**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0315-001068 / Case Ref No: 1014-15046**

**Appellant Landlord:** Donal Kilalea

**Respondent Tenant:** Louise Leahy (Maguire), Duncan Maguire

**Address of Rented Dwelling:** 32 Mount Pleasant Square, Ranelagh , Dublin 6, D06N927

**Tribunal:** Aidan Brennan (Chairperson)

Suzy Quirke, Deirdre Bignell

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

**Date & time of Hearing:** 23 June 2015 at 2:30

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| **Attendees:** | Louise Leahy (Maguire), Tribunal Respondent, Tenant, Duncan Maguire, Tribunal Respondent, Tenant, Marshall Properties, Landlord's Representative |
| **In Attendance:** | Gwen Malone stenographers |

**1. Background:**

On 29/10/2014 the Tenants made an application to the Private Residential Tenancies Board (the PRTB) pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 12/02/2015. The Adjudicator determined that:

1. The notice notifying the Applicants of a rent increase in relation to the tenancy of the dwelling dated the 22nd September, 2014 was validly served.

2. The market rent for the Dwelling situate at 32 Mount pleasant Square, Ranelagh, Dublin 6 is in the sum of €3,600.00 per month.

3. The Respondent Landlord is entitled to €300.00 per month from the 3rd November 2014 to date, (4 months) to account for the difference in rent paid and market rent amounting to €1,200.00 in total, the said sum to be paid to the Respondent Landlord within 35 days of the making of the Order herein.

An appeal was received from the Landlord on 12/03/2015. The ground of the appeal was that the market rate of rent determined by the adjudicator was not in accordance with the current rate of rent achievable for the dwelling. This appeal was approved by the Board of the PRTB on 31/03/2015.

The PRTB constituted a Tenancy Tribunal and appointed Suzy Quirke, Aidan Brennan and Deirdre Bignell as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Aidan Brennan to be the chairperson of the Tribunal (the Chairperson).

On 18/05/2015 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 23/06/2015 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:**

NA

**4. Procedure:**

The Chairperson asked the parties present to identify themselves and to identify the capacity in which they were attending the Tribunal. The Chairperson 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 titled “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; that the person who appealed ( the landlord’s representative ) would be invited to present his case first; that there would be an opportunity for cross-examination by the respondent tenants; that the respondent tenants would then be invited to present their case, and that there would be an opportunity for cross-examination by the landlord’s representative. The Chairperson said that members of the Tribunal might ask questions of both parties from time to time. The Chairperson explained that both parties would be given an opportunity to make a final submission. The Chairperson said that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and 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 advised the parties that as a result of the Hearing, the Board of the PRTB would make a Determination Order which would be issued to the parties and could be appealed to the High Court only on a point of law [reference section 123(3) of the 2004 Act].

**5. Submissions of the Parties:**

Appellant Landlord:

Evidence of: Malcolm Marshall.

The Tribunal dealt with a substantial number of points concerning PRTB procedures as well as Tribunal procedures which had been raised by the landlord’s representative in his written submissions. Following these clarifications the landlord’s representative agreed that the single issue before the Tribunal was the quantum of market rent at 3 November 2014 and in this regard the landlord’s representative outlined his appeal and gave evidence in relation to the description of the dwelling the subject of the tenancy and referred to the various photographs on file. No 32 Mountpleasant Square is one of a pair of the largest houses on Mountpleasant Square. The house is a large double fronted, 3 storeys, over garden level residence which was refurbished from top to bottom about 8 years ago. It has a split level, west facing, sun trap, maintenance free garden at the rear, which is not over-looked. There is an area of artificial lawn surrounded by high walls as well as a large terrace leading out from the garden level study. Internally, the house is comprised of a bright hall, 3 reception rooms, an eat-in kitchen, 4 upper level bedrooms and 1 possible 5th bedroom at garden level, along with 3 bathrooms. There are 4 equally sized, large rooms (1 at each level) accommodating the study at garden level, the dining room at hall floor level, the drawing room on the first floor and the master bedroom on the top floor all with feature fireplaces. All these rooms as well as the kitchen are dual aspect rooms. The sun rises to the front and by about 1.30pm the sun shines into the back garden. The colour scheme is neutral throughout and the only area of carpeting is on the stairs and garden level study. There is no front garden and parking is “on street”.

The landlord’s representative outlined the particular difficulty in this case of comparing like with like as there were no identical properties in the area and said that it was not a matter of comparing houses in an estate which might be similar if not identical. He provided substantial data in relation to houses in comparable areas but claimed that there were no houses of a similar size type and character. The properties identified by the landlord’s representative would appear to command a generally higher monthly rent than those in the area where the dwelling is situated. He gave further evidence to the effect that, as an agent, he deals in expensive houses owned by “old school” clients whose primary concern is the quality of the tenants rather than the quantum of the rent. The policy of these clients is to offer attractive proposals for long term tenants who will be no bother, no fuss and nice nice (sic) tenants. He said that it was not the landlord’s intention to continue the tenancy after the expiry of the Part 4 period, but to instead upgrade the dwelling and seek a rent of €4500 to €5000 per month depending on the extent of the upgrade.

