**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0315-001059 / Case Ref No: 1114-15302**

**Appellant Landlord:** Gillian Matthews

**Respondent Tenant:** Dunstan Burke, Alice Marchand

**Address of Rented Dwelling:** 1 Coppinger Walk, Blackrock , Dublin, A94DD85

**Tribunal:** Louise Moloney (Chairperson)

Orla Coyne, James Egan

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

**Date & time of Hearing:** 19 June 2015 at 10:30

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| **Attendees:** | Dunstan Burke, Respondent Tenant  Alice Marchand, Respondent Tenant Casey Kennedy Properties, Applicant Landlord Representative  Gwen Malone Stenographers |
| **In Attendance:** | See below |

**Background:**

On 17/11/2014 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 12/01/2015. The Adjudicator determined that:

1. The market rent in respect of the dwelling at 1 Coppinger Walk, Blackrock, County Dublin is €1350 per calendar month and as such the Respondent Landlord shall not provide for an amount of rent in excess of same.

2. The Applicant Tenants application under the grounds of standard and maintenance of the dwelling and breach of Landlord obligations is upheld. The Respondent Landlord shall pay the sum of €500 to the Applicant Tenants within 14 days of the date of issue of the Order being damages for breach of Landlord obligations in failing to carry out necessary repairs and replacements in respect of the tenancy of the above dwelling.

Subsequently the following appeals were received:

Landlord : received on 09/03/2015. The grounds of the appeal: Standard and maintenance of dwelling, Rent more than market rate ; Approved by the Board on 20/03/2015.

The PRTB constituted a Tenancy Tribunal and appointed Louise Moloney, Orla Coyne, James Egan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Louise Moloney to be the chairperson of the Tribunal (“the Chairperson”).

On 15/05/2015 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 19/06/2015 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:**

- Email 8 June 2015 from Dun Laoghaire Rathdown County Council.

- Service Docket from Reactive Property Maintenance with correspondence by

emails dated 17 June 2015 and 18 June 2015 between Reactive and the Appellant Landlord`s Representative.

- The PRTB Rent Index for 2014 (quarter 4).

- The Daft.ie Rental Report (2015 Q1).

- Extract from the PRTB/ESRI Rent Index.

- 4 To Let advertisements with Daft.ie re 3 apartments and 1 house in Blackrock, County Dublin.

**4. Procedure:**

The Chairperson asked the Parties present 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 the PRTB document entitled “Tribunal Procedures”.

The Chairperson explained the procedure which would be followed; that while the Tribunal Hearing was a formal procedure the Tribunal would seek to be as informal as was possible; that the person who appealed (the Appellant Landlord) would be invited to present his case first including the evidence of any witnesses; that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenants would then be invited to present their case, including the evidence of any witness, and that there would be an opportunity for cross-examination by the Appellant Landlord. She said that members of the Tribunal might ask questions of both Parties from time to time.

The Chairperson explained that following this, the Appellant Landlord and the Respondent Tenants would be given an opportunity to make a final submission.

She stressed that all evidence would be taken on oath or affirmation and would be recorded by the official stenographer present, she reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both. The Chairperson drew the Parties attention to Section 7 of the Tribunal Procedures. The Chairperson reminded the Parties that the Hearing is a public hearing and that members of the public may attend the Hearing. She asked the Parties if they had any queries about the procedure, there were no queries.

The Chairperson also reminded the Parties 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].

The Oaths/Affirmations of Parties giving evidence were then sworn/affirmed.

**5. Submissions of the Parties:**

Appellant Landlord`s Case:

The Appellant Landlord`s Representative said that he is a licensed and qualified Agent/Valuer, he said that the minimum market rental value of the dwelling on the open market is €1500 per month as supported by what he submitted was an independent valuation on the PRTB file. He said that the reference on this valuation to a three bedroomed house rather than a two bedroomed house is a clerical error. He referenced the Daft.ie Rental Report for 2015 (Q1) and also the PRTB Rent Index to support his submission re the market rental value of the dwelling. He confirmed that the dwelling is a two bedroomed house. He submitted that a one bedroom apartment in Blackrock would achieve a rent of €1300 per month on the open market and that a two bedroom apartment in Blackrock would achieve a rent of €1500 per month. He referenced the Daft.ie advertisements submitted today in support of his submissions re market rents, he pointed out that one of these advertisements is for a 3 bedroomed house in the same area as the dwelling and that the rent sought for this house is €2,400 per month.

