

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0414-000608 / Case Ref No: 0813-07210

Appellant Landlord: Stephen O' Mahoney

Respondent Tenants: Iwona Lesniewska, Daniel Rusek

Address of Rented Dwelling: 4 Maiville, Kilrush Road, Ennis, Co. Clare

Tribunal: Tim Ryan (Chairperson)
Vincent P. Martin, John Tiernan

Venue: Council Chamber, Limerick City Council, City Hall,
Merchants Quay, Limerick

Date & time of Hearing: 17 June 2014 at 11:00

Attendees: Patricia McCarthy, Representative of the Appellant
Landlord
Iwona Lesniewska, Respondent Tenant
Paul Ryan, Citizens Information, Witness for the
Respondent Tenant
Owen Kavanagh, Interpreter

In Attendance: Gwen Malone Stenographers

1. Background:

On 13/08/2013 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 an Adjudication which took place on 12/02/2014. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €438.70 to the Applicant Tenants, within 7 days of the date of issue of the Determination Order by the Board, being the unjustifiably retained portion of the security deposit of €525, having deducted the sum of €86.30 being damages for breach of the fixed term tenancy in respect of the tenancy of the dwelling at No. 4, Maiville, Kilrush Rd., Ennis, Co. Clare.

Subsequently an appeal was received from the Landlord 01/04/2014. The grounds of the appeal were that the landlord had incurred costs in ensuring that the dwelling was re-let promptly and he sought re-imbursement of same in the circumstances. The appeal was approved by the Board on 04/04/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Vincent P. Martin, John Tiernan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Tim Ryan 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 17/06/2014 the Tribunal convened a hearing at Council Chamber, Limerick City Council, City Hall, Merchants Quay, Limerick.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

Witness for the Respondent submitted a letter to the Representative of the Appellant Landlord outlining part of the Building Regulations in regard to the ventilation of rooms. There was no objection.

4. Procedure:

The Chairperson asked the parties 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 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 as informal as possible; that the persons who appealed (in this case the Representative of the Appellant Landlord) would be invited to present her case first, that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case and that there would be an opportunity for cross-examination by the Representative of the Appellant Landlord.

He also said that members of the Tribunal might ask questions of both parties from time to time.

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

He stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he 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 and/or up to six months imprisonment or both.

The Chairperson noted that should the parties indicate that they would be able to resolve the dispute through negotiation, the Tribunal would facilitate any such settlement. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal and thus become enforceable through the Courts.

The Chairperson also reminded the parties that, as a result of the Hearing that they, 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 in accordance with Section 123(3) of the Residential Tenancies Act, 2004 hereafter to as the RTA.

The first-named Respondent Tenant, who was in attendance, confirmed that she had authority to represent the second-named Respondent Tenant, Daniel Rusek.

The Parties giving evidence were then sworn in and the hearing commenced.

5. Submissions of the Parties:

Appellant Landlord's case:

The Representative of the Appellant Landlord said she acted as his agent in agreeing a fixed one year tenancy agreement with the Respondent Tenant which commenced on 1 March 2013. She said the first-named Respondent Tenant had contacted the Appellant Landlord initially to say she found the dwelling was cold and he said he would get back to her. At the end of May 2013 the Representative of the Landlord said the first-named Respondent Tenant again made contact saying she wanted to vacate the dwelling as it did not have air vents in each room and her young daughter has a tendency to suffer from asthma. She said she explained the terms of a fixed tenancy agreement but agreed that a tenant's circumstances might change and a tenant could vacate provided a suitable replacement tenant was found. She said that she informed the first-named Respondent Tenant that the second-named Respondent Tenant would be responsible for rent in the interim.

The Representative of the Landlord said she had checked and confirmed that each room of a dwelling should have an air vent. She spoke to the Appellant Landlord about this and he agreed to have air vents put in straight away. The work was to be carried out by a builder on Saturday 15 June 2013 but on the previous day the Respondent Tenant texted her to say she did not wish the work to be undertaken.

Questioned by the Tribunal, she said the work would take a period of between six and eight hours in one day and it had been arranged for cleaners to be present who would clean the house thoroughly as the work progressed and when it was completed. She said no arrangements for alternative accommodation had been made for the Respondent Tenant and her daughter that day as no requests were made by the Respondent Tenants or by anybody on their behalf. She said if somebody had a better suggestion as to how the work might be done, they should have come forward with it. She said as she was advising the Appellant Landlord but she had advised the Respondent Tenants at all times to contact Threshold for advice on the matter.

The Representative of the Appellant Landlord said the Respondent Tenants moved out at the end of June 2013 and handed back the keys on 2 July 2013. She gave evidence that she had immediately commenced the search for a new tenant once the Respondent Tenants had indicated that they wished to vacate the tenancy. She said that she found a new tenant by advertising on the Daft.ie website and that a new tenant moved in on 6 July 2013. In regard to the engagement of her as a letting agent, she said while the Appellant Landlord had a duty to mitigate his losses, his work often took him away from home and he employed her as his agent to look after the dwelling. She said she felt the Appellant Landlord was entitled to retain the deposit and she furnished a detailed invoice of costs incurred which totalled €439.77. She said there was considerable work involved including showing the dwelling to prospective tenants and some difficulties in sorting out the provider of the telephone and internet service to the dwelling.

