**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0315-001071 / Case Ref No: 1014-15034**

**Appellant Landlord:** Geraldine Mc Garrigle

**Respondent Tenant:** Janice Stewart

**Address of Rented Dwelling:** 8 The Drive, Woodpark, Ballinteer , Dublin 16, D16E862

**Tribunal:** Rosemary Healy Rae (Chairperson)

Finian Matthews, Orla Coyne

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

**Date & time of Hearing:** 14 September 2015 at 2:30

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| **Attendees:** | Geraldine McGarrigle (Appellant Landlord)  Tim Dixon B.L. and Patrick Cunningham, Solicitor (Appellant Landlord's Representatives)  Kevin McCormack (Appellant Landlord's witness)  Dan Collins (Appellant Landlord’s Representative)  Janice Stewart (Respondent Tenant) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 29 October 2014 the Tenant 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 5 December 2014. The Adjudicator determined that:

1. The Notice of Termination served on 23rd September 2014 by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at 8 The Drive, Woodpark, Ballinteer, Dublin 16, is invalid;

2. The Notice of Termination served on 30th September 2014 by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of above dwelling, is invalid;

3. The Respondent Landlord shall pay the total sum of €1,750 to the Applicant Tenant within 56 days of the date of issue of the Order, being €1,000 damages for breach of landlord obligations in failing to carry out necessary repairs and replacements, plus €750 damages for the service of invalid notices of termination in respect of the tenancy of the above dwelling.

Subsequently an appeal was received from the Landlord on 11 March 2015 and this Appeal was approved by the Board on 10 April 2015.

The PRTB constituted a Tenancy Tribunal and appointed Rosemary Healy Rae, Orla Coyne and Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Rosemary Healy Rae 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 14 September 2015 the Tribunal convened a hearing at Tribunal Room, 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:**

None.

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity 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 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; that the person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, both parties would be given an opportunity to make final submissions.

The Chairperson stressed 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 €4,000 or up to 6 months imprisonment or both. The Chairperson 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 [pursuant to section 123(3) of the 2004 Act].

The Parties were then sworn in.

**5. Submissions of the Parties:**

Counsel for the Appellant Landlord made a preliminary submission regarding the time within which the Respondent Tenant had lodged her application for dispute resolution with the PRTB. He argued that the Respondent Tenant’s challenges to the validity of the Notices of Termination were not made within the 28 day time limit prescribed in section 80 of the 2004 Act. He argued that, in the circumstances the issue of the validity of the Notices was not properly before the Tribunal. Having withdrawn to consider this issue, the Tribunal indicated that the issue of the validity of the Notices of Termination was properly before it and would be considered in the context of the full hearing of the matter, including the issues raised relating to the condition of the dwelling.

Evidence of Geraldine McGarrigle Appellant Landlord:

The Appellant Landlord stated that the dwelling had originally been her family home and she had commenced letting it when she had to move out of Dublin. She said that the previous tenant was also on the Rented Accommodation Scheme (RAS) and when that tenant vacated the dwelling she was only given 7 days by Dun Laoghaire Rathdown County Council (DLRCC) in which to turn the property around for the next RAS tenant. She explained that she knew that there was work which needed to be carried out at the dwelling and that she told the Respondent Tenant that the work would be done. She said she carried out as much of the works as she could during the week to 10 days before the Respondent Tenant moved in. She said she could not remember whether the dwelling was inspected by RAS prior to the Respondent Tenant moving in.

The Appellant Landlord said she had taken a number of photos prior to the Respondent Tenant moving in and she referred the Tribunal to these photos contained within the Tribunal Case File.

She said that after the Respondent Tenant moved in the builder Mr. Kevin McCormack came and carried out the work in March/April 2013. These works included, inter alia, removal of a full length window and replacement with a smaller window and blocking up the remainder of the wall; internal insulation and repair of guttering/facia boarding. She stated that the builder himself would give further evidence as to the nature of the works carried out. She said that as far as she was aware the Respondent Tenant moved to her mother’s house for a short period while some of the works were being carried out. She said that prior to these works another major job had been done namely the boiler at the dwelling was totally replaced and some new radiators were installed. She accepted that there had been mould in the bathroom and she said that all of the bathroom fittings had been replaced and that the tiling was re-done.

