of Stephen Fynes dated the 8th May 2015. (Submitted by the Appellant Landlord and agreed by the Respondent Tenant as being an affidavit only)
* Three photographs identifying a teapot and figurines (Submitted by the Respondent Tenant Keith Synnott and agreed by the Appellant Landlord)

**4. Procedure:**

The Tribunal hearing was convened to commence at 11.00am on the 15th June 2015. The Respondent Tenants were present at the appointed time. The Appellant Landlord did not attend until 11.35am. and the hearing convened.

The Chairperson asked the Parties present 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 the PRTB document entitled "Tribunal Procedures".

She explained the procedure that would be followed: that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as possible. She indicated that the Party who had appealed (the Appellant) would be invited to present his case first and present any witnesses as he saw fit. There would be an opportunity for cross-examination by the Respondent. The Respondents would then be invited to present their case and present any witnesses as they saw fit and the Appellant could cross-examine the Respondent if he so wished. She indicated that members of the Tribunal might also ask questions of both parties from time to time.

The Chairperson explained that following this, the Parties would be given an opportunity to make final submissions.

The Chairperson explained to the parties that in the event agreement is reached between them, the terms of any such agreement can be incorporated into a determination of the Tribunal and thus become enforceable through the courts.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the stenographer present. She advised the Parties that knowingly providing false or misleading information or statements to the Tribunal was an offence punishable by a fine of up to €4,000.00 or up to 6 months imprisonment or both.

She also 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 enforced by either of the Parties or in some cases by the PRTB at its discretion. She also advised the Parties that the Tribunal process was the final step in the dispute resolution process unless appealed to the High Court on a point of law only, pursuant to Section 123(3) of the Private Residential Tenancies Act 2004 as amended.

She asked the parties if they had any queries about the procedure and there were none.

The parties were then sworn in.

**5. Submissions of the Parties:**

**Appellant Landlord’s Case:**

The Appellant Landlord agreed that the grounds for his appeal were as follows;

1. Invalid Notice of Termination.

2. Deposit Retention.

3. Amount of damages Awarded.

In relation to the Notice of Termination the Appellant Landlord gave evidence that he had given the Respondent Tenant Keith Synnott numerous verbal requests both over the phone and had visited him a number of time requesting the outstanding rent and he believed it was accepted by the Respondent Tenant Keith Synnott that he could not pay the level of rent and was living beyond his means. He specifically indicated that verbal notice was given to the Respondent Tenant by phone after a meeting in March 2014 and the Respondent Tenant Keith Synnott was always aware of the level of rent arrears. He said that the Respondent Tenant Keith Synnott recognised the fact that he would have to leave the dwelling.

He gave evidence that he had served the 14 day written warning letter which was prepared by his witness, Adrienne Ward. He gave evidence that he had hand delivered the 14 day warning letter and gave it to the Respondent Tenant Keith Synnott himself and had also put it into the post box at the house on the 14th March 2014.

He gave evidence that he had served the Notice of Termination on the Respondent Tenant Keith Synnott on the 1st April 2014. He said that he told the Respondent Tenant Keith Synnott he would be calling and he said he again put one copy in the post box and gave one copy to the Respondent Tenant Keith Synnott himself.

He said that he believed that he took every step and hadn’t received any rent.

He gave evidence that the rent outstanding was €2,400.00.

In relation to the deposit he gave evidence that the deposit agreed was €800.00. He said he had never received the deposit. He said that his son Steve had met with the Respondent Tenant Keith Synnott and the he had given his son a month’s rent. He did not give him a deposit. His son had signed the lease on his behalf and the Respondent Tenant Keith Synnott signed also. His son was unable to attend the Tribunal hearing but he had submitted an affidavit from his son who maintained he had not been given the deposit. He accepted that the lease indicated a payment of €800.00 was due for the deposit on the signing of the lease but same had not been received. He indicated that the note that “no deposit had been paid” had been placed by him on the office copy lease for office purposes. The Appellant Landlord gave evidence that he himself had spoken to the Respondent Tenant Keith Synnott and the Respondent Tenant had accepted that he had not paid a deposit and was waiting on some money to come thorough to pay. The Appellant Landlord indicated that he had subsequently received no deposit. He said that records were kept in his office by his witness Adrienne Ward.