Respondent Tenants:

Evidence of:

Louise Leahy (Maguire) and Duncan Maguire.

The tenants submitted that when they took up occupancy of the dwelling, the subject matter of the dispute in 2011, they had initially believed that market rent was in the region of €3,000.00 per month but that in circumstances where they were offered a three year fixed rent tenancy they agreed to pay the sum of €3,300.00 per month.

The Applicants referred to a list of properties in support of their opinion of what market rent for the dwelling was at 3 November 2014. The tenants said that the dwelling was unique and that it was difficult to find exact comparisons but they relied upon their written submissions. They outlined their views and reasons on each of the properties in their list and demonstrated to the Tribunal that they had researched the matter in significant detail. Their gave their description of the dwelling which contrasted with that of the landlords representative in terms of style and standard of the decor and fixtures and fittings and gave their measured figure for the floor area as 200 sq metres. The stated that in making their comparisons they had looked at criteria such as location, size, parking or lack of, garden or lack of and whether a property was overlooked. In their opinion the market rent at 3 November 2014 was €3500 and at the date of the Tribunal hearing was €3600.

**6. Matters Agreed Between the Parties**

The tenancy commenced on 4 November 2011 under a written lease for a three year period at a rent of €3,300 per month. The terms of the lease prevented the tenants from seeking a downward rent review for the duration of the lease and prevented the landlord from increasing the rent for the duration of the lease.

**7. Findings and Reasons:**

Having considered 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.

Finding:

The Tribunal finds that the rent set by the landlord in the sum of €4000 per month effective from 3 November 2014, and notified to the tenants by letter dated 22 September 2014, does not comply with section 19(1) of the Residential Tenancies Act 2004. Section 115(2) b of the Act provides that where the Tribunal finds that an amount of rent set does not comply with section 19(1) of the Act then the Tribunal shall indicate what amount would in its opinion comply with section 19(1). The market rent for the tenancy at that time was, in the opinion of the Tribunal, €3600 per month.

Reason:

Section 24 defines market rent as the rent that a willing tenant would give and a willing landlord would take for vacant possession having regard to the other tenancy terms and the letting values of dwellings of a similar size, type and character and located in a similar area. The definition is based on that applying to ‘‘gross rent’’ in the Landlord and Tenant (Amendment) Act 1980. The parties have relied upon references to properties which they say are comparable to the dwelling and which are situated in comparable areas. It is clear that no property is exactly comparable to the dwelling and nor for that matter are many of the mentioned areas comparable to the area in which the dwelling is situate. The nature of the dwelling is such that it is one which is at the higher end of properties available on the rental market and consequently there is a wider range of factors affecting market rate, accordingly it is difficult to estimate with precision what market rent it would obtain at 3 November 2014.

The landlord’s representative gave evidence that the dwelling is part of a rental sector which does not have a high turnover in availability and that a primary factor in any letting is the quality of the tenants rather than the quantum of the rent. This policy could be considered, in effect, as limiting the willingness of the landlord to let the dwelling in the open market.

The tenants evidence, in the main, related to properties generally smaller than the dwelling but one in particular was in Mountpleasant Square and notwithstanding that the property located in Mountpleasant Square submitted as evidence by the Tenants has fewer bedrooms and may not be as modern, it is more directly comparable to the subject dwelling than any other example of comparable market evidence submitted by either party.

While the evidence tendered by the parties was in direct contrast on almost every point, even relating to the description of the dwelling, the Tribunal, while acknowledging the quality of the evidence and the opinion as to market rent given by the landlord’s representative, found the evidence of the tenants to be more persuasive in assisting the Tribunal to arrive at its opinion of the market rent.

**8. Determination:**

**Tribunal Reference TR0315-001068**

**In the matter of Donal Kilalea (Landlord) and Louise Leahy (Maguire), Duncan Maguire (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The market rent for the tenancy of the dwelling situate at 32 Mountpleasant Square, Ranelagh, Dublin 6 is in the sum of €3,600.00 per month on and from 3 November 2014 and directs under the provisions of section115 (2) a, of the Residential Tenancies Act 2004 that the Respondent Tenants shall pay the sum of €2400 to the Appellant Landlord within 28 days of the date of issue of this order, representing rent arrears for the period from 3 November 2014 to 3 June 2015.

The Respondent Tenants shall also pay any further rent outstanding from 3 July 2015, at the rate of €3600 per month unless lawfully varied.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 05/08/2015.

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

**Aidan Brennan Chairperson**

For and on behalf of the Tribunal.