

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0314-000589 / Case Ref No: 1113-08724**

<b>Appellant Tenant:</b>	Yamhong Xu, Tony (Xing Dong) Chen
<b>Respondent Landlord:</b>	Brian McEnery as Receiver over certain assets of Liam Moran
<b>Address of Rented Dwelling:</b>	4 Victoria Mews, Clontarf , Dublin 3
<b>Tribunal:</b>	Finian Matthews (Chairperson) Orla Coyne, John Tiernan
<b>Venue:</b>	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	26 May 2014 at 10:30
<b>Attendees:</b>	Yamhong Xu, Appeal Appellant, Tenant, Fei Fei, Tenant's witness Stephen Donovan, Receiver's representative Helen Gibbons, Legal Representative Rajan Reilly, Legal Representative
<b>In Attendance:</b>	Gwen Malone, Stenographers Sean Scully, PRTB appointed interpreter

**1. Background:**

On 05/11/2013 the Landlord 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 03/02/2014. The Adjudicator determined that

- The Notice of Termination served on 14th June 2013, by the Applicant Landlord on the Respondent Tenants, in respect of the tenancy of the dwelling at 4 Victoria Mews, Victoria Terrace, Clontarf, Dublin 3 is valid;
- The Respondent Tenants and all persons residing in the above dwelling, shall vacate and give up vacant possession of the dwelling within 56 days of the date of issue of the Order;
- The Respondent Tenants shall pay the total sum of €5,000 to the Applicant Landlord, to be paid at the rate of €1,000 per month, in five consecutive instalments to be paid on the last day of each month, commencing the next month after the issue of the Order. This sum represents rent arrears of €7,269 owed by the Respondent Tenants to the Applicant Landlord, having deducted damages of €2,269 for breaches of landlord obligations due by the Applicant Landlord to the Respondent Tenants;
- The enforcement of the Order for such payment shall be deferred and the total sum owing will be reduced by the number of monthly instalments of €1,000 paid by the

Respondent Tenants to the Applicant Landlord on each due date until the sum of €5,000 is paid in full;

- For the avoidance of doubt any default in the payment of the monthly instalments of €1,000 shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing by the Respondent Tenants to the Applicant Landlord.
- The Respondent Tenants shall also pay any further rent outstanding from the 4th February 2014 at the rate of €1,300 per month, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as they vacate the above dwelling;
- The Applicant Landlord shall refund the entire of the security deposit of €1,300 to the Respondent Tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received:

Tenant : received on 06/03/2014. The grounds of the appeal: Deposit retention, Standard and maintenance of dwelling, Invalid Notice of termination, Rent arrears and overholding, Breach of landlord obligations ; Approved by the Board on 04/04/2014

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

On 1/05/2014 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 26/05/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, 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:**

An up-dated schedule of rent arrears was submitted on behalf of the Receiver and shown to the attending Appellant Tenant, who had no objection to its being entered in evidence. The attending Appellant Tenant submitted a copy of a letter of 18 May, 2014 from her to the Receiver. This was shown to the Respondent Landlord's representatives who had no objection to its being entered in evidence.

## **4. Procedure:**

Opening the Tribunal the Chairperson stated that it had been established by the PRTB to hear an appeal by the Appellant Tenants against a determination made following an adjudication held on 3 February, 2014 in the case of a dispute between the Appellant Tenants and the Respondent Landlord in respect of a tenancy at 4 Victoria Mews, Clontarf, Dublin 3. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. 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 and understood the PRTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it 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 anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He 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 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenants would be invited first to present their case, including the evidence of their Witness; this would be followed by an opportunity for cross-examination by the Respondent Landlord's representatives; that the Respondent Landlord's representatives would then be invited to present the case on his behalf, followed by an opportunity for cross-examination by the Appellant Tenants. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, the Appellant Tenants and the Respondent Landlord's representatives would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

All persons giving evidence to the Tribunal were then sworn in, as was the Interpreter.

## **5. Submissions of the Parties:**

During the course of the hearing of evidence at the Tribunal hearing, the parties to the dispute indicated to the Tribunal that they were willing to enter into discussions with a view to establishing if it were possible to reach agreement between the parties in relation to the matters in dispute between them. Following an adjournment of the hearing to facilitate such discussions, the parties to the dispute advised the Tribunal that they had reached an agreement in relation to the matters in dispute between them. A copy of a written agreement entered into and signed by the Respondent Landlord's representatives and the attending Appellant Tenant, who confirmed that she was signing on behalf of both of the Appellant Tenants, is appended to this report.

The Chair thanked both parties for attending. He advised them that the Tribunal would make its Determination in relation to the dispute on the basis of the written settlement reached between the parties and will notify the PRTB of that Determination

## **6. Matters Agreed Between the Parties**

Before inviting the parties to make their submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

- The tenancy commenced on 15 October, 2010
- The tenancy was an oral tenancy
- The tenants remain in possession of the dwelling
- The rent was €1,300.per month
- The Respondent Tenants paid a deposit of €1300
- The deposit has been retained by the Appellant Landlord.

Both parties accepted that they were in agreement in relation to the foregoing matters.

## **7. Findings and Reasons:**

The Tribunal's finds that the dispute between the Appellant Landlord and the Respondent Tenant has been settled on the basis of the compromise reached between the parties in the within proceedings held on 26 May 2014

## **8. Determination:**

**Tribunal Reference TR0314-000589**

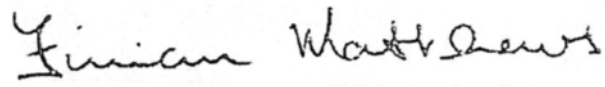
**In the matter of Yamhong Xu, Tony (Xing Dong) Chen (Tenant) and Brian McEnery as Receiver over certain assets of Liam Moran (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

the following matters were agreed between the parties:

1. The Appellant Tenants are to vacate the dwelling on or before 27 June, 2014
2. The Appellant Tenants are to pay the sum of €4,000 in discharge of rent arrears, on or before 9 June, 2014, such cheque to be provided to Noel Smyth & Partners. If the Appellant Tenant fails to make this payment the Respondent Landlord shall be entitled to seek the full amount of the arrears of rent of €13,650 plus any additional rent to the date of vacation of the dwelling.
3. The deposit of €1,300 shall not be repaid to the Appellant Tenants.

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

Signed:

A handwritten signature in black ink that reads "Finian Matthews". The signature is written in a cursive style with a large initial 'F' and 'M'.

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**Finian Matthews Chairperson**

For and on behalf of the Tribunal.