**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0315-001086 / Case Ref No: 1114-15400**

**Appellant Tenant:** Kai Meyer

**Respondent Landlord:** Edward Nyhan

**Address of Rented Dwelling:** Schmetterling, Durrow, Rostalla, Kilbeggan , Co.Westmeath

**Tribunal:** James Egan (Chairperson)

Anne Colley, Mervyn Hickey

**Venue:** Ante-Chamber, Athlone Civic Centre, Church Street, Athlone, Co Westmeath

**Date & time of Hearing:** 08 July 2015 at 2:30

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| **Attendees:** | Kai Meyer Appellant Tenant  Margeret Meyer, Representative for Appellant Tenant  Ken Nyhan, Representative for Respondent Landlord  Kathleen Nyghan, Representative for Respondent Landlord |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 24/11/2014 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 Mediation which took place on 21/01/2015. The Mediatation was unsucessful and the parties were unable to reach an agreement.

Subsequently the following appeal was received by the Tenant on 19/03/2015. The grounds of the appeal were Invalid Notice of termination,Standard and maintenance of dwelling and Other. The appeal application was approved by the Board on 10/04/2015.

The PRTB constituted a Tenancy Tribunal and appointed James Egan, Anne Colley, Mervyn Hickey as Tribunal members pursuant to Section 102 and 103 of the Act and appointed James Egan 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 08/07/2015 the Tribunal convened a hearing at Ante-Chamber, Athlone Civic Centre, Church Street, Athlone, Co Westmeath.

**2. Documents Submitted Prior to the Hearing Included:**

PRTB File

**3. Documents Submitted at the Hearing Included:**

The Tenants sought to submit some photographs of the dwelling and also a written timeline, which the Landlord’s representative, Ken Nyhan, felt were superfluous. Subsequently, neither of these documents was actually submitted during the hearing.

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. He confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received, read and understood the PRTB document entitled “Tribunal Procedures”.

The Chairperson explained the procedure which would be followed. The Parties were advised that while the Tribunal Hearing was a formal procedure, the hearing would be held in as informal a manner as was possible; that the person who appealed (the Appellant Tenants) would be invited to present his case first including the evidence of any witnesses; that there would be an opportunity to respond by the Respondent Landlord’s representative and to present his case. The Chairperson said that members of the Tribunal might ask questions of both Parties from time to time.

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

The Chairperson stressed that all evidence would be taken on oath or affirmation and would be recorded by the official stenographer present. The Chairperson 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 and 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. He asked the Parties if they had any queries about the procedure and the Respondent Landlord’s representative inquired the reason for the appeal. The Appellant Tenants raised an issue that the Landlord was not present in person. The Chairperson advised that as this was a matter that would be dealt with in evidence he would first complete the formalities. The Chairperson 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. Mr and Mrs. Nyhan and Mr and Mrs. Meyer were sworn/affirmed by Mr. Hickey of the Tribunal.

The parties were advised that there was no issue over the Landlord's son and wife representing him at the Tribunal. In response to the Landlord's son, it was confirmed that and that the reason for the appeal was in the paperwork, that had been made available to both parties.

**5. Submissions of the Parties:**

**Appellant Tenants’s Case:**

The Tenants moved into the dwelling on 6 December 2009. They have four children, two of whom have been born since the commencement of the tenancy. The Tenants gave the house the name 'Schmetterling'. In the years that they resided there, the Tenants submitted that they made significant improvements to the character and structure of the dwelling and to the property on which it is situated and stated that the dwelling had become their family home. The Tenants had always intended to purchase the dwelling from the Landlord when it became available for sale, which eventually occurred in June 2014. According to the Tenants, the proposed sale was the subject of a 'gentleman's agreement' which would ensure the Tenants would pay market value for the dwelling, with a deduction apportioned for the improvements they had made over the course of the tenancy.

The Tenants detailed a number of faults which arose at the dwelling over the course of the tenancy. The most significant issues were in respect of the geothermal heating system which failed on two occasions, the lack of insulation in the attic and in the cavity of the walls, a flood which occurred in 2012 and expensive utility bills. Notwithstanding these issues, the Tenants maintained that the Landlord (Mr. Edward Nyhan), the Landlord's wife and Tenants had a great relationship. The faults identified by the Tenants were addressed by Mrs Nyhan as they arose. The Tenants had undertaken to address the more minor matters that emerged over the course of the tenancy. In this way, they did not have to bother the Landlord unless absolutely necessary. The Tenants provided an example of Mr. Meyer installing insulation in the attic when he discovered that there was no insulation.

