

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0414-000618 / Case Ref No: 1213-09561

Appellant Landlords: Flannan Delaney, Magdalena Godren

Respondent Tenants: Muhammad Tayyab, Zonera Tayyab

Address of Rented Dwelling: 21A Sallins Bridge, Sallins , Kildare

Tribunal: Tim Ryan (Chairperson)
Finian Matthews, Orla Coyne

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

Date & time of Hearing: 11 June 2014 at 2:30

Attendees: Flannan Delaney, Appellant Landlord
Magdalena Godren, Appellant Landlord
Muhammad Tayyab, Respondent Tenant
Zonera Tayyab, Respondent Tenant

In Attendance: Gwen Malone Stenographers

1. Background:

On 23/12/2013 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 21/02/2014. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €3440.00 to the Applicant Tenant within 35 days of the date of issue of the Order being damages for the unlawful termination of the tenancy (€3190.00) and damages for breach of landlord obligations in failing to carry out necessary repairs and replacements (€250.00) for the tenancy at 21A Sallins Bridge, Sallins, Kildare.

Subsequently an appeal was received from the Landlord 30/04/2014. The grounds of the appeal were: damage in excess of normal wear and tear, unlawful termination of tenancy (Illegal eviction) and anti-social behaviour. The appeal was approved by the Board on 02/05/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Finian Matthews, Orla Coyne 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 11/06/2014 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:

The Appellant Landlords submitted a photograph of the sub meters for electricity and gas in the rented dwelling. There was no objection from the Respondent Tenants.

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 Appellant Landlords) would be invited to present their case first, that there would be an opportunity for cross-examination by the Respondent Tenants; that the Representatives of the Respondent Tenants would then be invited to present their case and that there would be an opportunity for cross-examination by the Appellant Landlords.

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 6 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 under Section 123(3) of the Residential Tenancies Act.

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

5. Submissions of the Parties:

Appellant Landlords' case:

The second-named Appellant Landlord said the first-named Respondent Tenant originally came on his own to view the dwelling. He walked around it and said he wished to take it

there and then without consulting his wife who was in Limerick at the time and was pregnant. On 6 September 2013 the family moved in late in the evening.

Within a few days the second-named Appellant Landlord said the Respondent Tenant started to come to her house which was close by and started asking for items including a carpet for the living room floor and a wardrobe. She had told him he could buy such items himself if he wished but he had rented the house as it was. He also said he had a single bed for his son and wished to have the one in the house removed.

One night at about 10pm the second-named Appellant Landlord said she received a phone call from the Respondent Tenant and she understood from him that he had locked himself into a room. However, when she went to the dwelling, she found that all that was wrong was he was complaining that one screw was missing from a set of four on a door handle. Shortly thereafter, he rang to complain that the hot water was not working and she called a plumber who dealt with it immediately. On another occasion when she looked out the window, she observed the Respondent Tenant in her garden and he took away a sweeping brush without asking her permission. She said she began to feel very insecure in her own house in relation to the Respondent Tenant as she was on her own with two young children for much of the time.

The second-named Appellant Landlord said the Respondent Tenant paid the rent in October without any problem but when the next rent was due she went to collect it from him in his computer/phone repair shop. When she arrived she said there was nobody in the shop except the Respondent who again started to complain about the lack of a carpet and wardrobe. A customer came into the shop when she alleged the Respondent Tenant threw the rent at her which was in 50 euro notes. She had to pick the money up from the floor and he had made her feel humiliated in front of the customer. She later met him outside her house and verbally told him she was giving him once month's notice to leave the dwelling. She said the Respondent Tenant sneered at her and walked off. At this point she said a neighbour on the other side of her house had offered assistance to her if she ever needed it so afraid was she of the Respondent.

The first-named Appellant Landlord said the Respondent Tenants had offered to pay rent for December 2013 but that they had refused to accept it. The Respondent Tenants were to move out on 7 December 2013 but in fact ended up remaining another four weeks and finally moved out on 6 January 2014.

The first-named Appellant Landlord said he was away in Africa working when his partner agreed the terms of a tenancy with the Respondents in relation to the dwelling which was located beside their own home. He said both the gas and electricity came in through a meter in their house first before passing into the dwelling through sub meters which were located in the dwelling. The sub meters were available to be read at all times by the Respondent Tenants. He said that when he received each utility bill, he simply divided the standard charges for the utility services in two and calculated the amount of electricity and gas used by the Respondent Tenants by reading the two sub meters in the rented dwelling. The Respondent Tenants were aware of this and had agreed to this method of calculating the utility bills as they were in the Appellant Landlord's name.