The Appellant Landlord`s Representative said that with regard to the standard and maintenance of the dwelling no further issues had arisen since the Adjudication on the 12th of January 2015. He said that the issues re mould in the dwelling which the Respondent Tenants complained of were the result of lifestyle issues. He said that the shower was fixed within three weeks of the complaint made by the Respondent Tenants concerning the shower. The Tribunal noted that report from Reactive Property Maintenance furnished by the Appellant Landlord`s Representative recorded that the shower was fixed on the 31 October 2014 and further noted that the Respondent Tenants say they complained the matter on the 17 September 2014. The Appellant Landlord`s Representative said he was unclear as to some details as he had not prepared for a full Hearing today, he said that he could not confirm when the Respondent Tenants complained about the shower in the dwelling. He said that he had prepared his evidence to the Tribunal to support the rental market value of €1500 per month and also wanted to say that the fine referenced in the Adjudicator`s Determination was unjust.

In the course of his submission the Appellant Landlord`s Representative said that he was not able to access the dwelling as relationships between him and Respondent Tenants were not good. He confirmed that the dwelling was inspected by a colleague within the past 3 or 4 weeks and that the Respondent Tenants facilitated this inspection.

In response to a question from the Tribunal he confirmed that no work had been carried out at the dwelling by the Appellant Landlord to address any of the matters referenced on the assessment report from Dun Laoghaire Rathdown County Council dated 7 January 2015 following the Council`s inspection of the dwelling on the 8 December 2014. The Appellant Landlord`s Representative said that he has been negotiating with the Council as to the work that is required, he said that the Council have agreed with him that a number of the items on their assessment do not require attention.

In response to the Respondent Tenants` submissions the Appellant Landlord Representative said that apartments are not more expensive to rent than houses, that whether a property is furnished or not furnished has no effect on the market rental value of the property and that the To-Let advertisements referenced by the Respondent Tenants are not for similar properties to the dwelling. He also said that there was an irreparable break-down in relationship between the Appellant Landlord and the Respondent Tenants. He said that the Appellant Landlord intends to sell the dwelling

Respondent Tenants Case:

The second named Respondent Tenant said that the submissions made by the Appellant Landlord`s Representative re current market rental values pertained to properties that were very centrally located in Blackrock as well as being of a much higher standard enjoying greater services, accommodation and facilities than the dwelling. She said that the dwelling is nearer to Stillorgan than it is to Blackrock, that it is a half hour walk from the dwelling to the centre of Blackrock and to the DART. She referenced the To-Let advertisements submitted by the Respondent Tenants as on the PRTB file showing 2 bedroom houses for let in or about March/April 2015 for €1200/1300 per month. She said that the dwelling is a very modest end of terrace two bedroomed house, she submitted that €1300 per month rent would be a fair increase and represented the market rental value for such a house in good repair.

The second named Respondent Tenant confirmed that relationships between the Respondent Tenants and the Appellant Landlord`s Representative were not good, she confirmed that the Respondent Tenants had facilitated a recent inspection of the dwelling to consider the issues affecting the dwelling.

She said that the outstanding issues referenced on Page 85 of 133 of the PRTB file which letter is headed “List of Recent Issues in the House (2014) had been dealt with by January 2015. She said that there was an unreasonable delay on the part of the Appellant Landlord in dealing with these issues. She referenced an email from the first named Respondent Tenant to the Appellant Landlord`s Representative dated 5 September 2014 advising of the malfunction of the shower, she said the shower was not fixed until the end of October 2014.

The second named Respondent Tenant said that when the tenancy commenced in October 2011 there were traces of mould on the blinds, they asked that these blinds be replaced and this was done after a few weeks. She said that the mould was treated by the Respondent Landlord by bleaching and painting over the affected areas, that tiny spots still appear but the position has improved although she said she was of the opinion that mould could be a recurring problem in the dwelling as there may be a structural issue causing the mould given that a neighbour`s house has mould issues as well. She said that they use a tumble drier to dry their clothes, that they ventilated the house and on very rare occasions use hangers for drying clothes. She pointed out that the dwelling is a house for four people and rejected the assertion that the mould was a result of their lifestyle. She said that they complained the mould problem to the Appellant Landlord at least 3 times before the matter was addressed five weeks later.

She said in addition that minor issues had arisen in the dwelling during the tenancy which they had reported to the Appellant Landlord which had not been addressed, she said that a number of electrical bulbs were not working in the dwelling and would not work even when replaced with new bulbs which she attributed to some issue pertaining to the light fittings or the electrics in the dwelling which has not been addressed by the Appellant Landlord.

She said that the issues concerning the standard and maintenance of the dwelling which are outstanding were reported to the Appellant Landlord six months ago and concerned double glazing in the kitchen, the extractor fan in the Kitchen which is not connected to the out pipe and therefore the fan is not doing its job which affects the ventilation in the kitchen, the missing plank on the banister, the poor decorative repair of the outside walls/woodwork and the uneven paving.. She said the missing plank in the banister is a safety issue that the Respondent Tenants have two small children, that she works at home part time and that the Appellant Landlord was fully informed of all these matters.

