

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0314-000588 / Case Ref No: 0612-01190

Appellant Landlords: Christine Lydon, Scott Lander

Respondent Tenant: Judith Kenneally

Address of Rented Dwelling: 13 Fernleigh View, Castleknock , Dublin 15

Tribunal: Orla Coyne (Chairperson)
Finian Matthews, John Tiernan

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

Date & time of Hearing: 19 May 2014 at 10:30

Attendees: Attendees for the Appellants:
Jannette Hynes (Tara Property Management Limited) Agent

Attendees for the Respondent
Claudine Myles (Representing Tenant).

In Attendance: Gwen Malone Stenographer

1. Background:

On 07/06/2012 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 06/09/2013. The Adjudicator determined that:

The Respondent Landlords shall pay the total sum of €871.49 to the Applicant Tenant, within 7 days of the date of issue of a Determination Order by the Board, being part of the security deposit of €960.00 unjustifiably retained, having deducted utility arrears of €88.51, in respect of the tenancy of the dwelling at 13 Fernleigh View, Castleknock, Dublin 15.

Subsequently the following appeal was received:

Landlord : received on 04/03/2014. The grounds of the appeal: Deposit retention, Rent arrears ; Approved by the Board on 07/03/2014

The PRTB constituted a Tenancy Tribunal and appointed Orla Coyne, John Tiernan, Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Orla Coyne to be the chairperson of the Tribunal ("the Chairperson").

On 27/3/2014 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 19/05/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

none

4. Procedure:

The Chairperson asked the parties 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 and understood the PRTB document entitled "Tribunal Procedures". Both parties confirmed that they had done so.

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 parties must follow the instructions given by the Chair, that evidence would be given under oath or affirmation and would be recorded by the stenographer present and based on that a recording transcript could be made available to the Tribunal, if necessary to assist in preparing its Report on the dispute. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for any person giving evidence to refuse to take the oath or affirmation, to refuse to produce any document in their control required by the Tribunal, to refuse to answer any question put by the Tribunal or to knowingly provide false or misleading statements or information to the Tribunal. The Chairperson pointed out that an offence may be prosecuted by the PRTB through the Courts and a successful conviction could result in a fine of up to €4,000.00 and/or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Landlord's agent would be invited first to present her case; this would be followed by an opportunity for cross-examination by the Respondent Tenant's representative; that the Respondent Tenant's representative would then be invited to present her case followed by an opportunity for cross-examination by the Appellant Landlord's agent. She also said that members of the Tribunal might ask questions of both parties from time to time. She also directed that neither party should interrupt the other when direct evidence was being given.

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

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.

The Parties giving evidence were then sworn in.

5. Submissions of the Parties:

APPELLANT LANDLORDS' CASE.

The Agent of the Appellant Landlords', Ms. Hynes of Tara Property Management Limited (TPM), stated that the Respondent Tenant entered into a fixed term lease on the 23rd March 2012 for 12 months at a monthly rent of €960. She said that a Notice of Termination which was not before the Tribunal dated the 4th May 2012 was served on the Respondent Tenant. She further stated that the Respondent Tenant agreed to move out but that she requested TPM to organise a van and that she would pay the costs of the van. She said that the Respondent Tenant left on the 5th June 2012 but that there was 2 weeks rent outstanding when the tenants left.

She stated that a difficulty had arisen in respect of a dog being kept in the Dwelling. She said that the property manager from TPM who was managing the Dwelling at the time had taken photographs of the dog in the dwelling. She said that dogs were not allowed under the Lease and in particular she referred to paragraph (n) of the lease relating to matters agreed by the Tenant. However, the text of the said clause read "To keep any dog or other animal in or on the premises". It was pointed out to the Ms Hynes by the Tribunal that this in essence could be construed as obliging the Tenant to keep a dog on the premises and not as she was stating that no dogs were allowed on the premises. She stated that this was an error on the face of the Lease in that the word "not" had been omitted. However, she stated that at no time was consent ever given for the dog and that the Respondent Tenant had advised the property manager that the dog was not theirs and was only with them for a short period of time. However, when the dog remained in the dwelling it was then that they decided to serve a Notice of Termination on the Respondent Tenant.

