

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0314-000587 / Case Ref No: 1013-08560

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| Appellant Landlord: | Papyrus Property Company |
| Respondent Tenants: | Robert Hoca, Bernadette Berta, Ildiko Berta, Janus Berta, Alexandra Berta |
| Address of Rented Dwelling: | Apartment 55E, Milners Square, Santry , Dublin 9 |
| 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 2:30 |
| Attendees: | Robert Hickey, Comer Property Management, Representative of the Appellant Landlord Ian Martin, Comer Property Management, Representative of the Appellant Landlord Janus Berta, Respondent Tenant Bernadette Berta, Respondent Tenant |
| In Attendance: | Gwen Malone Stenographers Csilla Dallody, Interpreter for the Respondent Tenants |

1. Background:

On 24/10/2013 the Tenants 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 30/01/2014. The Adjudicator determined that:

1. The Notice of Termination served on 16 October 2013, by the Respondent/Applicant Landlord on the Applicant/Respondent Tenants, in respect of the tenancy of the dwelling at 55E Milners Square, Santry, Dublin 9, is invalid.
2. The Respondent/Applicant Landlord shall pay the sum of €1000 to the Applicant/Respondent Tenants within 28 days of the date of issue of the Order, being damages for service of an invalid notice of termination, in respect of the tenancy of the above dwelling.
3. The Respondent/Applicant Landlord's application, regarding overholding, in respect of the tenancy of the above dwelling, is not upheld.

Subsequently an appeal was received from the Landlord on 03/03/2014. The grounds of the appeal were: invalid Notice of Termination and anti-social behaviour. The appeal was approved 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 Representatives of the Appellant Landlord) would be invited to present their case first, that there would be an opportunity for cross-examination by the Respondent Tenants; that the Respondent Tenants would then be invited to present their case and that there would be an opportunity for cross-examination by the Representatives of the Appellant Landlord.

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 Landlord's case:

Mr Robert Hickey of Comer Property Management, the Representative of the Appellant Landlord, said he was the office manager for the management company but was only in the job a few months. He had replaced a person who had been dealing with this particular tenancy. He said the reason the Appellant Landlord was not represented at the Adjudication Hearing was because this person was pregnant at the time and had since left the company.

He said the reason for bringing the appeal was because he felt the evidence given to the adjudication hearing was somewhat fabricated and he disagreed with it. He said it was his evidence to the Tribunal that another tenant in the same block as the Respondent Tenants, who did not wish to be identified, had told the management company that he had seen one of the Respondent Tenants kick in the basement door which leads from the car park to the apartment block. As a result, the lock had to be repaired and the security of the block was compromised as the door works on a magnet system and once the door is kicked in, it fails to lock. He said the observing tenant had noted the registration number of the car of the person who had kicked in the door and reported it to the management company. He said his colleague, Ian Martin, had rung this tenant and the tenant, who was identified as the person responsible for kicking in the door, admitted it but she said she had no fob to access the door. In regard to fobs, Mr Hickey said they were issued on the basis of the number of bedrooms in each apartment and, in this case, there were three bedrooms and three fobs issued. Additional fobs could be purchased for €50 each but none of the tenants in the apartment at issue had ever requested an extra fob.

Mr Hickey said his predecessor had issued a 7-day Notice of Termination to the Respondent Tenants for kicking in the door which she had regarded as anti-social behaviour. However, they remained in the apartment. He said a sign appeared on a wall in the block which described the management company as racist and defamed the character of his predecessor. The company then received emails from other tenants in the block alleging they were racist.

Mr Hickey said a maintenance man had been dispatched to change the locks on the apartment door of the Respondent Tenants but had subsequently been instructed before he started any work not to do so. He said this maintenance man called to the door to inquire about their involvement in the kicking in of the basement door. A woman answered the door but then allegedly shut it in his face. Subsequently, a man came to the door and told him he had no right be there and that he was going to call the gardai. He said he had put his foot in the door to prevent it hitting him in the face again but the man put his hand on his chest and shoved him back.

Mr Hickey conceded to the Tribunal that a 7-day Notice of Termination can only be served for serious and repeated acts of anti-social behaviour as outlined in Sections 17(a) and (b) of the Residential Tenancies Act. He also conceded that the alleged ant-social behaviour in this case fell into behaviour of the type described in section 17(c) of the Act, in respect of which a 28-day termination notice for any alleged breach of tenant's obligations in that regard would be required. Mr Hickey also told the Tribunal that he had

not made efforts to ascertain if any of the other tenants had given their consent to the alleged anti-social behaviour on the part of one of the tenants, but that he was of the view that at least one of the other tenants had knowledge of the alleged behaviour.

Respondent Tenants' case

Speaking through an interpreter, the first-named Respondent Tenant said he believed he knew the tenant who had reported the incident of kicking in the door and he knew the reason why the tenant had reported the incident. They were the first family to move into the block and were told they could park anywhere in the car park.

The second-named Respondent Tenant said that over time more cars arrived and some owners were given specific numbered car spaces while others were not. She said one day when she parked in a spot, a Spanish man placed a note on her car requesting that she not park there again. After this incident, she said the Spanish man was very hostile to them.