He said that on the date the Respondent Tenant and his wife left the dwelling he called to the dwelling. He said that the Respondent Tenant Keith Synnott knew he was calling as he had arranged to pick up a football table which was in the Respondent’s garage. He said that he was accompanied by a third party who was there to help him lift out the football table. He said he had been told by the Respondent Tenant Keith Synnott that he was moving out that day. When he got to the house he spoke to the Respondent Tenant’s wife. He said he saw packed boxes in the hall and presumed they were leaving. He said when he spoke to the Respondent Tenant’s wife she was erratic and annoyed. She was trying to ring her husband. He said he rang the Gardai as he thought there might be trouble. The Respondent Tenant’s wife said she was not leaving. The Respondent Tenant Keith Synnott then arrived. He suggested that the Appellant Landlord leave his wife to him to deal with. The Respondent Tenant and his wife then packed up their stuff and indicated they would collect the balance in the next few days. The Appellant Landlord felt that it had been dealt with in the appropriate manner. The Respondent Tenant and his wife left the premises and the Appellant Landlord said that he had stayed around tidying up. He said that later that evening a locksmith came and the locks were changed. He said that he had been accommodating in every way.

The Appellant Landlord was questioned by Counsel on behalf of the Respondent Tenant Keith Synnott. It was put to him that he was there with his third party and the locksmith and he ejected the Respondent Tenant and his wife from the property. This was denied by the Appellant Landlord. He said that the Respondent Tenant’s wife was upset and said she was not moving out. He did say that at one point the Respondent tenant’s wife was screaming in the background.

He gave evidence that the Respondent Tenant and his wife had a lot of items in the garage and that the Respondent Tenant and his wife prioritised what they wanted to take with them on the day. He said that the Respondent Tenant Keith Synnott came back two days later and the Appellant Landlord’s wife was there when he removed the balance of his belongings.

The only items left at the property were 3 cars. He said that subsequently he decided to sell the house and he needed the cars removed. He said that he tried to contact the Respondent Tenant Keith Synnott and left messages for him on his phone and at his place of work. He also said that he called to the Respondent tenant’s place of work and left a message with the receptionist for the Respondent Tenant to call him. The Respondent Tenant never called him back. He said he met the Respondent Tenant’s wife on two occasions and mentioned to her to get her husband to remove the cars.

He had to have the cars removed as the sale was about to close. He contacted a scrap dealer who took the cars. He said that he did not get any payment for the cars. Subsequent to the adjudicator’s decision he attempted to retrieve the cars and succeeded in retrieving the Pontiac which he returned to the Respondent Tenant Keith Synnott. He does not know what happened to the other two cars but he believes that they were scrapped. He further said that when the Pontiac was taken from the premises it wasn’t in running order but when the Respondent Tenant Keith Synnott got it back it was.

The Appellant Landlord said that he knew nothing about the Jade tea-pots and had never seen them.

The Appellant Landlord submitted that he was not a rogue landlord and he believed that he had done what he did for the right reasons and believed that he has given the Respondent Tenant and his wife every opportunity.

**Evidence of Adrienne Ward – Witness of the Appellant Landlord:**

Adrienne Ward gave evidence that she was the office Manager for the Appellant Landlord. She specifically remembers that she received the month’s rent but no deposit. She remembers that she was told that the Respondent Tenant Keith Synnott had not paid the deposit. She recorded that the month’s rent had been paid. She further indicated that the Respondent Tenant Keith Synnott on a previous occasion was unsure as to whether he paid the deposit.

**Respondent Tenant’s Case:**

**Evidence of Keith Synnott:**

The Respondent Tenant gave evidence that he viewed the dwelling initially with the

Appellant landlord’s son. He was interested in taking the property. He said he hadn’t got the deposit of €800.00 but paid it subsequently when he got the keys to the property. He paid it to the Appellant landlord’s son. He had the rent in cash and took the deposit money from his credit card. He didn’t get a receipt. He accepted that he was €2,400.00 in arrears of rent.

