

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0314-000602 / Case Ref No: 1213-09274

Appellant Tenants:	Jieying Tao, Yang Liu
Respondent Landlord:	Cliona Kenny
Address of Rented Dwelling:	12, Synnott Row, Drumcondra, Dublin 7 , Dublin
Tribunal:	Patricia Sheehy Skeffington (Chairperson) Thomas Reilly, Finian Matthews
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	19 June 2014 at 2:30
Attendees:	(For the Appellant Tenant) Jieying Tao (For the Respondent Landlord) No appearance
In Attendance:	Gwen Malone Stenographers

1. Background:

On 4 December 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 a mediation which took place on 6 January 2014, a report of which issued on 25 February 2014. The mediation did not result in an agreement. Subsequently, on 19 March 2014, the Tenants requested that the dispute, the subject matter of which was deposit retention, be referred to a Tribunal. This application was approved by the Board on 21 March 2014.

The PRTB constituted a Tenancy Tribunal and appointed Patricia Sheehy Skeffington, Thomas Reilly and Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Patricia Sheehy Skeffington 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.

Following one adjournment at the behest of the Respondent Landlord and having turned down a second adjournment request from the Respondent Landlord, on 19 June 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:

None.

4. Procedure:

The Tribunal commenced later than scheduled to allow for the consequences of a miscommunication between the First Named Appellant Tenant (hereafter “the Appellant Tenant”) and her former solicitor. The Tribunal commenced at approximately 15.30.

The Chairperson asked the party present to identify herself and to identify in what capacity she was attending the Tribunal. The Chairperson confirmed that the party present had received the relevant papers from the PRTB in relation to the case and that she had received the PRTB document entitled Tribunal Procedures. The Appellant Tenant confirmed that she had received the second case file and that she was content to proceed on the basis of its contents, as the first case file contained substantially the same material.

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. She explained that the Respondent Landlord, who was not present, had requested that her written submission and documents be taken into account and as such the Appellant Tenant would be asked to comment on the matters raised by the Respondent Landlord.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and she reminded the party present 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 party present 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 (pursuant to section 123(3) of the Act.

The party intending to give evidence was then sworn in.

5. Submissions of the Parties:

The Appellant Tenant said that she had moved into the dwelling with a former tenant called Fiona and boyfriend in May 2012 on a six-month lease. This lease was on file and it listed the three persons, including Fiona and the Appellant Tenant, as parties to the tenancy.

The Appellant Tenant said that at the end of this tenancy, Fiona and her boyfriend decided to leave and the Respondent Landlord (or her parents, acting as her agents) asked the Appellant Tenant if she wished to stay on. She said that she agreed to stay on with two other persons and it was agreed that the Appellant Tenant would pay the exiting tenant Fiona the deposit of €1,000. Upon questioning she said this arrangement had been agreed to by the Respondent Landlord (or agent) as she did not have to visit again.

The Appellant Tenant said that the Respondent Landlord (or her agent) had inspected the property at the time the new lease agreement was signed in November 2012 and found no problem with it.

The Appellant Tenant therefore rejected the claims made by the Respondent Landlord in her submission in respect of nails and hooks in walls. First she said that these had been installed by Fiona, who had left in November 2012 with a full deposit and secondly that they were merely stick-on hooks that did not cause damage.

The Appellant Tenant said that in about February 2013 the Respondent Landlord's parents (who were acting as her agents) came to the dwelling to collect post. She said that they related that the management company had raised an issue in relation to her running a business from the premises.

The Appellant Tenant said that at the time of the Respondent Landlord's parents' visit, she had been cooking dinner and her housemate was on the computer in one of the rooms. She said that the dwelling had never been used as any type of business and said that while she was aware that a massage business was operating out of a beauty parlour at the end of the street, it had nothing to do with her dwelling. She said that she asked for a copy of the management company's letter of complaint but that it was not given to her. The Respondent Landlord had submitted advertisements for massage from a location at the same street as the dwelling. The Tribunal read the phone number on the ads to the Appellant Tenant and asked if she recognised it; the Appellant Tenant said it was not hers and recited her own number which was different.

The Appellant Tenant said that she was asked to leave by the Respondent Landlord and she felt she had no option but to comply, but that she did ask for more time to seek alternative accommodation, which was afforded to her.

The Appellant Tenant said that the day she moved out, which was 30 March 2013, she had asked that the Respondent Landlord visit and inspect. They said that they would inspect the premises the following day. The Appellant Tenant said she was not given any opportunity to remediate any of the damage allegedly caused by her to the dwelling.

The Appellant Tenant addressed the issue of the mould of which the Respondent Landlord had complained. She said that the mould had first appeared in the first winter in which she had resided in the dwelling and that upon mentioning it to the Respondent Landlord's parents they had said they did not know how to clean it either. She said that although she kept it clean the mould kept coming back after a couple of days. Upon questioning from the Tribunal she agreed that the initial photographs showed the bathroom in very good condition and free of mould and that the later photos showed mould, but she said that the angle of the latter photographs made the problem look worse than it was. She described the bathroom as having no window but having an extractor fan which switched on when the light was turned on. She said that clothes were dried outside normally, but if it was raining they dried them in the combined washing machine. She described switching the heating on in a timed fashion for when the residents came home from work in the evenings and prior to them waking up in the mornings. She said that the mould was scrubbed regularly but kept returning.