He said he had also fixed items during the tenancy in the dwelling including a shower head which had a small leak. While he was away working, the first-named Appellant Landlord said he had advised his partner to give the Respondent Tenants one month's notice. She had looked up the website of the Citizen Advice Centre and understood that

verbal notice was sufficient as the tenants were in the dwelling less than six months. They were unaware that written notice was a requirement by law. He said they were very fair to the Respondent Tenants by giving them four extra weeks up to 6th January before they moved out.

The first-named Appellant Landlord said he knew nothing about power failures in the rented dwelling until Threshold left a message on his partner's phone about them. He was away at the time in his family home and thought it was the tumble-dryer in his own house that was causing the problem and asked his partner not to use it anymore. At no point did the Respondent Tenants ever raise the issue of power failures with him or his partner. It was only when Threshold contacted his partner that they became aware of the Tenants' problems.

He said despite being asked to get their own rubbish bins, the Respondent Tenants kept using his wheelie bins even though he and his family needed their bins for themselves and their two young children.

He said the problems continued. On being cross-examined by the Respondent Tenant, however, he denied that he had ever arrived at the dwelling with two other men and had caused fear in the tenants.

On or about 16 December he said he was walking his young son to school near his home when the Respondent Tenant pulled up in a car beside and shouted abuse at him, saying he would get money out of him yet. He decided to go to Naas Garda station on December 22 and made a statement of complaint about the harassment by the Respondent Tenant. However, shortly afterwards a company called Capricorn Properties rang him to say the Respondent Tenants were moving to another property in Sallins and were seeking a reference. At this point he decided not to pursue his complaint with the gardai any further.

When the Respondent Tenant moved out, the first-named Appellant Landlord said he only returned one set of keys even though he had been give two at the beginning of the tenancy. After the Respondent Tenants left, he said he did not go near the dwelling for a while but when he finally went in to turn on the heating, he found the main water valve was switched off. When he turned it on, he said water appeared to gush all over the place and he subsequently discovered that water pipes had been severed behind the washing machine and in the attic with one pipe pushed down through wire meshing into a dividing wall. Luckily he had remained in the house long enough to see the problem emerge but significant damage was caused by the leaks. He submitted estimates for repairs to the dwelling including painting which he said was as a result of the water damage. There was writing on the walls in the children's bedrooms. Photographic evidence was also submitted to substantiate the damage. He said he did not think they would rent the dwelling again as the experience with the Respondent Tenants was a very bad memory for himself and his partner.

Respondent Tenants' case:

In his evidence, the first-named Respondent Tenant confirmed he had moved in to the dwelling late on 6 September 2013 as that was the time that suited him best. They had made very little noise and moved in their belongings very quickly. He said he was given one set of keys to the dwelling and not two as stated by the Appellants.

The first-named Respondent Tenant said he did not at first understand how the meters for the utility services operated but he did when he had it explained to him. He said he was

given permission by the Appellants to use their waste bins but said he was able to dispose of some of his rubbish himself elsewhere. He said he had asked for a second wardrobe as they had a lot of clothes and he had asked for a carpet as his son did not wear shoes or socks in the house.

He denied he had thrown the rent at the second-named Respondent Landlord in his shop but said he had left it on the edge of the counter. Later he said he received a text to come to meet her and when he did, she was furious with him accused him of treating her very badly in his shop. She had told him he had one month to vacate the property. He said the Appellant Landlords refused to accept any further rent when it was offered despite him telling them it would be very difficult to find a suitable house to rent in such a short time.

He said on one occasion the first-named Appellant Landlord arrived at his door with two other men. He was frightened by this and ran upstairs and rang the gardai. However, when the gardai arrived half an hour or so later, they told him they could do nothing about it as it was a private matter. After this he said the power was switched off periodically for periods over a number of days and he believed the Appellant Landlord was doing this deliberately. He rang the Citizen's Advice Centre who advised him to ring Threshold. He was subsequently advised by Threshold to bring a dispute to the PRTB.

The first-named Respondent Tenant denied he had caused any damage to the house when vacating. He denied he had damaged a leather couch or that the mattress was soiled. He said there was some light writing on his son's bedroom wall but that was the only damage to the paint work. He denied any knowledge of the severed water pipes in the attic or behind the washing machine. In regard to the sweeping brush mentioned by the second-named Appellant Landlord, he said she had given him permission to take it and he had even cut the grass for her.

When vacating, he said the first-named Appellant Landlord had looked at the dwelling and said it was fine. He had asked the Appellant for his deposit back but was told it was "gone". He agreed he owed money for gas and electricity and did not contest the figure of €283.91 submitted by the Appellant Landlords.

6. Matters Agreed Between the Parties

Tenancy commenced on 7 September 2013.

A deposit of €790 was paid and is retained by the Landlord.

The rent was €790 per month.

A verbal Notice of Termination was served on the Tenants on 7 November 2013.

The Tenancy was terminated on 6 January 2014.

