

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0314-000596 / Case Ref No: 1013-08527

Appellant Tenant: Ifeanyi Ede

Respondent Landlord: Ken White

Address of Rented Dwelling: 2 College View, Main Street, Ballymun , Dublin 11

Tribunal: Gareth Robinson (Chairperson)
John Tiernan, John FitzGerald

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

Date & time of Hearing: 22 May 2014 at 2:30

Attendees: Ifeanyi Ede, Appellant Tenant
Francis Gaughan, Solicitor for the Tenant
Jeanette Dermody, on behalf of Appellant Landlord
Mr Chimereogo Amadi, witness for the Tenant

In Attendance: Gwen Malone Stenographers

1. Background:

On 22/10/2013 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 5/02/2014. The Adjudicator determined that:

1. The Notice of Termination served on the 3/12/13 by the Respondent Landlords on the Applicant Tenant, in respect of the tenancy of the dwelling at 2 College View, Main Street, Ballymun, Dublin 11 is valid.
2. The Applicant Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling within 21 days of the date of issue of the Order.
3. The Applicant Tenant shall pay € 4,503.03 to the respondent Landlords in 20 consecutive monthly payments of €200.00 on the 28th day of each month followed by one payment of €503.03 in the immediately succeeding month commencing on the 28th day of the month immediately following the date of issue of the Determination Order by the Board being rent arrears of €5,503.03 in respect of the tenancy of the above dwelling having deducted the sum of €1,000 being damages for breach of Landlords' obligations pursuant to section 12 (1) (b) of the Residential Tenancies Act, 2004.
4. The enforcement of the Order for such payment of €4,503.03 will be deferred and the sum owing reduced by the cumulative sum paid in the monthly instalments made

by the Applicant Tenant to the Respondent Landlords, on each due date, until such time as the total sum of €4,503.03 has been paid in full.

5. For the avoidance of doubt any default in the payment of a monthly instalment shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Respondent Landlords.

6. The Applicant Tenant shall also pay any further rent outstanding from the 5th February 2014 (date of hearing), at the rate of €29.59 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each day or part thereof, until such time as he vacates and gives up possession the above dwelling.

7. The Respondent Landlords shall refund the entire of the security deposit of €900 to the Applicant Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently an appeal was received from the Tenant on 14th March, 2014. The grounds of the appeal were: Breach of Landlords obligations, Validity of the Notice of Termination.

The PRTB constituted a Tenancy Tribunal and appointed Gareth Robinson, John Tiernan and John Fitzgerald as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Gareth Robinson 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 22/05/2014 the Tribunal convened a hearing at Tribunal Room, 2nd Floor, O'Connell's 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 Appellant Tenants) would be invited to present his case first, that there would be an opportunity for cross-examination by the Respondent Landlord; that the

Respondent Landlord would then be invited to present his case and that there would be an opportunity for cross-examination by the Appellant Tenant. 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 or by way of affirmation 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 negotiation. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal and would be enforceable through the Courts.

The Chairperson also reminded the parties that, as a result of the Hearing that they would submit their findings to the Board who would make a legally binding Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only.

At this point the Representative of the Appellant Tenant took some moments to go speak to the representative of the respondent Landlord, and the Tribunal adjourned for a brief period to allow this to happen.

The hearing then commenced in the usual format, with the Appellant Tenant opening the case.

The parties intending to give evidence were sworn in.

5. Submissions of the Parties:

The Appellant Tenant's Case:

The Appellant Tenant gave evidence that the lease commenced in April 2009, and that the Respondent Landlord and his Agent were aware that other people would be living in the dwelling, as the Appellant Tenant had made it clear to the Respondent Landlord's Agent that he would be unable to pay the entirety of the rent himself. The Appellant Tenant gave evidence that he spoke with Ms Sharon Brown of Keenan Property Management (KPM) and informed her that he would source other Tenants for the property.

He gave evidence that he had issues with the property throughout the initial period, and informed the Respondent Landlord's Agents KPM on many occasions of these issues. He said that there were a number of different people coming to the dwelling but would only stay a short period of time owing to the problems with the dwelling. He stated that predominantly people were unprepared to remain in the dwelling for a significant period owing to the problems with the dwelling, which the Appellant Tenant maintained were communicated to the Respondent Landlord on numerous occasions. In particular, evidence was given that a leaking washing machine was reported to the Respondent Landlord in October 2012, but he said that no action was taken to rectify same.