The property manager had arranged to meet with the Respondent Tenant before she moved out to check the Dwelling to ensure that no damage had been caused to it. However when he arrived at the Dwelling, he was met by the Tenant and two other persons. She said that the property manager had claimed that he felt under pressure, that he was being intimidated and that the three people were acting aggressively towards him. She said that it was at that time that the property manager had agreed to give back the deposit as he thought he had no other option but to do so, less the outstanding utility bills which had been calculated at €88.51. She stated that the property manager was satisfied that there was no deterioration in the condition of the Dwelling above normal wear and tear.

She said that a cheque was furnished to the Respondent Tenant by the property manager for the full sum of the deposit of €960 that evening. However, on the Appellant Landlords' instructions it was cancelled the next day. They subsequently tried to negotiate with the Respondent Tenant in order to reach an agreement as to what they claimed was owed by the Respondent Tenant namely rent arrears in the sum of €441.84, cost of rental of the removal van in the sum of €73.80 and gas utility arrears of €88.51. She gave evidence that the total sum owing therefore was €604.15 and the property manager offered to refund the balance of the deposit in the sum of €355.85 to the Respondent Tenant which was not acceptable to her.

She gave evidence that on 23rd May 2012 the Respondent Tenant was emailed to say the rent was due. However, the Respondent Tenant denied receiving this email.

RESPONDENT TENANT'S CASE.

Claudine Myles on behalf of the Respondent Tenant stated that she had also lived in the Dwelling during the tenancy. She stated that there was nothing mentioned in relation to whether or not a dog was allowed in the Dwelling. However, she said that two weeks into the tenancy they got a call from the property manager to say that the Appellant Landlord did not want a dog in the Dwelling and they were told then by the property manager to either get rid of the dog or leave. There were numerous phone calls between the parties at this stage.

She gave evidence that the property manager turned up on the door of the Dwelling one day and that the Respondent Tenant opened the door to him to be told by him that he had taken photos of the dog in the Dwelling. She said that the dog concerned was a miniature Jack Russell, which is a very small dog. Approximately 2 days later they received a notice to say that they had broken the tenancy agreement. She said that as a result of being served with the notice and the attitude of the property manager they concluded that they would not be happy in the Dwelling and decided to leave.

She gave evidence that the Respondent Tenant agreed with the property manager that they would move out of the Dwelling. She stated that the property manager agreed to provide a van because she said that he knew that he was rushing them out of the Dwelling before the end of the fixed term. She said that they eventually located a different dwelling to live in but at a higher rent of €1,200 a month. She stated that the Respondent Tenant felt under great pressure to leave and needed a deposit for the new property. She said that the tenants did not want to move and would have insisted on adhering to their lease agreement. However she said that when they got the new premises they gave the property manager a date for moving out and their understanding was that he was happy with the arrangement. She said that there was no mention that rent would be due for the final two weeks of occupancy when they left on the agreed date and they considered that it was accepted that all that would be due and owing would be the agreed amount for the utilities.

She stated that on the day in question when they were leaving namely the 5th June 2012 they moved out early in the day and had also paid for the van. She said that they were at the Dwelling at approximately 7 o'clock in the evening and still moving some items from the Dwelling when the property manager came to give back the deposit. She said that they gave back the keys and believed everything was okay.

She gave evidence that on the next day when they presented the cheque to the bank it was refused. She said that they started ringing the property manager and he came up with an offer of about €300 which was unacceptable to them. She said that he then said he would give back the deposit minus utilities.

She also stated the Respondent Tenant while at work after she had vacated the Dwelling was approached by her boss who stated that they had received a call which alleged that the Respondent Tenant had trashed the Dwelling. Her boss queried whether there was there something wrong. She said that the Respondent Tenant was very upset that her work place had been contacted by someone about a matter that was untrue.

The Representative of the Respondent Tenant stated that they had to borrow from their parents in order to help to pay the security deposit and first month's rent in the new Dwelling.

6. Matters Agreed Between the Parties

The Tenancy commenced on the 23rd March 2012 and ceased on the 5th June 2012.

The rent was €960 per month.

There are arrears of utilities in the sum of €88.51.

There was a fixed term tenancy for twelve months entered into between the parties commencing on the 23rd March 2012.