In 2013, the Tenants noted that a neighbouring property, also rented out by the Landlord, was having its external cavity walls insulated and they asked the Landlord if a similar project could be undertaken at the dwelling. This was agreed to by the Landlord and it was completed in December 2013. The Tenants suffered a power outage when the mains were cut in the course of the work and they had to employ an electrician to restore their power supply. After the completion of the cavity walls insulation, the Tenants asked for the exterior of the dwelling to be repainted to restore the dwelling to its original appearance, and were told by the Landlord that it would be completed in the spring of 2014. The Tenants state that these works were not commenced despite their further requests.

In February 2014, a new shower was installed for the Tenants. In 2014, Mrs Meyer complained to the Landlord about a leak in the kitchen ceiling. This was addressed by the Landlord. However, after the repairs, the kitchen was not re-painted to cover the re-plastering work despite requests to do so.

In June 2014, the Tenants were informed by the Landlord that the house was ready to go on the market and the Landlord inquired as to whether they would be interested, to which they replied that they were. The Tenants, being aware of the maintenance issues with the house and of the improvements they had carried out to it, said they would engage an auctioneer to value the dwelling. From then on the negotiations on the sale were undertaken by Mr Ken Nyhan for his father, the Landlord. The Tenants received a valuation of €315,000 and made an offer of €300,000. In circumstances where the Tenants were going on holiday in August 2014, they requested the Landlord to paint the exterior of the dwelling, paint the kitchen and to tend to the garden whilst they were away. The Tenants stated that this was agreed to by the Landlord.

The Tenants facilitated the Landlord's auctioneer in conducting a valuation of the dwelling, however they were disappointed when the valuation amount was not disclosed to them. The Tenants were told by the Landlord's son that the price they were looking for was no less than €350,000. In or around September and October 2014, there was no communication from the Landlord or his son Ken, and the issues that had been raised remained unresolved. The Tenants noted that from June 2014, when discussions started about the possible purchase of the dwelling by them, maintenance issues that they raised were not addressed by the Landlord.

On 3 November 2014, the Tenants received a Notice of Termination that shocked them. They were informed by that letter/notice that they should vacate the dwelling by the 1st December 2014, less than a month later. They claimed that they suffered a huge amount of upset (the Tenants became visibly upset at the Tribunal) because they had believed they were the potential buyers of the dwelling. The termination date was close to Christmas and they had previously no idea that the Landlord intended to terminate. In circumstances where the Landlord and the Tenants were also neighbours, the Tenants could not understand why any issue that might lead to such an event was not discussed with them. The Tenants believed that they would have to vacate the dwelling and find new accommodation in the weeks approaching Christmas.

The Tenants stated that they wish to remain in the dwelling. The Tenants believe that the Landlord had chosen their dwelling to put up for sale because he and his wife have brought it to a standard which would appeal to the marketplace. The Tenants stated that the Landlord had a number of other houses in the development that could be sold instead. The Tenants wish to have their improvements recognised in the price sought by the Landlord. The Tenants stated that they would not have made the improvements to the dwelling without representations that were made to them at the commencement of the tenancy and over the course of the tenancy by the Landlord. The Tenants wondered how they could expect to recover their substantial expenditure incurred on the dwelling if the sale falls through. Among the improvements carried out by the Tenants were; a sum of €8,500 spent on external shutters made for the house, extensive landscaping and planting of the one acre garden, insulation of the attic space, and installation of light fittings around the house.

In respect of the second Notice of Termination, the Tenants said that although the Notice had apparently been posted to the address used by the Landlord it had not been delivered to them for another ten days. They contacted the PRTB the next day to report this and stated that they had received an email from the PRTB which confirmed that the second Notice of Termination could be dealt with at the Tribunal hearing, and they had therefore not formally lodged a separate dispute in relation to that notice. The Appellant Tenants stated that their understanding was that the termination was invalid as it was served whilst a dispute was in being. They also claimed that although the Notice of Termination purported to give them 112 days notice, due to the delay in the actual service of the notice on them the termination date was then incorrect.

In response to a question from the Tribunal, the Tenants confirmed that no mechanism for deciding upon a suitable sale price was agreed, nor was there an agreement on how the improvements could be valued at the time of a sale when they had originally discussed this with the Landlord.

**Respondent Landlord's (The Landlord’s) Case:**

The Landlord's wife was in attendance and the Landlord was represented by his son. The Landlord's son is referred to as the 'Landlord', except where stated. The Landlord recognised at the outset all of the problems that were mentioned by the Tenants throughout their submission. The Landlord stated that he took no issue with what the Tenants said in respect of the maintenance that was conducted at the dwelling. The Landlord stated that he did not want a tale of woe to be painted by the Tenants and he pointed out that the Tenants acknowledged that many of their issues had been addressed. The Landlord retracted the 'tale of woe' description when it was objected to by the Tenants.

