

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0414-000617 / Case Ref No: 1213-09518

Appellant Landlord:	Maria Pendas
Respondent Tenant:	Lucia Bradford
Address of Rented Dwelling:	10 El Pinar, Kilgobin Road, Sandyford , Dublin 18
Tribunal:	John FitzGerald (Chairperson) Gene Feighery, Gareth Robinson
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	18 June 2014 at 10:30
Attendees:	Lucia Bradford, Tribunal Respondent, Tenant, Adeline Coia of Bell Properties Ltd, Tribunal Representative Patrick Cremin, Landlord's Agent, Paul Keogh, Solicitor, John Gibbons SC.
In Attendance:	Gwen Malone Stenographers

1. Background:

On 19 December 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 06 March 2014. The Adjudicator determined that:

The Notice of Termination served on 20 November 2013, by the Respondent/Applicant Landlord on the Applicant/Respondent Tenant, in respect of the tenancy of the dwelling at Apartment 10, El Pinar, Kilgobbin Road, Sandyford, Dublin 18, is invalid.

The Applicant/Respondent Tenant shall pay the total sum of €7036.12 to the Respondent/Applicant Landlord within 56 days of the date of issue of the Determination Order, being rent arrears of €6836.12, plus damages of €200 for failing to pay rent as it fell due, in respect of the tenancy of the above dwelling.

The Appellant Landlord subsequently lodged an appeal which was received by PRTB on 25 April 2014. The grounds of the appeal: Unlawful termination of tenancy (Illegal eviction), Rent arrears and overholding and this was approved by the Board on 16 May 2014

The PRTB constituted a Tenancy Tribunal and appointed John FitzGerald, Gene Feighery, Gareth Robinson as Tribunal members pursuant to Section 102 and 103 of the

Act and appointed John FitzGerald 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 18 June 2014 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:

1. Original documents including Notice of Termination.

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 a final submission.

The Chairperson 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 or up to 6 months imprisonment or both.

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].

5. Submissions of the Parties:

Appellant Landlord's Case:

Submission by Legal Representative on behalf of the Appellant Landlord

On behalf of his client, the Appellant Landlord's legal representative was heavily critical of the PRTB in circumstances where a request to have an original of the Notice of Termination, submitted by the Respondent Tenant to the Adjudicator on the day of the

Adjudication hearing supplied to him was ignored. The Adjudicator's findings of fact and determination order were based on the said Notice of Termination.

Having been supplied with the original Notice of Termination at the Tribunal Hearing an adjournment of the proceedings was sought for the purposes of carrying out a forensic examination of the document to establish its origin and authenticity in circumstances where it was alleged that the document had not issued from the Landlord's Agent to the Respondent Tenant. The Tribunal adjourned to consider the matter.

The Tribunal re-convened and a decision to continue with the hearing was taken.

On the basis that the Respondent Tenant confirmed to the Tribunal that she had in fact received the 14 day notice of arrears dated 1 November 2013 and 28 day notice of termination dated 20 November 2013 giving a termination date of 18 December 2013 the Appellant Landlord sought to rely on the said Notice of Termination as evidence of a validly terminated tenancy.

The Appellant Landlord's Representative stated that the Notice of Termination issued by the Respondent Landlord on 15 May 2014 had been withdrawn with a letter of apology written to the Tenant.

The Appellant Landlord's Agent stated that there was an estimated sum of €7,000 in damages caused to the dwelling where it is alleged that the Respondent Tenant had deliberately caused flood damage to the dwelling by placing a toothbrush in the wash-hand basin and leaving the tap to run. He stated that the fact that the Respondent Tenant has refused to vacate the dwelling despite mounting rent arrears is a source of great financial hardship and stress to the Appellant Landlord. He stated that no rental payments in the sum of €1,275 per month have been made since 25 August 2013 and that the Appellant Tenant refuses to vacate the dwelling.

The Respondent Landlord confirmed that the attendee at the Adjudication was Gordon Snow who appeared as friend witness on that occasion.

Respondent Tenant's Case

Evidence of Lucia Bradford

The Respondent Tenant stated that she regretted the fact that she was in rent arrears. She stated that she had been refused Jobseekers allowance payments and that her application for rent supplement from the Department of Social Welfare was also denied. She accepted that she made an error in cancelling her standing order to the Appellant Landlord for rental payments.

The Respondent Tenant stated that in November 2013 she was three months in arrears. She further stated that she was granted three month's rent assistance payment by the Department of Social Welfare but that the system requires that any further payment in contingent on securing a reduction in rent with her current Landlord, or sourcing alternative accommodation with a rental charge commensurate with the rental assistance payment. The Respondent Tenant stated that on receipt of the three month rent assistance payment, she failed to lodge it to the Appellant Landlord's account but instead used it to reduce arrears for a loan with her Credit Union.