Evidence was given on behalf of the Appellant Tenant that as a result of the lack of action on the issues reported, the Appellant Tenant ultimately reported the matter to Dublin City

Council, who sent an Inspector, who reported on the issues of concern to the Appellant Tenant. The said report was produced in evidence, as were a large amount of photographs relating to the condition of the dwelling.

The Appellant Tenant stated in evidence that he considered that his portion of the rent was paid forward in advance and was incorporated in the rental payments that had been made before the arrears accrued. In response to a query from the Tribunal he said that he did not say this to the Respondent Landlord or his Agent at the time of payment. He later qualified his response to this matter by stating that he had made clear to the Respondent Landlord that he had overpaid. He further purported that his rental payments were made in respect of a 'rent to buy' arrangement with the Respondent Landlord but did not adduce any supporting evidence in this regard .

Evidence of Mr Amadi

Mr Amadi gave evidence that he was currently living at the dwelling and that he had moved in around Easter 2013. He said that he had never met Ms Dermody, but had met another representative of Keenan Property Management. He gave evidence that he had not paid rent, but felt there were a number of issues which required maintenance within the dwelling .

The Respondent Landlord's Case

Evidence of Ms Jeanette Dermody

The Respondent Landlord's Agent,

Ms Dermody, gave evidence that they had not been aware that the original tenants had not moved in back in 2009. In May 2010, she became aware of this, and caused a new lease to be executed by the Appellant Tenant. She gave further evidence that she informed the Appellant Tenant at this point that should any further persons move into the dwelling, they would have to be added to the lease.

In November, 2013, and following upon the receipt of a letter from Dublin City Council, she said that she became aware that a lady named Sally, her partner and child, and two other men were living in the dwelling, together with the Tenant. She gave evidence that issues with a number of items were brought to her attention in November, 2013, to include a leaking washing machine.

The Respondent Landlord's Agent presented evidence in regard in regard to notifications of rent arrears and in particular a written communication dated 15/05/2013 to the Appellant Tenant which advised on the need to pay arrears of rent that had accumulated and advising that failure to do so could result in issuing of proceedings to vacate the Dwelling. She gave further evidence that rent arrears up to and including the rent due on the 20th January 2014 was €5,800 being in respect of the rent due for the months of October 2013, November 2013, December 2013 and January 2014 and arrears going back to July 2013 and August 2013 when no rent was paid for those months and June 2013 when only €400 was paid. Ms Dermody gave evidence that as of the 21st of May, 2014, the arrears of rent are in the amount of €7,550.00 .

6. Matters Agreed Between the Parties

1. Tenancy commenced on the 20th of April, 2009.
2. Monthly rent is €900.

3. Deposit of €950 paid and is retained by the Respondent Landlord.
4. Notice of Termination served on the 3rd December 2013.
5. Tenant remains in occupation.

7. Findings and Reasons:

Findings & Reasons

1. Finding:

The Tribunal finds that the Notice of Termination as served by the Respondent Landlord on the Appellant Tenant dated 3rd December 2013 is valid.

Reason:

On the basis of the evidence as adduced it is clear to the Tribunal that the appropriate procedures were followed by the Agent of the Respondent Landlord in serving the Notice of Termination on the Appellant Tenant.

An appropriate 14 Day Warning Notice was also served in compliance with Section 67 of the Act and there is also evidence of previous correspondence dated 15/05/2013 advising the Appellant Tenant that failure to pay the arrears that had accrued could lead to the termination of the tenancy.

The proper period of notice as required by section 67 of the Act was given. No evidence was led before this Tribunal by the appellant Tenant in relation to the validity or non-validity of the Notice of Termination.

2. Finding:

The Tribunal finds that the Appellant Tenant has been in breach of his tenant's obligations pursuant to Section 16(k) of the Act and that he has been in breach of Clause 2.23 of the Letting Agreement furnished to the Tribunal and which provided that the tenant was not to assign or sub-let the Dwelling save in accordance with the provisions of Section 16(k) of the Act.

