

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0314-000586 / Case Ref No: 0114-09628

Appellant Tenants:	Christoph Schobel, Tina-Maria Schobel-Brunner
Respondent Landlord:	Gerard McGrath
Address of Rented Dwelling:	18 Teaguestown Wood, Dublin Road, Trim, Co Meath , Meath
Tribunal:	John FitzGerald (Chairperson) John Tiernan, Gareth Robinson
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	22 May 2014 at 10:30
Attendees:	Gerard McGrath, Tribunal Respondent, Landlord Fabien Laboulle, Tribunal Representative, Tenant Gerard McGrath, Dispute Respondent, Landlord
In Attendance:	Gwen Malone Stenographers.

1. Background:

On 03 January 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 a Mediation which took place on 03 February 2014.

Subsequently a valid notice of appeal was received by the PRTB from the Appellant Tenant on 03 March 2014. The grounds of the appeal: Breach of landlord obligations, Deposit retention. The PRTB at a board meeting on 21 March 2014 approved referral of the Tenants appeal to the Tenancy Tribunal.

The PRTB constituted a Tenancy Tribunal and appointed John FitzGerald, John Tiernan, Gareth Robinson as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John FitzGerald 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 22 May 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:

- 1 Photograph derived from mobile phone texts submitted at hearing by the Landlord. No objection was raised on the part of the Appellant Tenant.

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 her 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.

The Chairperson 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 appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

5. Submissions of the Parties:

Appellant Tenants' Case: Fabian Laboulle (herein-after known as the Appellant Tenants' Representative)

The Appellant Tenants' Representative stated that he had helped to clean the house at the termination of the tenancy on 30 July 2013 with three others. He went on to say that they had rendered the house in spotless condition and as good if not better than it had been at commencement of the tenancy. He advised the Tribunal that they had also arranged a professional carpet cleaner for the stairs carpet which was outside their scope in terms of cleaning the Dwelling. He outlined how his friends, the Appellant Tenants, were en route to Austria, when they received a text from the Respondent Landlord on 4 July 2013 to say that they were not being refunded their security deposit. The reasons given for the retention was that the Dwelling had floral wall stickers on the internal walls which the Respondent Landlord claimed were attached without his permission and because of the alleged damage to the Dwelling and matters regarding the cleanliness of the Dwelling.

At this point the Appellant Tenants' Representative stated that the Appellant Tenants had received permission for the placing of flower stickers on the walls in conversation with the Respondent Landlord subsequent to their being placed there and denied that the

Dwelling had been left untidy or in any way damaged. He went on to state that the Respondent Landlord made no mention of the stickers on his final inspection of the Dwelling and could not understand his position on the matter given that the stickers were still on the walls today. He pointed out that the Respondent Landlord had not provided any receipts for the work of restoring the Dwelling including for repainting that he alleges to be required due to the wall sticker issue. He averred that the new tenants had not indicated that they were unhappy with the stickers and had outlined this to the Appellant Tenants when viewing the Dwelling prior to moving in. He concluded by stating that the Appellant Tenants wanted the full security deposit repaid as had been their understanding before leaving for Austria.

Respondent Landlord's Evidence:

The Respondent Landlord stated that he had always had a good relationship with the Appellant Tenant and he was disappointed that it was now in dispute.

He went on to state that the reason for the retention of the security deposit was due to the fact that wall stickers were placed on the walls in two rooms and elsewhere in the Dwelling which would require a big redecoration job to rectify. He outlined that when he noted the wall stickers on the walls he had agreed to their remaining in place on being advised by the second named Appellant Tenant that they could be easily peeled off. He later discovered that this was not the case and that it would require greater work for a tradesman to repaint the Dwelling if they were to be removed.

On questioning from the Tribunal as to why they were still on the walls, the Respondent Landlord stated that it was because the matter was in dispute and therefore as he saw it as part of the case evidence for this dispute. He said that the contrary to the assertion of the Appellant Tenants in written evidence and as stated by the Appellant Tenant's Representative the new Tenants in the Dwelling were not happy to have them in place and he adduced in evidence mobile phone text messages purporting to support that evidence. The Respondent Landlord also stated that the Dwelling was not clean following termination and that food products, sacks of rubbish and beer cans had been left in the Dwelling.

He outlined that he had to deduct €100 from the first months rent due from the new Tenants in respect of skip hire and cleaning. He said that he had not removed the stickers from the walls as when he attempted to undertake this task he became worried that the paint might come away with them, therefore necessitating a bigger refurbishment of the dwelling to eliminate unevenness and blemishes in the finished paintwork. He denied that the new tenants were happy with the stickers on the walls and stated that they will have to go in due course. He outlined that his partner had cleaned the house to bring it up to a standard for the new tenants and that this took over two days. He remembered receiving a call from an official in Threshold questioning him in relation to the deposit. He concluded by saying that he had made an offer in mediation which was still on the table for consideration. The Tribunal questioned him as to why the dwelling had not been redecorated considering that it was possible to photograph the stickers for use in evidence. The Respondent Landlord explained that it was his understanding that he should not touch the evidence as the dispute continued.

6. Matters Agreed Between the Parties

The following matters were agreed between the Parties:

1. The rent was €850 per month.
2. The security deposit paid was €850 and is retained by the Respondent Landlord.

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 based upon the balance of probabilities and reasons therefor, are set out hereunder.

7.1 Finding: No 1

The Tribunal find that the tenants were in breach of their obligations by placing stickers on walls of the dwelling which could not be easily removed or peeled off which had been the understanding they had conveyed to the Respondent Landlord. The Tribunal awards the sum of €400 to the Respondent Landlord in respect of the works that would be required to restore the affected rooms.

Reasons:

1. The Tribunal accepts the Respondent Landlords evidence that he had not agreed to decorative stickers in advance of being placed on the internal walls of the dwelling resulting damage beyond the level of normal wear and tear and in additional costs in restoring the walls.

7.2 Finding: No 2

Notwithstanding Finding No 1 the Tribunal finds that otherwise the Appellant Tenants did not cause damage beyond the level of normal wear and tear by leaving the Dwelling in a condition that required expenditure on the part of the Respondent Landlord. The Respondent Landlord did not present sufficient evidence of the lack cleanliness and costs relating to the rendering clean of a dwelling at changeover of tenancy.

Reasons:

1. There was a conflict of evidence in regard to the condition of the Dwelling on vacation by the Appellant Tenants. The evidence presented by the Appellant Tenants' Representative and in particular his first hand knowledge of the cleanup process in the dwelling is preferred by the Tribunal as to the condition of the dwelling on termination.

8. Determination:

Tribunal Reference TR0314-000586

In the matter of Christoph Schobel, Tina-Maria Schobel-Brunner (Tenant) and Gerard McGrath (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall repay the sum of €450 to the Appellant Tenants within 21 days of the date of issue of the Determination Order by the Board being the unjustifiably retained portion of the security deposit of €850 having deducted the sum of €400 in respect of the Appellant Tenants breach of their obligations under Section 16(f) of the Residential Tenancies Act 2004 in respect of the tenancy of the Dwelling at 18 Teaguestown Wood, Dublin Rd, Trim, Co Meath.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 02/06/2014.

A handwritten signature in blue ink, reading "John FitzGerald", with a horizontal line underneath.

Signed:

John FitzGerald Chairperson

For and on behalf of the Tribunal.