In response to a question from the Tribunal the second named Respondent Tenant said that the Respondent Tenants were reluctant to do any work in the dwelling even after an appropriate notice to the Appellant Landlord because of the difficulties in the relationships between the Parties.

The second named Respondent Tenant acknowledged that there is a kitchen wall fire blanket and also that the gas boiler in the dwelling had been serviced by the Appellant Landlord.

In conclusion the second named Respondent Tenant said that the market rent for the dwelling should be no greater than €1300 per month. She pointed out that the rent was reviewed in November 2013 on a previous application when the market rent for the dwelling was upheld at €1225 per month and that therefore any increase should be measured and assessed from 2013 which she said would result in a more modest percentage increase than the nearly 22.5% increase sought by the Appellant Landlord in respect of the market rent for the dwelling. She said that the report of Dun Laoghaire Rathdown County Council has been ignored, that the Appellant Landlord is in breach of the Landlord`s obligations concerning the standard and maintenance of the dwelling.

**6. Matters Agreed Between the Parties**

a. The Tenancy in the Dwelling commenced on the 21 October 2011.

b. The rent payable in respect of the dwelling is €1,225 per month, payable monthly in advance on the 21st day of each month during the tenancy.

c. There are no arrears of rent arising in respect of the tenancy in the dwelling.

d. A security deposit of €1,225 was paid by the Respondent Tenants to the

Appellant Landlord at the commencement of the tenancy in the dwelling.

e. A Notice to increase the rent was served by the Appellant Landlord on the

Respondent Tenants on the 20 October 2014

**7. Findings and Reasons:**

Having considered all of the documentation before it and having considered the evidence presented to it by the parties the Tribunal’s findings and reasons therefor are set out hereunder.

1. Finding: The Appellant Landlord is in breach of her obligations under Section 12 of the Act and in particular Section 12 (b) in respect of the tenancy in the dwelling. The Appellant Landlord shall pay the sum of one thousand euro (€1,000) to the Respondent Tenants within twenty eight days of the date of issue of the Determination Order by the Board being damages for breach of her obligations in relation to the standards and maintenance of the dwelling during the tenancy.

Reasons: On the basis of the evidence furnished the Tribunal is satisfied that there was an unreasonable delay by the Appellant Landlord in fixing the shower in the dwelling, this issue was reported to the Appellant Landlord in or about the 5 September 2014 and was not fixed until the end of October 2014. The Tribunal is also satisfied that other issues in the dwelling complained to the Appellant Landlord by the Respondent Tenants and highlighted by the inspection from the Local Authority were left unaddressed. In particular the extractor fan in the Kitchen which is not connected to the out pipe and therefore the fan is not doing its job which affects the ventilation in the kitchen and the missing blank on the banisters were notified to the Appellant Landlord and were not addressed.

The Tribunal finds that the sum of one thousand euro (€1,000) is having regard to all the evidence before the Tribunal an appropriate sum of damages for the breach of the Appellant Landlord`s obligations with regard the standards and maintenance of the dwelling during the tenancy.

2. Finding: The market rent of the dwelling is €1500 per month and this market rent is payable by the Respondent Tenants to the Appellant Landlord in respect of the dwelling as and from the next rent payment date following the date of the issue of the Determination Order by the Board. The Notice served by the Appellant Landlord in respect of a review of the market rent under Part 3 of the Act and in particular Section 22 thereof is upheld.

Reasons:

The dwelling is a two bedroomed end of terrace house with garden on the south side of Dublin in Blackrock. Having regard to the evidence furnished the Tribunal is satisfied that the “market rent” as set out in Section 24 of the Act being “the rent which a willing tenant not already in occupation would give and a willing Landlord would take for the dwelling and having regard to-(a) the other terms of the tenancy and (b) the letting values of dwellings of a similar size, type and character to the dwelling and situated in a comparable area to that in which it is situated” is €1500 per month for the dwelling.

**8. Determination:**

**Tribunal Reference TR0315-001059**

**In the matter of Gillian Matthews (Landlord) and Dunstan Burke, Alice Marchand (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Appellant Landlord shall pay the sum of one thousand euro (€1,000) to the Respondent Tenants within twenty eight days of the date of issue of the Determination Order by the Board being damages for breach of the Appellant Landlord`s obligations under Section 12 of the Act and in particular Section 12(b) in respect the tenancy in the dwelling at 1 Coppinger Walk, Blackrock, County Dublin.

2. The Respondent Tenants shall pay the reviewed rent of €1500 per month in respect the tenancy in the dwelling at 1 Coppinger Walk, Blackrock, County Dublin with effect as and from the next rent payment date following the date of the issue of the Determination Order by the Board.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/08/2015.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\Louise Moloney.png |

**Louise Moloney Chairperson**

For and on behalf of the Tribunal.