She said while she knew it was she who was being identified as the person who kicked in the door because it was her car registration number that was reported, she said she did not kick it in as there was no need because it was not locked. She said it was rarely locked as none of the fobs they were given would open this particular door. She confirmed that the access gate to the car park was secure in any case.

After the Notice of Termination was served, the second-named Respondent Tenant said a tall man arrived at the door in October 2013 and told them they had three hours to leave the apartment. He came back one hour later and said he was going to change the lock. The Respondent Tenants had to make sure there was a person in the apartment at all times for a week after this incident. She said they received phone calls every day from the then office manager of the management company threatening them that the electricity would be cut off.

The first-named Respondent Tenant said he had to take time off work because he was so traumatised by the threats. He said he was a good worker, had no problems with anyone else, had worked at the same place for six years and always paid the rent on time.

He admitted to the Tribunal that he had placed the sign on the wall about the management company being racist but he had taken it down again when requested to do so. He said they all wished to remain in the apartment but only if they were not harassed by the management company.

In summary, Mr Hickey, the Representative of the Appellant Landlord, said they wished to have the Notice of Termination enforced and to receive back the vacant apartment.

6. Matters Agreed Between the Parties

1. The tenancy commenced on 31 May 2012.
2. On 16 October 2013 a representative of the management company served a 7-day Notice of Termination on the tenants.
3. The tenants are still in occupation.

7. Findings and Reasons:

Finding 1:

The Notice of Termination, dated 16 October 2013, is invalid.

Reasons:

Section 17(1)(a),(b) and (c) outline the circumstances in which a 7-day Notice of Termination may be issued for anti-social behaviour. This defines the offence as behaviour likely to directly affect the well-being or welfare of others, or to engage in behaviour that causes fear, danger or injury to others in the dwelling, or to engage persistently in behaviour that prevents, or interferes with, the peaceful occupation by others of the dwelling. On his own admission, the first-named Representative of the Appellant Landlord conceded that the alleged act outlined in his evidence of kicking in a door came within the ambit of section 17(1)(c) and required 28 days notice rather than the 7 days given, if the Landlord wished to terminate the tenancy by reason of the tenants' breach of their obligations not engage in anti-social behaviour. For the avoidance of doubt, the Tribunal also finds that the alleged anti-social behaviour on the part of one of the tenants did not constitute anti-social behaviour within the meaning of the section 17(1)(c) because the alleged incident was of a "one-off" nature, with the landlord failing to demonstrate that the tenant engaged persistently in any alleged anti-social behaviour with the meaning of the section 17(1)(c).

Secondly, the tenant alleged to have engaged in anti-social behaviour was one of multiple tenants of a dwelling the subject of a Part 4 tenancy. Section 51 of the RTA provides that in the case of a Part 4 tenancy, the act of one of multiple tenants of a dwelling cannot prejudice the rights of the others unless the landlord takes reasonable steps to ascertain whether or not the other tenants had given their consent to the alleged behaviour of one of the tenants. No evidence was produced to the Tribunal to show that the Landlord's Representatives had taken any steps to comply with the provisions of section 51. In seeking, therefore, to terminate the tenancy of 5 tenants, in a situation where only one of those tenants was alleged to have engaged in anti-social behaviour, the Landlord was in breach of the provisions of section 51 of the Act.

Finding 2:

The Landlord failed to allow the Respondent Tenants enjoy peaceful and exclusive occupation of the dwelling.

Reasons:

Section 12(1) of the RTA obliges a landlord to allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling. The evidence produced to the Tribunal, notably the persistent calls by the previous office manager to the Respondents Tenants threatening them that the electricity would be cut off and the arrival of a man who told them they had three hours to leave the apartment, the arrival of a man to change the locks, even if this did not proceed and the perceived need on the part of the tenants for one of them to remain in the apartment at all times after receiving the 7 days notice of termination clearly breached this landlord obligation.

Finding 3:

The Tribunal finds that the Respondent Tenants are entitled to damages in the amount of €2,500, or €500 in respect of the breaches by the Landlord of the provisions of sections 51 and 12(1)(a) of the Act.

Reasons:

The Tribunal is satisfied, on the evidence before it, that the Respondent Tenants suffered serious distress, anxiety and inconvenience as a result of the breaches on the part of the Landlord of sections 12 and 51 of the Act. The Tribunal considers that the appropriate quantum of damages to award in the circumstances of this case is €500 to each of the five Respondent Tenants amounting in total to damages in the sum of €500. In exercise of its powers, therefore, under section sub-section (1)(d) of section 115 of the Act the Tribunal directs that damages in the amount of €500 shall be paid by the Appellant Landlord to the each of the five Respondent Tenants.

8. Determination:

Tribunal Reference TR0314-000587

In the matter of Papyrus Property Company (Landlord) and Robert Hoca, Bernadette Berta, Ildiko Berta, Janus Berta, Alexandra Berta (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination, dated 16 October 2013, served by the management company representative on the Respondent Tenants is invalid.
2. The Appellant Landlord shall pay to each of the five Respondent Tenants the sum €500, within 14 days of the date of the determination order, being damages for distress, anxiety and inconvenience arising from the breach of the landlord's obligations under sections 12 and 51 of the Act in respect of the tenancy of the dwelling at Apartment 55E, Milners Square, Santry, Dublin 9.

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

Signed:



Tim Ryan Chairperson

For and on behalf of the Tribunal.