She said that she never received any written complaints from the Respondent Tenant in relation to the condition of the dwelling. She said that the Respondent Tenant had made a verbal complaint about the fridge/freezer and that a new fridge/freezer was installed in February 2013. She stated that she was doing everything she could for the Respondent Tenant.

She said that she was not aware that an environmental health inspection had been carried out in January 2013 and only became aware of it when she received the Report dated the 10th January 2013. She said that following receipt of this Report she arranged to have the necessary works carried out.

She said that she inspected the dwelling sometime in June 2013 after the works had been carried out. She said that on that occasion she was denied access to a number of areas in the dwelling on the basis that there were children asleep in the bedrooms.

In relation to the conduct of the Respondent Tenant during the tenancy she referred to a number of issues which arose such as:- that the dwelling was unkempt; she was not happy with how the bins and rubbish were dealt with; there was scribbling on the walls; she had received complaints from the neighbours about dirty nappies being left outside the dwelling and that a caravan had also been parked outside the dwelling. She stated that she had facilitated the Respondent Tenant from the outset because even though pets were not allowed under the terms of the tenancy she agreed that the Respondent Tenant could keep an old family dog in the dwelling so long as the dog was confined to the downstairs area and the garden. She felt that she was acting as a caring landlord but that this was not reciprocated.

She inspected the property again in August 2014 and February 2015 by agreement with the Respondent Tenant. In relation to the February 2015 inspection she said she gave 3 weeks’ notice but that when she arrived at the dwelling the Respondent Tenant refused to speak to her and left and that it was her daughter who showed her around. She had no access to the back garden, side entrance or shed because the Respondent Tenant had taken the back door key with her. She realised that some of her furniture was being stored in the shed. She said that she had not been looking for the furniture during the visits in June 2013 and August 2014 but noticed that the dining room was full of stuff. After each of the inspections she spoke to the Respondent Tenant and stated how unhappy she was. Following the meeting on the 25th August 2014 she sent a letter to the Respondent Tenant and to Ms. Kennefick on the 9th September 2014 which listed out the items which she required the Respondent Tenant to address.

She referred to the meeting at the dwelling on 24 June 2014 with the Respondent Tenant, Ms. Mary Kennefick and Mr. David Jordan RAS. It was acknowledged that she was taking on board the list of works and making attempts but that she was not allowed full access to the dwelling. She was aware that Ms. Kennefick discussed with the Respondent Tenant what her obligations were in relation to the dwelling and advised her about her role and attitude to the dwelling.

She said she became aware that there was a cage of gerbils at the dwelling and also noted that there was bedding and food for a cat at the doorstep. When she queried this with the Respondent Tenant she was informed that it was a “visiting cat”. In summary she stated that the whole situation was chaotic.

She confirmed that the Notices of Termination dated the 23rd and 30th September 2014 were both posted to the Respondent Tenant.

Evidence of Mr. Kevin McCormack for the Appellant Landlord:

Mr. McCormack stated that he was a Building Contractor and that he had carried out various works at the dwelling concerned. He said that prior to the works being carried out he was furnished with a copy of the Environmental Health Report dated the 10th January 2013,

He stated that: (1) all of the external walls had been insulated except the kitchen which would have been difficult as it would have involved removal of all of the kitchen cabinets; (2) the bathroom fittings including toilet and wash hand basin were all replaced;

(3) double glazing was installed; (4) the large dining room window was replaced with a smaller one and the gap underneath it caused by the removal of the large window was blocked up; the soffits, fascia and gutters were all repaired and pipes cleared out to ensure that there were no blockages.

He said that the main complaint that the Respondent Tenant had was with the mould in the bathroom. He said this is often caused by a cold spot. He said he dealt with this by locating a corner in the attic above the bathroom which was not properly insulated and he put insulation into that corner.

He said the works took 3 weeks approximately and that the tenant was there for most of that time. He said that this did not cause any difficulty because he did the job room by room and he is a very tidy builder.

He said he noticed a lot of rubbish in the passageway at the side of the house. He could not recall if there was furniture in the shed but that it was generally ramshackle.