Respondent Tenant's case:

In her evidence the first-named Respondent Tenant said her main concern was for her young daughter who had a tendency to asthma. She said it worsened while they were in

the dwelling and she realised it was probably due to the lack of ventilation in the rooms in the dwelling. She included in her written submissions a letter from her doctor confirming this. However, she said the doctor had not visited the dwelling himself and was relying on her description of it.

The Respondent Tenant said she had contacted the Appellant Landlord to tell him she wished to vacate the dwelling. She said he told her and he had told her he had no problem with this but that he first needed to contact the letting agent. She said the Landlord's Representative had told her arrangements had been made to have a builder install the air vents in each of the five rooms of the dwelling on Saturday 15 June. She said that at first she thought the vents would be fitted in the windows but when she realised the walls would have to be drilled, she grew fearful for her daughter because of all the dust that would be generated. She felt extremely detailed cleaning works would be needed and she would, for example, have to empty all the clothes from the wardrobes in advance. She decided to contact the Landlord's Representative to say she did not wish the work to be carried out. She said she had already decided to vacate the dwelling in any case and she found alternative accommodation. She said she left the dwelling in a very clean state.

Questioned by the Tribunal, the Respondent Tenant said she felt she was entitled to break the fixed tenancy agreement as the dwelling was not in accordance with the building regulations as set down by law. She emphasised that at all times her principal concern was for the welfare of her daughter whose asthma very much improved as soon as they vacated the dwelling.

Paul Ryan, Witness for the Respondent Tenant, said he understood the Respondent Tenant had been told the work would take place over the weekend of June 15 and 16.

6. Matters Agreed Between the Parties

A 12 month lease was signed on 1 March 2013.

The rent was €525 per month.

A deposit of €525 was paid and was retained by the Landlord

Rent was paid up to 30 June 2013.

The tenants vacated on 2 July 2013.

7. Findings and Reasons:

Finding:

1. The Appellant Landlord is not in breach of his obligations.

Reasons:

Section 12(1) of the RTA obliges a landlord to carry out any structural repairs that are necessary from time to time to ensure compliance with housing standards as set down. As soon as the attention of the Appellant Landlord was drawn to the requirement to have ventilation in each room as set down in Article 9 of the Housing (Standards for Rented House) Regulations 2008, he moved to have this rectified within a matter of two weeks. A suitable builder was identified and it was planned to complete the work in a timeframe

of between six and eight hours. He had made arrangements for cleaners to be present and to clean the house thoroughly when the work was completed. He did not make any specific accommodation arrangements for the Respondent Tenant and her daughter while the work was being undertaken as none such was sought. When requested by the Respondent Tenant not to undertake the work on June 15, he duly complied with her request and waited until she had vacated the dwelling before the work was done.

Finding:

2. The Respondent is in breach of her obligation by breaking a fixed tenancy agreement.

Reasons

A tenant is only entitled to break a fixed tenancy agreement if there is a major breach of obligation by the landlord. While the Respondent Tenant's concern for the health of her daughter is totally understandable, the Tribunal, as outlined above, does not find the Appellant Landlord was in breach of his obligation. However, as was required of him, he did move swiftly to mitigate his losses and a new tenant moved in to the dwelling on 6 July, 2013. The Tribunal determines he is entitled to rent for the five days (1 July to 6 July).

The Tribunal also determines that the Appellant Landlord is justified in retaining the deposit to cover the costs incurred as a result of the breaking of the tenancy agreement by the Respondent Tenant. While the Respondent Landlord had moved swiftly to rectify the problem, the Respondent Tenant had decided to move out in any event. In addition, no written Notice of Termination was given as is required under by the RTA.

The Tribunal finds those costs were as follows:

Agent's fees

(75% of first month's rent apportioned over an eight month period)	€262.50
Utility transfer for previous tenant	€ 30.00
VAT @ 23%	€ 67.27
Advertising	€ 35.00
Rent	
5 days rent from July 1 to July 6 calculated as follows:	
$€525 \times 12 = €6,300 / 365 = €17.26 \times 5 = €86.30$	€ 86.30
50% of PRTB Registration cost	€ 45.00
Total	€ 526.07

8. Determination:

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In the matter of Stephen O' Mahoney (Landlord) and Iwona Lesniewska, Daniel Rusek (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Tenants shall pay the total sum of €1.07 to the Appellant Landlord within 14 days of the date of issue of this Determination Order by the Board, being the sum of €526.07 for costs incurred arising from the breaking of a fixed tenancy agreement having deducted the security deposit of €525.00 in respect of the dwelling at No 4, Malville, Kilrush Road, Ennis, Co. Clare.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 30/06/2014.

A handwritten signature in black ink, appearing to read 'Tim Ryan', is positioned above a horizontal line.

Signed:

Tim Ryan Chairperson

For and on behalf of the Tribunal.