7. Findings and Reasons:

Finding:

The Notice of Termination is invalid.

In order to be valid, a Notice of Termination must be writing and conform with the requirements as set down in Section 62 of the Residential Tenancies Act (RTA) 2004.

While the Respondent Tenants were initially opposed to the verbal notice to quit, they did find a new house within a matter of some weeks where they appeared to voluntarily make a decision to vacate and give up possession of the dwelling on the basis of the, albeit invalid, notice of termination they had received. The Appellant Landlords did not insist on a rigid one month's notice and in the event, the Respondent Tenants remained on in the dwelling for an extra four weeks until 6 January 2014 when they vacated. As the parents of two very young children they did, however, suffer considerable stress and inconvenience as a result of their decision to vacate on foot of an invalid notice of termination and for this the Tribunal makes an award of €500 in damages in accordance with the provisions of Section 115(2) of the act. The Tribunal is satisfied on the evidence, however, that the Appellant Landlords did not terminate the tenancy unlawfully and, in particular, that the Appellant Landlords did not cut off the electricity supply to the dwelling deliberately for the purpose of forcing the Respondent Tenants to vacate the dwelling.

Finding:

The Respondent Landlords were not in breach of their obligation to maintain the dwelling.

Reasons:

Section 12 of the RTA obliges a landlord to maintain the interior of a dwelling and to carry out repairs as they become necessary from time to time. While the Respondent Tenants made a number of complaints in regard to the condition of the dwelling the Tribunal finds that the Appellant Landlord acted reasonably at all times to attend to them. The first-named Respondent Tenant agreed to rent the dwelling in the state it was when he viewed it, and there was no obligation on the Appellants to provide a carpet, wardrobe or any other additional items. Specifically, in the case of the intermittent electrical supply, the Tribunal accepts the evidence of the first-named Appellant Landlord that even if he wished to, he did not have the capacity to turn off the power as alleged by the Respondent Tenants as the fuse boxes were in the dwelling and not under the Landlord's control. Furthermore, the Tribunal accepts the Appellant's Landlord's evidence - supported by an invoice from an electrician - that the problem was due to "leakage" from the fuse box in the main house which he attended to as quickly as possible when he became aware of the problem. The Appellant Landlord said he tried to have the electrician present to give direct evidence to the Tribunal but he is currently working abroad.

Finding:

The Respondent Tenants are in breach of their obligation to pay rent and other charges in accordance with the terms of the tenancy.

Reasons:

Section 16(a) of the RTA obliges a tenant to pay rent when it falls due. While the Tribunal accepts that the offer of the rent to the Appellant Landlords in December was refused, the rent did still remain due and owing at the end of the tenancy. The November rent of €790 brought the Respondents to 7 December, the original date the verbal notice of termination expired. They did not vacate for another four weeks. The Tribunal finds that the Appellant Landlords are entitled to retain the deposit of €790 in lieu of rent arrears for the month from 7 December 2013 to 6 January 2014.

The Respondent Tenants did not contest that they owe outstanding utility payments of the sum of €283.91 for which the Appellant Landlords provided a detailed breakdown.

Finding:

The Respondent Tenants are in breach of their obligation to maintain the dwelling beyond normal wear and tear.

Reasons:

Section 16(f) of the RTA obliges a tenant not to cause any deterioration of a dwelling beyond normal wear and tear. Both parties gave contradictory evidence as to the extent of the damage caused to the dwelling when the tenancy ceased. While the first-named Appellant Landlord outlined a great deal of damage much of which he said was caused by the alleged severing of water pipes, he should have carried out a joint inspection of the dwelling before the Respondent Tenants vacated and made a list of the items he noted in their presence. According to the Respondent Tenants, he made no particular complaints on the day they left. However, the Respondent Tenants admitted to some writing on the walls and for this the Tribunal awards damages of €100. The Tribunal also finds there was some damage to a leather couch and makes an award €50 for this.

8. Determination:

Tribunal Reference TR0414-000618

In the matter of Flannan Delaney, Magdalena Godren (Landlord) and Muhammad Tayyab, Zonera Tayyab (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlords shall pay the Respondent Tenants the sum €66.09 within 14 days of the date of the issue of this Determination Order by the Board being damages of €500 from the stress and inconvenience caused arising from an invalid Notice of Termination, less outstanding utility bills in the sum of €283.91 plus painting repairs in the sum of €100 plus damage to a couch in the sum of €50, the deposit in the sum of €790 being retained by the Landlord for non-payment of rent for the period 7 December 2013 to 6 January 2014 in respect of the tenancy of the dwelling at 21A Sallins Bridge, Sallins, Co. Kildare.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 17/06/2014.

Signed:



Tim Ryan Chairperson

For and on behalf of the Tribunal.