Evidence of Janice Stewart Respondent Tenant:

At the outset of her evidence the Respondent Tenant accepted that the Appellant Landlord had carried out a huge amount of work to the dwelling. However, she said that there were some problems with things that were not done such as the shower in the bedroom which had no ventilation. She said she believed the Notices of Termination were issued as a result of the meeting at the dwelling on the 25th August 2014.

She said that after moving in to the dwelling she pointed out that the bathroom was exceptionally cold. This was due to a hole in the wall at the toilet roll holder and rain was coming in. She said that was all rectified. She said there as an ongoing problem with a leak in the kitchen which caused the lino to lift up. This was fixed in May 2013 when the builder put in new kickboards but she said that damp had been caused behind the kitchen presses where the leak had originated. She referred to the two Reports in January 2013 and April 2014 from the Environmental Health Officer. She said she was not given copies of these at the time as they are only sent to the Landlord. She stated that no report was issued following the meeting on the 25th August 2014 but later in her evidence she conceded that Ms. Kennefick of Dun Laoghaire Rathdown County Council had issued her with a list of items that she would need to address before she vacated the dwelling.

She accepted that works had been carried out at the dwelling in 2013. She said that a shower curtain had been provided but that no pole was provided and she was told to buy one. She again highlighted the issue with the kitchen and stated that the presses had rotted as a result of the leak and that there was a bad smell emanating from the presses. She said that the kitchen floor was subsiding and the cooker had to be placed on wood to balance it.

She said that when she moved in she had small children and she did not have much time for housework. She said there was no flooring in the hot press and that there was a drop down on one side of it to the landing below. She said that this was fixed in February 2015. She said that after the meeting in August 2014, a notice of termination dated the 23rd September 2014 was issued by the Appellant Landlord and she would have received it in the post 2 days later.

She accepted that she had broken a light and also that one of her children had kicked in the sitting room door but that this was replaced by a new door in early 2015. She said she had some furniture of her own when she moved in and she was told that she could store some furniture in the shed. She asked the Appellant Landlord to remove some beds and a bureau. She was aware that the bureau was of sentimental value and she was concerned that it would be damaged. The items were not removed.

She said that her dog died the following September and was not replaced. She also had her late mother’s dog in the dwelling for a period of 4 days. Her daughter also had a hamster. She said she had got the loan of a caravan from her aunt in July 2014 and it was parked outside the dwelling for a week approximately.

She said she never put any complaints in writing because she thought it was sufficient to deal with these matters by way of telephone calls.

She said the hoover never worked and that she borrowed her mother’s hoover until she bought one herself. She said when she moved in the heating was not working properly and she had to burn maximum fuel. She stated that this was subsequently rectified. There was no alarm on the dwelling and she had one break-in and two attempted burglaries. As a result she was scared in the dwelling and she notified Dun Laoghaire Rathdown County Council and the Gardai of the break-ins. The locks had to be changed and she said she supplied the new keys to Joe, the odd job man.

She said her relationship with the Appellant Landlord deteriorated over time and she felt it would be best if she left the dwelling. She said she was advised that the first notice of termination was invalid. She received a further notice of termination dated the 30th September and she said she would have got this in the post a day or two later.

In cross examination she accepted that the Appellant Landlord only had 10 days in which to get the property ready and that RAS were happy for her to reside in the dwelling. She said she had hoped that matters would improve. When asked if she made a list of problems, she said she never put them in writing but she had walked around with the Appellant Landlord in December and talked about the issues such as the dining room window and the heating problems. She accepted that a new boiler had been fitted but in relation to the new radiators she said that the radiators in the sitting room and bathroom had not been replaced. She said she told the Appellant Landlord about the hoover not working in December. She said her heating bills from November to February were astronomical. She said there were a number of small matters which were not sorted such as the bath tap. She accepted that a significant amount of work was done to the dwelling but said this was only done because of the environmental health report. She said there was no fence at the end of the garden until the environmental health inspection. She said she notified the Appellant Landlord of defects by telephone calls.