He told the Tribunal that there were no dates agreed for him to leave but he recognised that he had to find alternative accommodation. He said that on the 2nd May 2014 he got a call from his wife. She was upset. The Appellant Landlord had arrived with two men and took the keys. The locks were changed. The Gardai were called and they said it was a civil matter. He said that the Appellant Landlord said to him it was the hard way or the easy way. He gave evidence that the Appellant Landlord had told them to pack their stuff and go. He said they took the basics from the house and left. There were two dogs and a cat with them in the van. They went to a friend’s place and parked in his garden. The next day he said that he had to go to work and he rang to collect the balance of his belongings. He said he was met by the Appellant Landlord’s ex-wife and retrieved most of his belongings. He said they found temporary accommodation and got 60% of their property returned. The Appellant Landlord said he was going to hold onto the cars. There were 3 cars - a Honda which was worth about €400/€500 and was 20 years old, a SAAB 01 with 120,000 miles worth about €1,000 and a Pontiac which was very valuable. This car was returned to him after the adjudication. In one of the cars were jade tea-pots belonging to his wife which were invaluable. They were never returned. Photographs were handed in of those items and there was no objection to same by the Appellant Landlord. The Respondent Tenant said that it was very clear from the Appellant landlord that if he gave him what he owed him that he would get the cars back.

After he was told that he made no further attempt to contact him. The boxes that were in the house were not for moving but had glasses in them. He said that he had received none of the notices. When asked by the Appellant Landlord he agreed that in relation to the deposit he was unsure at the Adjudication as to whether he had paid a deposit.

Counsel for the Respondent Tenant Keith Synnott closed by saying that the Notice of Termination was invalid and handed into the Tribunal the High Court case of Jack Canty and the Private Residential Tenancies Board and David Connelly 2007 IECH 243 which he was relying on. He further submitted that the Respondent Tenant and his wife had not agreed to vacate and the termination of the tenancy was unlawful. It was finally submitted that the cars were being held for rent arrears and this was not allowed under section 19 of the Housing (Miscellaneous Provisions) Act 1992.

**Evidence of Juan Liu wife of the Respondent Tenant:**

The wife of the Respondent Tenant gave evidence that she was living in the house. She said that she was there on the day the Appellant Landlord called to the house. She said that there was another man in the truck with him. A third man arrived in a van. She said that she only knew the Appellant Landlord. The man that arrived in the van was there to change the locks. She opened the door and the Appellant Landlord asked her to give him the keys. She said that she didn’t know what he was talking about and she felt upset and threatened in her home. She said that the two men went into the house and one changed the locks.

She said she could do nothing and the Appellant Landlord took the key. She rang a friend but he was not there. She said that she rang her husband. She went into the room with the TV. She said that she was told to go upstairs and pack her bags and she did that. She said that they had to leave and they had to stay in the van. She said that the boxes in the hall had small glass in them. She had not made any arrangements to move out. She said she remembers meeting the Appellant Landlord subsequently but she said that she does not remember him saying anything to her about the cars.

**6. Matters Agreed Between the Parties**

* The tenancy commenced on the 24th February 2010.
* The tenancy terminated on the 2nd May 2014.
* The monthly rent to be paid was €800 per month. The deposit sought was €800 but it was disputed as to whether it was paid.
* The arrears of rent stand at €2,400.00.

**7. Findings and Reasons:**

Having considered all of the documentation before it, and having considered the evidence given by the Appellant Landlord and the Respondent Tenant and the witnesses, the Tribunal’s findings and reasons therefor are set out hereunder;

**Finding No. 1:**

Juan Liu was a co-tenant in the dwelling.

**Reason:**

The evidence given by all parties is that Juan Liu was residing the dwelling. She was the named Respondent Tenant’s wife. The Appellant Landlord knew she was residing there and it is clear that she had a key to the premises. Jean Liu herself gave evidence that she was residing in the dwelling which was not disputed.

**Finding No. 2.**

The Tribunal finds that the Notice of Termination dated the 1st April 2014 is invalid.

**Reason**:

There are various issues in disputes between the parties in relation to the Notice of Termination. The Appellant Landlord gave evidence under oath that he gave the verbal warning of rent arrears to the Respondent Tenant Keith Synnott, served the 14 day Warning Letter by hand and by leaving it at the dwelling and subsequently served the Notice of Termination by hand and leaving it all the dwelling. The Respondent Tenant Keith Synnott gave evidence under oath that he never received either the 14 day warning letter or the Notice of Termination. What is clear from the evidence is the Notice of Termination itself as presented by the Appellant Landlord is invalid on its face. It does not specify that the Respondent Tenant has the whole of 24 hours of the termination date to vacate the premises. It does not specify that the question of the validity of the Notice of Termination can be referred to the PRTB within 28 days of the service of it. These are mandatory statutory requirements and without them the Notice of Termination cannot be held to be valid. The Tribunal therefore does not have to make any findings on the disputed service of what was clearly an invalid notice of termination.