The Appellant Tenant was asked about the allegation that there was an oily residue on the front room wall and on some carpets. She denied that there was such residue. She was asked if massage oils had been used and she said she had never had massage oils in the house or conducted massages. She was asked if she had cooked or eaten food in

the front room, a question which she seemed quite surprised by and almost laughingly said no.

In respect of a claim that there had been candle grease in the dwelling, the Appellant Tenant said that the only time she recalled a candle burning there was at a Christmas dinner in which they decorated the dwelling. She said however that the candles had been bought in holders from IKEA and would not drip.

Going through the photographs submitted by the Respondent Landlord, the Appellant Tenant agreed that the dwelling had been in excellent condition when she first moved in but pointed out that the hooks had not been objected to after the first six months. Her attention was brought to the second set of photographs taken after the tenancy and she said they did not show any oil damage as had been claimed. In respect of the mould on the sealing rubber on the fridge door, she said that mould was hard to remove but prior to vacating they had cleaned the house and gardens.

In respect of the claim that damage was done by smoking, the Appellant Tenant said that only one person smoked and then only in the garden, as had been agreed. She rejected that there had been smoking in the dwelling.

The Appellant Tenant said that she had apologised in a text about the mould in the house because she was sorry it was there rather than that she took responsibility for it. She submitted that the cost of redecoration was extreme and on a very unofficial-looking docket. She said that had one hundred euro been taken from the deposit for further cleaning of the mould she would have had no objection, but said that it was unfair to deduct €800 from the deposit. She said that she had to borrow money from friends to raise a deposit for her new dwelling and had to pay them back out of her next pay cheque.

A review of the documents submitted clearly shows that the interactions between the Respondent Landlord and the Appellant Tenants were conducted through the Respondent Landlord's parents.

6. Matters Agreed Between the Parties

None.

7. Findings and Reasons:

On hearing the oral evidence and considering the documents in the case file before it, the Tribunal finds as follows:

Finding One:

The Tribunal partially upholds the Respondent Landlord's claim that the Appellant Tenant caused damage in excess of normal wear and tear in failing to adequately clean mould staining at the end of the tenancy and assesses damages at €100.

Reasons:

1. The photographic evidence of the presence of mould in the bathroom and one of the bedrooms and on the fridge door was compelling. The Appellant Tenant agreed that further cleaning of this mould could have been expected.

2. The Tribunal does not however find that the Appellant Tenants' usage of the property was the sole reason for the mould build-up. The Appellant Tenant gave cogent evidence of reasonable usage of the dwelling with sensible practices in respect of clothes drying and ventilation of condensation from the bathroom.

3. In the circumstances, the Tribunal finds that a good day's cleaning of the premises would have redressed the mould issue to the degree the Appellant Tenant had responsibility for it and as such awards the Respondent Landlord €100 in damages for the damage caused by the build-up of mould.

4. The Respondent Landlord adduced insufficient evidence of any oily or waxy residue that impacted on the dwelling and any such evidence was not given under oath and not amenable to cross examination and seemed to rely on information given by third parties or agents. The Appellant Tenant gave clear and convincing evidence, under oath and tested by questioning from the Tribunal, that damage of this nature had not occurred.

5. The Tribunal rejects that any damage occurred as a consequence of a smoker living at the dwelling.

Finding Two:

The Respondent Landlord was justified in retaining €100 of the deposit.

Reasons:

1. Pursuant to section 12(4) of the Act, a landlord may withhold a deposit (or part thereof) for rent arrears, other charges or damage in excess of normal wear and tear. There were no rent arrears in this case but damage in excess of normal wear and tear is assessed at €100.

Finding Three:

The Respondent Landlord unjustifiably withheld €700 of the deposit; the Tribunal, in accordance with section 115(2)(d) of the Act, awards the Appellant Tenant €50 in damages for the inconvenience caused as a consequence.

Reasons:

1. Of the deposit of €1000, €200 has already been returned. It has been held that €100 was lawfully withheld rendering €700 unlawfully withheld.

2. The Tribunal accepted the Appellant Tenant's evidence that she had to borrow a new deposit from friends in order to secure a new dwelling which caused her inconvenience.

8. Determination:

Tribunal Reference TR0314-000602

In the matter of Jieying Tao, Yang Liu (Tenant) and Cliona Kenny (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlord shall pay the Appellant Tenants €750 within 14 days of the issue of this Order being the unjustifiably withheld balance of the deposit of €1000, having deducted €100 in lieu of cleaning and €200 having already been returned to the Appellant Tenants, plus €50 damages for the consequences of unjustifiably retaining

€700 of the deposit, in respect of the tenancy of the dwelling at 12, Synnott Row, Drumcondra, Dublin 7.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 24/06/2014.

Signed:

A handwritten signature in cursive script, reading "Patricia Sheehy Skeffington".

Patricia Sheehy Skeffington Chairperson

For and on behalf of the Tribunal.