When cross examined about the damage to walls by writing and the carpets she said she never damaged the carpets and any damage was caused by the building works. She said that after the building works the place was filthy. Joe came in and cleaned the beige carpet. She said she replaced the sitting room carpet at a cost of €200 in July 2015 as it had been damaged when her children were sick. She said she painted over the writing on the walls. When referred to a photo of the hall carpet she said it was worse than when she left. She said she had removed the rugs and mats because they were a health and safety hazard. She said the carpet had been in place for many years and had been damaged by wear and tear and by the builders.

She accepted that no dogs and cats were allowed but she did not think there would be a problem with the hamster. She said that the hamster was on full view in its cage when the Appellant Landlord called. Her view was that the terms of the lease only prohibited cats and dogs. She accepted that she had been allowed to keep the family dog and she said that she had her mother’s dog in the dwelling for the final 4 days of her tenancy.

She accepted that a caravan had been parked outside the dwelling over a weekend but denied that there was any anti-social behaviour associated with it. She said she had 4 children in the house and as a result she would not be having parties in the garden. She said her request to have the excess furniture removed was reasonable in order to make the dwelling more habitable. She said the landlord’s bureau was taking over half a room and she was concerned that it would get damaged.

She said she never received the letter dated the 9th September 2014 from the Appellant Landlord. She accepted that she had discussions with Ms. Kennefick of Dun Laoghaire Rathdown County Council on the 25th August 2014 and that she had been told to replace the extractor fan, clean the floors and paint over the scribbles on the wall.

She said the notice of termination dated the 23rd September 2014 was post marked with that date but she could not recall the post mark on the notice of termination dated the 30th September 2014. She said she would have received the first notice on the 25th or 26th September 2014. She said she spoke to the PRTB who informed her that the first notice was invalid because it did not outline the contraventions of the Act. When it was put to her that the PRTB do not give advice to people over the telephone, she said she also contacted Threshold and was told that it was not a valid termination notice. She said she could not recall when she lodged her application with the PRTB. When it was put to her that she lodged it after the 28 day time limit she said that was not the case as she would have studiously counted back the days. She also said that if her application had been out of time she would have been so notified by the PRTB and the Adjudicator. She said she received the 30th September 2014 Notice on a Monday which was 2 days later. She denied that she was trying to fabricate a date.

She again denied ever receiving the letter dated the 9th September 2014 from the Appellant Landlord. However she confirmed that she did receive a letter from Ms. Kennefick dated the 26th September 2014. She said this letter listed matters to be addressed by her when vacating the dwelling. She said she had contacted RAS and requested that she be relocated. She said she left the dwelling in immaculate condition in July 2015. She said she was naïve for not having put her complaints in writing.

In his final submissions to the Tribunal, Counsel for the Appellant Landlord submitted that the first notice of termination was not subject to a dispute application to the PRTB on time. With regard to the second notice he said this must have been received by the Respondent Tenant on the 1st or 2nd October 2014. He said the burden of proof was on the Respondent Tenant to show that her dispute application had been made on time and that she had not met that burden. He said that the notice of termination must be read in conjunction with the letter which accompanied it. In response to a comment by the Tribunal that the notice of termination must stand on its own, he disagreed and said that there was no requirement that the notice be contained on a single page. He submitted that for the purposes of section 62 the two documents must be construed together.

With regard to the condition of the property he submitted that the dwelling must be maintained at a certain standard and not an ideal standard. He said that there had been no written notification of defects. He said that all complaints had been dealt with within a reasonable time. A significant amount of expenditure had been made on the dwelling. Some of the complaints such as the request to move furniture were unreasonable.

With regard to the notices of termination he said the imposition of a penalty of €750 was unreasonable under the Act. He said no action had been taken on foot of the notices and that in any event the tenant eventually left of her own accord. He said the defects notified by DLRCC had all been rectified and submitted that there had been no breach of Landlord’s obligations.

In her final submissions, the Respondent Tenant submitted that the notices of termination were invalid. She said she never received the letter dated the 9th September 2014. She said she had made verbal complaints to the Appellant Landlord and the DLRCC. She said two reports were issued and that there were still matters outstanding from the second report. She said any damage caused by her to the dwelling was rectified before she left and that she had left the dwelling in very good condition.