The Landlord stated that his family developed the sites and had employed builders to build the group of houses of which the dwelling was one, and that they were built to the standards that existed at the time. In respect of the valuation of the dwelling, the Landlord stated that he was advised that he could achieve €380,000 on the open market however following a discussion between the Landlord (Mr. Edward Nyhan) and his son (Mr. Ken Nyhan), they decided that they would offer the dwelling to the Tenants for €350,000 to take any improvements made to the property by the Tenants into account.

The Landlord stated that between June and October 2014 he believed the Tenants were dragging their feet in respect of the house purchase. The Landlord stated that he contacted the Tenants many times and that they did not respond. He became frustrated with the process and the house was increasing in value during this time. The Landlord decided to terminate the tenancy in order to sell the dwelling on the market. The Landlord submitted that the Notice of Termination dated 3 November 2014 was wrong. The Landlord submitted that he communicated his apology to the telephone mediator in charge of the case for sending that letter to the Tenants. The Landlord stated that this letter should not have been sent. The Landlord stated that over the course of the mediation he offered the dwelling to them for €345,000. The Landlord insisted that he needs to sell the house and that whilst the letter giving them Notice of Termination in November was wrong, he wished to have his position clarified so they could proceed with the sale.

The Landlord stated that he decided to issue a second Notice of Termination following the failure of the telephone mediation. The Landlord requested clarity as to whether this second Notice of Termination was valid so he could achieve certainty in respect of his position. The Landlord stated that the Notice of Termination was served by his agent and that he could not legislate for the actions of his agent or the Postal Service.

In response to a question from the Tribunal as to whether he acknowledged there had been improvements made to the dwelling by the Tenants, the Landlord stated that he could plant a garden in a day and that planting a few roses would not take much effort. The Landlord recognised that he had not been inside the dwelling and he accepted that shutters to the value of €8,500 were installed by the Tenants. In respect of the gentleman's agreement, the Landlord submitted that he provided the Tenants with first refusal, however an agreement on the sale price was not reached.

The Respondent Landlord asked the Tribunal to consider the validity of the service of the second Notice of Termination notwithstanding its service following the first stage of the dispute resolution process.

**6. Matters Agreed Between the Parties**

* The Tenancy in the Dwelling commenced on the 6th December 2009.
* The rent payable in respect of the dwelling is €800.00 per month.
* There are no arrears of rent arising in respect of the tenancy in the dwelling.
* A security deposit of €800.00 was paid by the Appellant Tenants to the Respondent Landlord at the commencement of the tenancy in the dwelling.
* The Appellant Tenants rented the dwelling unfurnished and proceeded to furnish it upon the commencement of the lease.
* A purported Notice of Termination was served by the Landlord on the 3rd November 2014.
* A second Notice of Termination was served on the Tenants by the Landlord's agent after the mediation had failed, however the date of service was in dispute.
* The dwelling was around 3,500 square feet and was situated on over an acre of land in a cul de sac containing similar dwellings constructed by the Nyhan family.

**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.

**Finding 1:**

The Respondent Landlord is in breach of his obligations under Section 12 of the Act and in particular Section 12(1)(b) in respect of the tenancy in the dwelling. The Appellant Landlord shall pay the sum of €500.00 to the Appellant Tenants within 28 days of the date of issue of the Determination Order by the Board being damages for breach of his 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 Respondent Landlord in repainting the dwelling after the cavity wall insulation was completed. It was not in dispute that the Respondent Landlord assured the Appellant Tenants that this work would be completed in January 2014.

By the summer of 2014, the works remained unfinished and the Appellant Tenants again requested the repainting of the dwelling in August 2014. This further request was not disputed at the Tribunal by the Respondent Landlord and the works were not completed. It was conceded that the Appellant Tenants had made significant improvements to the aesthetic of the dwelling through the installation of shutters and landscaping and planting of the garden. The Tribunal noted that the Tenants had installed the attic insulation themselves. It was reasonable to expect that after the external insulation works were completed the exterior of the dwelling would be completed to maintain the dwelling to standard. In circumstances where this work was not attended to, and where assurances were given that it would be completed, the Tribunal finds that the Respondent Landlord failed in his obligations to the Appellant Tenants.

Following the plastering of the kitchen to repair leak damage, the Appellant Tenants were assured that the kitchen would be repainted. This assurance was not disputed at the Tribunal and as the painting of the kitchen was not carried out the Respondent Landlord breached his obligations in respect of the standard and maintenance of the dwelling.

Under section 115(2)(d) of the Residential Tenancies Act 2004 (as amended) the Tribunal finds that the sum of €500.00 is, having regard to all the evidence before the Tribunal, an appropriate sum of damages for the breach of the Respondent Landlord`s obligations with regard the standards and maintenance of the dwelling during the tenancy. The Tribunal notes that for the preceding five years of the tenancy until June 2014, all complaints were addressed by Mrs. Nyhan.