The Respondent Tenant stated that she has done everything she can possibly do to ameliorate the unsatisfactory circumstances in which she now finds herself. She stated that in September 2013 she applied for jobseekers allowance and rent assistance

payments from the State, she had sought a reduction in rent from her Landlord and she contacted Threshold, but that all her attempts have been unsuccessful.

The Respondent Tenant stated that she is actively seeking alternative accommodation but that in the current market it is very difficult. She further stated that she has lodged an appeal with the Department of Social Welfare for rent allowance, and that if her appeal is granted, and perhaps even backdated, she might be able to go some way towards addressing her arrears and making her rental payments. The Respondent Tenant did however accept that any such rent assistance payment would be insufficient to meet her arrears and current monthly rental payment for the dwelling.

The Respondent Tenant rejects the suggestion by the Appellant Landlord that she caused damage to the dwelling by blocking a sink and flooding the apartment, and she stated that she no longer keeps her bicycle in the hall of the dwelling.

The Respondent Tenant expressed concern that an attendee at the Adjudication was unknown to her, and that the confidentiality of her tenancy was compromised.

The Respondent Tenant confirmed to the Tribunal that she had received notification from the Landlord's Agent that she was in rent arrears. This notification was followed by a 14 day notice of arrears and issued to her on 1 November 2013 and identified by the Respondent Tenant as the notice on page 70 of the PRTB Case File 1.

Following the notice of arrears, the Respondent Tenant confirmed that she had received a covering letter and Notice of Termination dated 20 November 2013 terminating her tenancy on 18 December 2013. She identified the notice of termination she received as the notice on page 52 of the PRTB Case File 1.

The Respondent Tenant attempted to appeal the validity of the issue of a Notice of Termination issued by the Respondent Landlord on 15 May 2014 at the hearing.

6. Matters Agreed Between the Parties

The following matters were agreed between the Parties:

1. Tenancy commenced on 24 September 2012.
2. The monthly rent was €1,275.00 per month.
3. The security deposit paid was €1,275.00.
4. This was a fixed term lease for twelve months expiring on 23 September 2013.

7. Findings and Reasons:

Finding 1

The Tribunal finds that the tenant is in breach of her obligations by reason of her failure to pay rent as it falls due contrary to Section 16 of the Act.

Reason

The Respondent Tenant accepted that she had not paid rent since August 2013 which at the date of the Tribunal amounted to €1,275 x 9.5 months = €12,112.50 of rent arrears in total.

Finding 2

The Tribunal finds that the Notice of Termination issued by the Landlord on the Tenant dated 20 November is valid having complied with S.34(1), S.62 and S.67 of the Act and therefore the Tenant is overholding.

Reason

The Respondent Tenant did not challenge the alleged invalidity of the Notice of Termination adduced by her in evidence to the Adjudicator at the Adjudication Hearing dated 20 December 2013 on page 135 of PRTB Case File 1.

In her oral testimony to the Tribunal, and in her appeal document dated 21 April 2014 to the PRTB, the Tenant confirmed that she had, in fact, received the valid Notice of Termination dated 20 November terminating the tenancy on 18 December 2013. In addition in correspondence to the Appellant Landlord she accepted that there is no valid reason for her remaining in the dwelling when she stated that 'further to your Notice of Termination, I will still be here (in the dwelling) on 12 June for no other reason that there is simply nowhere else for me to go..... so it very much looks like you will need to take further steps which will in your case make an application to the PRTB for overholding'.

The validity of the Notice of Termination dated 15 May 2014 was not considered by the Tribunal as it found that the Notice of Termination dated 20 November 2013 was valid.

Finding 3

The Tribunal also found that the Appellant Landlord's claim for damages in the sum of €7,000 is not upheld.

Reason

It was clear from the evidence heard at the Tribunal that there is a direct conflict of evidence between the parties as to the circumstances surrounding the alleged damage to the dwelling and no supporting evidence of the damage was adduced to the Tribunal in support of the claim.

8. Determination:

Tribunal Reference TR0414-000617

In the matter of Maria Pendas (Landlord) and Lucia Bradford (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Notice of Termination served on the Respondent Tenant on 20 November 2013, by the Appellant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at 10 El Pinar, Kilgobbin Rd, Sandyford, Dublin 18 is valid.

The Respondent Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the dwelling within 14 days of the issue of the Order.

The Respondent Tenant shall pay the total sum of €12,112.50 to the Appellant Landlord within 168 days of the date of issue of the Order, being rent arrears in respect of the tenancy of the above dwelling.

The Respondent Tenant shall also pay any further rent outstanding from 18 June 2014, at the rate of €1,275 per month or €41.92 per day, unless lawfully varied, and any other charges set out in the terms of the tenancy agreement for each month or

part thereof, until such time as she vacates and gives up possession of the above dwelling.

The Appellant Landlord shall refund the entire security deposit of €1,275 to the Respondent Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 01/07/2014.

A handwritten signature in blue ink, reading "John FitzGerald", with a horizontal line underneath.

Signed:

John FitzGerald Chairperson

For and on behalf of the Tribunal.