**Finding No 3:**

The Appellant Landlord unlawfully terminated the tenancy of the Respondent Tenants.

**Reason:**

Having found that the Notice of Termination is invalid any subsequent termination of a tenancy outside of the ambit of the Residential Tenancy Act 2004 is unlawful. The facts of what occurred on the 2nd May 2014 are disputed between the parties. The Appellant Landlord says that he did not force the Respondent Tenants to leave the premises and they left of their own accord. The Respondent Tenants say they were forced to leave the premises on that date and spent that night in their van. It is clear from the Appellant Landlord’s own evidence that at one point the Respondent Tenant Juan Liu was crying and screaming. She was in such a state that the Appellant Landlord telephoned the Gardai as he thought there would be trouble. Furthermore, the Appellant Landlord himself gave evidence that the Respondent Tenant Juan Liu said she was not leaving the premises. He accepted that the Respondent Tenants had to pack their belongings while he was there. He further accepts that the Respondent Tenant Keith Synnott had to return to the premises subsequently to retrieve more belongings. The Appellant Landlord accepts that the cars were left at the premises. The Tribunal believes that these are not the actions of Respondent Tenants who have planned an orderly move out of a premises. The evidence of Juan Liu does not indicate to the Tribunal that she was a person who left her home of her own accord. Her evidence, particularly of the events of that day, was preferred by the Tribunal. That being the case the Tribunal finds that this was an unlawful termination of a tenancy. It is accepted that the Respondent Tenants had to spend the night in their van and had to source alternative accommodation. The facts of the case as outlined by Juan Liu places this type of termination of a tenancy at the higher end of the scale in terms of damages and the Tribunal finds that €10,000.00 is a fair assessment of the damages due to the Respondent Tenants in this case.

**Finding No 4:**

The Respondent Tenant did not pay a deposit of €800.00.

**Reasons:**

The payment of the deposit is disputed. The Appellant Landlord says that the deposit was not paid and the Respondent Tenant Keith Synnott said that it was. The Tribunal accepts the evidence of Adrienne Ward, the witness for the Appellant Landlord in this regard. She gave evidence that she manages for the books for the Appellant Landlord and receipted the rent but not the deposit. The Tribunal also notes that the Respondent Tenant Keith Synnott accepted that he had on a previous occasion admitted that he was unsure as to whether a deposit had been paid or not.

**Finding No 5:**

There is no finding in relation to the cars at the dwelling or the tea-pots.

**Reason**:

It is disputed by the Appellant Landlord and the Respondent Tenant as to the circumstances of the retention of the cars and the loss of the tea-pots. The Appellant Landlord gave evidence that the vehicles were left at the premises by the Respondent Tenant and he made efforts to contact the Respondent Tenant for their removal. He had to remove the cars from the premises as he was selling the premises. He gave evidence that he knew nothing about the tea-pots. The Respondent Tenant gave evidence that the Appellant Landlord retained the vehicles until the rent was paid. What is clear is that the Appellant Landlord retrieved the Pontiac and returned it to the Respondent Tenant. There is a significant conflict of evidence and therefore the Tribunal in the absence of any clear compelling evidence is unable to make any finding in the matter.

**8. Determination:**

**Tribunal Reference TR0215-001029**

**In the matter of Derek Fynes (Landlord) and Keith Synnott, Juan Liu (Tenants) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord shall pay the total sum of €7,600.00 to the Applicant Tenants within 28 days of the issue of this Determination Order being the sum of €10,000.00 in damages for the unlawful termination of the tenancy of the dwelling at the Stables, Ballygarrett, Gorey, County Wexford less the sum of €2,400.00 in respect of rent arrears in respect of the tenancy of the above dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 23/07/2015.

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

**Catriona Walsh Chairperson**

For and on behalf of the Tribunal.