**Finding:**

The Notice of Termination dated the 3rd November is invalid. The Respondent Landlord shall pay the sum of €1500.00 in damages to the Appellant Tenants for the inconvenience and upset caused to the Appellant Tenants and his family by the service of this invalid notice.

**Reasons:**

Both parties were in agreement that the Notice of Termination (the notice) of the 3rd of November 2014 was invalid. The notice was defective because it failed to comply with section 62 the Residential Tenancies Act 2004 (as amended). The notice is deficient in its failure to include subsection (f) (ii) of s. 62 which requires a landlord to specify that a Tenant has the 24 hours of the termination date to vacate the dwelling. A further omission in the notice, which on its own would render it invalid, arises from the failure to include subsection (g), which provides that a Tenant, if disputing the validity of the notice, has a right to refer it to the Private Residential Tenancies Board within 28 days of its receipt. The Notice of Termination contained a further defect in that it did not allow 112 days notice to the Appellant Tenants in accordance with the notice period provided by section 66 of the Act.

The Respondent Landlord apologised during the telephone mediation and at the Tribunal for the invalid notice and for the impact it caused. The Tribunal accepts the Appellant Tenants' evidence that the service of the notice caused a significant degree of inconvenience and upset to their family. The Tribunal accepts that for a time, the Appellant Tenants believed that they would be evicted from of the dwelling before Christmas, that they would need to source similar accommodation in the locality, and they would also be likely to lose the investment they had made in the dwelling. The Tribunal notes that an assurance was not provided to the Appellant Tenants prior to the termination date that the notice would not be enforced. The Tribunal accepts that this created a difficult position for the Appellant Tenants' family in circumstances where they have four small children and where they had resided in the dwelling for almost five years. The Tribunal accepts that the Appellant Tenants had no choice but to refer the matter to the PRTB in order to vindicate their rights under the tenancy. The Tribunal notes that the parties were in negotiation up until September 2014 about the sale of the dwelling however negotiations appeared to stall at this point. On the basis of the foregoing, the Tribunal is satisfied that the service of the invalid Notice of Termination interfered with the Appellant Tenants' right to have peaceful and exclusive occupation of the dwelling for a number of months until the mediation commenced.

Section 115(2)(d) of the Act provides that a Tribunal may direct that a specified amount of damages be paid for the purposes of providing relief to one of the parties. In circumstances where the limit of damages that may be awarded by the Tribunal is €20,000.00, the Tribunal finds that the damages payable in this case, having considered all of the circumstances (including the factors in favour of the Respondent Landlord, namely that he did not enforce the notice and apologised when the matter was being mediated in January 2015) lies at the lower end of the scale. Arising from this inconvenience and upset caused by the interference with the exclusive and peaceful occupation of the dwelling resulting from the service of the invalid notice, the Tribunal finds that the Appellant Tenants are entitled to damages of €1500.00.

**Finding:**

The Notice of Termination dated 30 January 2015 is invalid.

**Reason:**

The Notice of Termination dated the 30th January 2015 provided a termination date of 22nd May 2015. The Appellant Tenants disputed the service of the Notice of Termination. In circumstances where the Respondent Landlord accepted that his agent or the Postal Service may not have served the notice on 30 January 2015, the Notice of Termination is invalid by reason of its failure to provide an adequate notice period to the Appellant Tenants. Under section 66 of the Act, the Appellant Tenants are entitled to 112 days notice, by virtue of the duration of the tenancy, commencing the day after the service of the notice in accordance with the Act. The Tribunal has decided not to award damages in respect of the second Notice of Termination because the Appellant Tenants were not adversely affected (and no evidence supporting any such impact was given by them) by the service of the notice. They remain in occupation of the dwelling.

**8. Determination:**

**Tribunal Reference TR0315-001086**

**In the matter of Kai Meyer (Tenant) and Edward Nyhan (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notices of Termination served by the Respondent Landlord on the Applicant Tenant dated 3 November 2014 and 30 January 2015 in respect of the tenancy of the dwelling at House 2, (also known as 'Schmetterling'), Pallas, Durrow, Rostalla, Kilbeggan, Co. Westmeath are invalid.
2. The Respondent Landlord shall pay the sum of €2,000.00 to the Appellant Tenant within 35 days of the date of issue of the Determination Order by the Board, being damages for breach of the Respondent Landlord’s obligations under Section 12 of the Act and in particular Section 12(1)(b), and for damages arising from the breach of the Respondent Landlord's obligation under section 12 (1) (a) of the Act resulting in inconvenience and upset to the Appellant Tenant caused by the service of the invalid Notice of Termination dated 3 November 2014, in respect of the tenancy in the above dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 17/07/2015.

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| **Signed:** | H:\Common\Signatures\Adjudicators\James Egan.png |

**James Egan Chairperson**

For and on behalf of the Tribunal.