7. Findings and Reasons:

1 Finding

The Tribunal makes no finding as to the validity or otherwise of the Notice of Termination served on the Respondent Tenant.

Reasons

The letter purporting to constitute a notice terminating the tenancy was not before the Tribunal.

2. Finding

The Tribunal finds from the evidence that there was an ambiguity in the wording of the written lease agreement which led to confusion amongst the parties in respect of whether or not a dog was allowed in the Dwelling.

Reason

It was apparent from reading the Lease that there was an error contained within it. The Landlords' Agent also accepted that there was a mistake contained in the wording of lease. The Tribunal, on the balance of probabilities, accepts the evidence given on behalf of the Respondent Tenant that she was not made aware that a dog was not allowed in the Dwelling.

3. Finding

The Tribunal finds that the Appellant Landlords failed in their obligation under Section 12(1)(a) the Act to allow peaceful occupation of the Dwelling. The Tribunal awards damages in the amount of €100 to the Respondent Tenant in respect of the consequences of this breach.

Reason

Under Section 12(1)(a) of the Act the Tenant is entitled to peaceful and exclusive occupation of the Dwelling. The Tribunal finds that the Agents of the Appellant Landlords by taking photographs and serving the Notice of Termination denied the Respondent Tenant peaceful occupation of the Dwelling.

4. Finding

The Tribunal finds that the Respondent Tenant owes the sum of €88.51 to the Appellant Landlords in respect of utilities outstanding at the termination of the tenancy. The Tribunal awards the sum of €88.51 to the Appellant Landlords in respect of this finding.

Reasons

Under S16 (a)(ii) of the Act a tenant is obliged to pay the charges as stipulated in a lease or tenancy agreement. It was accepted in evidence by the representative of the Respondent Tenant that the said sum was due and owing for the utilities.

5 Finding

The Tribunal finds that the Appellant Landlords' claim for arrears of rent due and owing by the Respondent Tenant is not upheld.

Reason

The Tribunal, on the balance of probabilities, accepts the evidence on behalf of the Respondent Tenant that the Agent in putting pressure on the Respondent Tenant to move out because of the misunderstanding in relation to the keeping of a dog in the Dwelling, in agreeing a date for the vacation of the Dwelling and in purporting to repay the full deposit to the Respondent Tenant, led the Respondent Tenant to believe that there were no rent arrears being sought for the final 14 days of occupancy

6. Finding

The Tribunal finds that the Appellant Landlords have unjustifiably withheld the balance of €871.49 from the Respondent Tenant's security deposit. The Appellant Landlords shall return the security deposit in the sum of €960 together with the sum of €73.80 payment for the removal van to the Respondent Tenant less the amount of €88.51 agreed between the parties to be owing in respect of utilities. The Tribunal finds that Appellant Landlords were not entitled to retain an amount of the deposit to pay for the removal van.

Reason

Pursuant to Section 12(1)(d) of the Act the Landlord is obliged to return and pay promptly any deposit paid by the Tenant. The Appellant Landlords' agent accepted that there was no damage or deterioration to the property above the level of normal wear and tear. Based on the evidence presented on behalf of both parties at the Tribunal it is agreed that the amount of €88.51 is due and owing from the Respondent Tenant to the Appellant Landlords. The Tribunal, on the balance of probabilities, accepts the evidence on behalf of the Respondent Tenant that the agent had agreed to pay for the removal van.

8. Determination:

Tribunal Reference TR0314-000588

In the matter of Christine Lydon, Scott Lander (Landlord) and Judith Kenneally (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlords shall pay the total sum of €1,045.29 to the Respondent Tenant within 14 days of the date of issue of the Determination by the Board being the unjustifiably retained portion of the security deposit of €960 together with €100 in damages for the consequences of the breach of the Appellant Landlord's obligations and payment of €73.80 for the removal van having deducted the utility arrears of €88.51 in respect of the tenancy of the dwelling 13 Fernleigh View, Castleknock, Dublin 15.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 07/07/2014.

A handwritten signature in black ink, appearing to read 'Orla Coyne', written in a cursive style.

Signed:

Orla Coyne Chairperson

For and on behalf of the Tribunal.