Reason:

Section 16(k) of the Act states that the Tenant is not to assign or sub-let the tenancy without the written consent of the Landlord. Evidence of a number of other occupants including a number exceeding the stated number of bed spaces in the Letting Agreement was submitted to the Tribunal. No written consent was furnished to the Tribunal in respect of these tenants. It is therefore the view of the Tribunal that the Appellant Tenant was in breach of clause 2.23 of the Letting Agreement. The Tribunal has decided to award €500 to the Respondent Landlord in damages in respect of the consequences of this breach.

3. Finding:

The Tribunal finds that the Appellant Tenant is in rent arrears of €8,688.77 on the date of the Tribunal, the 22nd of May, 2014.

Reason:

It was agreed between the parties that the monthly rent was €900. The Agent of the Respondent Landlord advanced evidence that rent was in arrears in the sum of €500 for June 2013. Apart from the payment of rent in October 2013 uncontested evidence was

adduced that no rent was paid in July 2013, August 2013, September 2013, November 2013, December 2013, January 2014, February 2014, March 2014 and April 2014 comprising 9 months of rent arrears = $9 \times 900 = \text{€}8,100$. The Letting Agreement provides that monthly rental payments run from 20th day the Month to the 19th day of the following month. The rent for the 3 days in May 2014 to the date of the Tribunal Hearing being 20th, 21st & 22nd is = $3 \times \text{Daily Rate} = 3 \times \text{€}29.59 = \text{€}88.77$.

Thus the rent arrears amount to $\text{€}500 + \text{€}8,100 + \text{€}88.77 = \text{€}8,688.77$

The Daily Rate above is calculated by multiplying the monthly rate of €900 by 12 to give the annual amount of due = €8,100 and dividing this figure by 365 = €29.59

4. Finding.

The Tribunal finds that the Respondent Landlord was in breach of his obligations under Section 12(1)(ii) of the Act arising from his failure to carry out necessary maintenance of the Dwelling. The Tribunal determines that damages in the amount of €1,000 shall be awarded to the Appellant Tenant in respect of the consequences of these breaches.

Reason:

The Tribunal considers that the evidence as adduced at the Tribunal hearing including photographic evidence and matters raised in the report that was prepared by the officer of Dublin City Council following his inspection coupled with consideration of the duration of the tenancy demonstrates that the condition of the Dwelling was such that it was in need of maintenance. The Respondent failed to inspect and failed to invoke his right to inspect further demonstrating that the Respondent Landlord was remiss in attending to matters of maintenance

8. Determination:

Tribunal Reference TR0314-000596

In the matter of Ifeanyi Ede (Tenant) and Ken White (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on the 3/12/2013 by the Respondent Landlords on the Appellant Tenant, in respect of the tenancy of the dwelling at 2 College View, Main Street, Ballymun, Dublin 11 is valid.
2. The Appellant Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling within 21 days of the date of issue of the Determination Order by the Board.
3. The Appellant Tenant shall pay net sum of €8,188.77 to the Respondent Landlord in 16 consecutive monthly payments of €500.00 on the 28th day of each month followed by one payment of €188.77 in the immediately succeeding month commencing on the 28th day of the month immediately following the date of issue of the Determination Order by the Board being rent arrears of €8,688.77 plus damages of €500 in respect of the consequences of the breach of tenant's obligations pursuant to Section 16 (k) of the Act and having deducted the sum of €1,000 being damages for

the consequences of the breach of Landlord's obligations pursuant to section 12 (1) (b) of the Residential Tenancies Act, 2004.

4. The enforcement of the Order for such payment of €8,188.77 will be deferred and the sum owing reduced by the cumulative sum paid in the monthly instalment(s) made by the Appellant Tenant to the Respondent Landlords, on each due date, until such time as the total sum of €8,188.77 has been paid in full.

5. For the avoidance of doubt any default in the payment of a monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Respondent Landlords.

6. The Appellant Tenant shall also pay any further rent outstanding from the 22nd May 2014 (date of Tribunal hearing), at the rate of €900 per month or proportional part thereof at the rate of €29.59 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each day or part thereof, until such time as he vacates and gives up possession the above dwelling.

7. The Respondent Landlords shall refund the entire of the security deposit of €950 to the Appellant Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act all in respect of the tenancy of the Dwelling at 2 College View, Main Street, Ballymun, Dublin 11.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 28/06/2014.

Signed:

A handwritten signature in blue ink, appearing to read 'Gareth Robinson', is written over a horizontal line.

Gareth Robinson Chairperson

For and on behalf of the Tribunal.