**6. Matters Agreed Between the Parties**

Before inviting the parties to make their submissions the Chairperson referred to the following factual matters in relation to the tenancy which were not in dispute between the parties:

1. The tenancy of the dwelling at 8 The Drive, Woodpark, Ballinteer, Dublin 16 commenced on 3 November 2012 and the Respondent Tenant vacated the dwelling on 19 July 2015.

2. The rent on the dwelling was €1,250 per month.

**7. Findings and Reasons:**

7.1 Finding

The Notice of Termination dated the 23rd September 2014 and served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at 8 The Drive, Woodpark, Ballinteer, Dublin 16, is invalid.

The Notice of Termination dated the 30th September 2014 and served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of above dwelling was withdrawn by the Appellant Landlord on the 19th February 2015.

The Tribunal does not propose to make any award of damages in relation to the service of the aforesaid Notices of Termination.

Reason

The Notice of Termination dated the 23rd September 2014 contained no reason for the termination as required by section 62(1)(e) of the 2004 Act.

The Appellant Landlord accepted that the Notice of Termination dated the 30th September 2014 was withdrawn by her on the 19th February 2015.

The Tribunal notes that no action was taken on foot of the aforesaid Notices of Termination by either party and that the second notice of termination was, in fact, subsequently withdrawn by the Appellant Landlord on the 19th February 2015. The Tribunal is also satisfied on the weight of evidence that the Respondent Tenant subsequently vacated the property of her own volition on the 19th July 2015. The Tribunal finds that the Notices of Termination did not bring about the termination of the tenancy in a manner contrary to the provisions of section 58 of the 2004 Act. In the circumstances the Tribunal is satisfied that it is open to it to find that the Notice of Termination dated the 23rd September 2014 is invalid but finds that no award of damages is warranted.

7.2 Finding

The Tribunal finds that the Appellant Landlord was not in breach of her obligations under section 12(1)(b) of the Act in relation to the standard and maintenance of the dwelling at 8 The Drive, Woodpark, Ballinteer, Dublin 16.

Reason

The Tribunal heard evidence regarding the nature and extent of the sums expended by the Appellant Landlord in relation to the repair and upkeep of the dwelling. The Tribunal notes that, instead of bringing certain matters to the attention of the Appellant Landlord in writing, the Respondent Tenant chose instead to ask the Environmental Health Service to carry out an inspection of the dwelling in January 2013. The Tribunal notes that while the Tenant was entitled to pursue this course of action it considers that it would also have been prudent and desirable for the Tenant to raise these issues directly with the Landlord.

The Tribunal notes that before the Respondent Tenant moved in to the dwelling the Appellant Landlord was aware that work needed to be done to the dwelling and she informed the Respondent Tenant that the works would be done. However, she was put under pressure by RAS to allow the Tenant into possession and so she did not have time to complete all the necessary works prior to the date on which the Tenant moved in to the dwelling. There were two significant tranches of work which were carried out by the Landlord. Firstly, the plumbing and heating issues and then the other works as outlined by the Builder Mr. McCormack. The total sum expended on the dwelling was in the region of €17,000. While it may have been desirable that the works might have been carried out at an earlier stage of the tenancy, the Tribunal accepts that the works were of a significant nature and that the Landlord would have to have obtained quotes from builders and fit in with the builder’s schedule and timeline.

**8. Determination:**

**Tribunal Reference TR0315-001071**

**In the matter of Geraldine Mc Garrigle (Landlord) and Janice Stewart (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

In the matter of Geraldine McGarrigle Appellant Landlord and Janice Stewart Respondent Tenant, the Tribunal, in accordance with Section 108(1) of the Residential Tenancies Act, 2004, determines that

1. The Notice of Termination dated the 23rd September 2014 and served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at 8 The Drive, Woodpark, Ballinteer, Dublin 16, is invalid;

2. The Appellant Landlord was not in breach of her obligations under section 12(1)(b) of the Residential Tenancies Act, 2004 in relation to the standard and maintenance of the dwelling at 8 The Drive, Woodpark, Ballinteer, Dublin 16.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 23 October 2015.

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| **Signed:** |  |

**Rosemary Healy Rae Chairperson**

For and on behalf of the Tribunal.