

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0314-000604 / Case Ref No: 1113-08862**

<b>Appellant Tenant:</b>	Ken Farrell
<b>Respondent Landlord:</b>	Therese Hennessy
<b>Address of Rented Dwelling:</b>	27 Wesley Lawns, Dundrum, Dublin 14
<b>Tribunal:</b>	John FitzGerald (Chairperson) Vincent P. Martin, Aidan Brennan
<b>Venue:</b>	Tribunal Section, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	29 May 2014 at 10:30
<b>Attendees:</b>	Liam Hennessy ( Respondent Landlord's Spouse)
<b>In Attendance:</b>	Gwen Malone Stenographers

**1. Background:**

On 12 November 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 a Mediation which took place on 09 December 2013. The Mediator determined that no agreement was reached at mediation.

The Tenant subsequently appealed the matter following unresolved mediation and this was received on 20 March 2014. The grounds of the appeal were Breach of landlord obligations and Deposit retention and this was approved by the Board at their meeting on 04 April 2014

The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, John FitzGerald, Aidan Brennan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John FitzGerald 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 29 May 2014 the Tribunal convened a hearing at Tribunal Section, 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:**

No written documents submitted. The Tribunal did view some photographs on the witness's laptop computer during the Tribunal.

### **4. Procedure:**

The Chairperson asked the Party present to identify himself and to identify in what capacity he was attending the Tribunal. The Chairperson confirmed with the Party 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 held in as informal a manner as was possible. He went on to say for the record that the person who appealed (the Appellant) was not present.

The Chairperson explained that following this, that the party would be given an opportunity to make a final submission and that any member of the panel may at any stage ask a question whenever it became relevant.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the Party 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 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 [reference section 123(3) of the 2004 Act].

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

Respondent Landlord's Case:

Evidence of Liam Hennessy

The Respondent Landlord's spouse stated that his wife inspected the dwelling at time of the termination on 16 October 2013. He stated that she noticed the dwelling was in a very poor state and agreed to refund half the security deposit in the sum of €1,100. She stated that the security deposit having been €2,200 in total. She subsequently checked with Airtricity and Bord Gais to discover that large arrears had accrued on these accounts during the tenancy and were still owing. He then submitted that in the circumstances the Landlord was justified in retaining the full deposit.

The Respondent Landlord's spouse took photographs of the damage caused to the dwelling and obtained costings for the repair of this damage in the sum of €5,823. The Appellant Tenant had been in the dwelling for over a year and the damage which took place had, he outlined rendered the dwelling less saleable in the current market and it had been their intention to offer the property For Sale when obtaining vacant possession. The Respondent Landlord's spouse concluded by stating that their dwelling has been left in dreadful condition and it had been in excellent condition prior to the commencement of the tenancy. He sought to retain the security deposit in this regard.

## 6. Matters Agreed Between the Parties

None.

## 7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence presented to it by the Party, the Tribunal's findings and reasons thereof, are set out hereunder.

7.1 Finding: The Tribunal finds the oral testimony of Liam Hennessy to be credible and compelling.

7.2 Finding: The Tribunal finds that the Respondent Landlord suffered financial loss resulting from the tenant causing damage to the dwelling beyond normal wear and tear and in the circumstances and allowing, inter alia, for depreciation, the Tribunal considers compensation to the Landlord for same in the sum of €2,200.00 to be appropriate and reasonable and therefore the Tribunal finds that the Respondent Landlord is justified in retaining the entire of the security deposit in the sum of €2,200.00 under Section 12(4)A of the Act.

Reason:

1. The Tribunal accepts the evidence of the Respondent Landlord's spouse that they incurred loss measured at €2,200.00 in damages for breach of tenant's obligations under Section 16(f) of the Act and is therefore entitled to retain the security deposit of €2,200.

## 8. Determination:

**Tribunal Reference TR0314-000604**

**In the matter of Ken Farrell (Tenant) and Therese Hennessy (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Respondent Landlord shall retain the security deposit of €2,200 which was justifiably retained for breaches of the Appellant Tenant's obligations under section 16(f) of the Act, for damages in excess of normal wear and tear in respect of the tenancy at 27 Wesley Lawns, Dundrum, Dublin 14.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 10/06/2014.

A handwritten signature in blue ink, which appears to read 'John FitzGerald', is written over a horizontal line.

**Signed:**

**John FitzGerald Chairperson**

For and on behalf of the Tribunal.