**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001108 / Case Ref No: 0914-14296**

**Appellant Landlord:** Amanda Brady

**Respondent Tenant:** Kirby Mahon, Aine Duffy, Nicole Gallagher

**Address of Rented Dwelling:** 17 Brookfield, Ballinode , Sligo,

**Tribunal:** Deirdre Bignell, (Chairperson)

Finian Matthews, John Tiernan

**Venue:** Council Chamber, Sligo County Council, County Hall, Riverside, Sligo

**Date & time of Hearing:** 10 July 2015 at 2:30

|  |  |
| --- | --- |
| **Attendees:** | Appellant Landlord:  Sinead Walsh (agent of Appellant Landlord)  Respondent Tenants:  Kirbie Mahon  Aine Duffy  Nicole Gallagher  Additional attendees:  Linda Mahon (witness for Respondent Tenants)  Paula Duffy (witness for Respondent Tenants) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 19 September 2014 the Landlord made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 76 of the Act. The matter was referred to a mediation which commenced on 29 October 2014. The Mediator issued a statement that no agreement had been reached between the parties.

Subsequently, on 1 April 2015, the Landlord submitted an application for the matter to be referred to the Tribunal, citing the grounds of breach of tenant obligations and rent arrears, which referral the Board approved on 28 April 2015.

The PRTB constituted a Tenancy Tribunal and appointed Deirdre Bignell, Finian Matthews, and John Tiernan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Deirdre Bignell 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 10 July 2015 the Tribunal convened a hearing at Council Chamber, Sligo County Council, County Hall, Riverside, Sligo.

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

* 1. PRTB File

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

NA

**4. Procedure:**

The Chairperson asked the parties present to identify themselves and to identify the capacity in which 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 and understood 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 possible; that the person who appealed (the Landlord in this case) would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondents; that the Respondents would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant. The Chairperson explained that following this, the parties would be given an opportunity to make a final submission.

The Chairperson said that she would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson stressed that all evidence would be taken on oath or affirmation and recorded by the official stenographer present and that based on that recording a transcript could be made available to the Tribunal if necessary to assist it in preparing its report on the dispute, or to the parties for a fee.

The Chairperson reminded the attending parties that it was an offence for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his or her control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide false or misleading statements or information to the Tribunal. The Chairperson informed the parties that the above offences were punishable by a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson said that members of the Tribunal would ask questions from time to time to assist in clarifying the issues in dispute between the parties, and informed them that she would clarify any queries raised at the outset, or in the course of, the hearing. She also stated that she would consider an application made at any stage of the hearing seeking a short adjournment for the purpose of allowing the parties to negotiate on a without prejudice basis, a settlement of the dispute.

The Chairperson also reminded the parties that as a result of the hearing, the Board would make a Determination Order which would be issued to the both parties to the dispute and could be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

The parties were then sworn in and the hearing commenced.

**5. Submissions of the Parties:**

The Appellant Landlord’s case:

Evidence of Sinead Walsh (Agent for the Appellant Landlord)

The Agent submitted that the Respondents had prematurely terminated their twelve month tenancy agreement by vacating the Dwelling in January 2014, after residing in the Dwelling for only three months, notwithstanding that their agreement was due to run from 1 September 2013 until 31 May 2014.

According to the Agent, when she first met the Tenants and showed the Dwelling to them, she stressed that the tenancy would be fixed for nine months, and a contract was entered into by the parties on this basis on 30 August 2013.

The Agent indicated that she was foregoing any claim to rent arrears owed for the period of the contractual term from 1 February 2014 onwards, having received advice that it would not be possible (due to her having issued a notice of termination), to claim arrears for the period between the tenancy having been terminated, and the date upon which the written contract was due to expire. However, the Agent wished to recover rent arrears due to 31 January 2014 (in the amount of €680), and was seeking to retain the Tenants’ deposit of €915 as damages for breach of contract. The Agent claimed that although her agency had paid the sum of €95 rent to the Landlord on one occasion, on behalf of the Tenants, she was not seeking to recover this amount.

The Dwelling had been re-let through another agency in or around April 2014.

The Agent confirmed that on 22 November 2013 she had been verbally informed by the mother of the Second Named Respondent Tenant that her daughter would be vacating the Dwelling on 29 November 2013. The notification was followed up by an email from the mother of the Second Named Respondent on an unidentified date between 22 and 29 November 2013. The Agent claimed that the First Named Respondent Tenant had also vacated in or around this time, without having given any notice, and the Third Named Respondent Tenant had vacated in mid-January 2014, and returned a key to the Dwelling on 27 January 2014.

In response to questioning regarding the pursuance of payment of arrears from the named Guarantor on the lease, the Agent confirmed that this avenue had not been explored. The Agent stated that she was seeking to rely on the clause contained in the tenancy agreement rendering the Respondents jointly and severally liable, and denied that she had ever informed any of the Respondents, or their representatives, that they could vacate without consequence.

The Respondent Tenants’ Case:

Evidence of Aine Duffy (Second Named Respondent Tenant)

The Second Named Respondent Tenant stated that due to challenging family circumstances, she had moved out of the Dwelling on 29 November 2013, in order to move in with her mother. Although she had attempted to source a replacement tenant, she had been unable to so do. The Second Named Respondent Tenant sought to rely on Special Condition 1 of the tenancy agreement to challenge the claim on the part of the Landlord that the agreement bore the nature of a fixed term agreement. Special Condition 1 reads as follows:

“This agreement may be determined at any time during the course thereof by either party by given [sic] one months notice in writing of such termination to the other party.”

The Second Named Respondent Tenant indicated that it was regrettable that she had had to terminate the tenancy so abruptly, but that she considered that her share of the security deposit was sufficient to cover any rent arrears.

Evidence of Kirbie Mahon (Third Named Respondent Tenant)

The Third Named Respondent Tenant stated that her mother, in signing a guarantee contained in the tenancy agreement, had presumed that she was providing a guarantee solely for her daughter’s share of rent, and had not intended to guarantee all liabilities under the agreement.

The Third Named Respondent Tenant submitted that upon becoming aware that the other Respondents intended to vacate the Dwelling, she advertised their rooms as available to rent, but did not receive any response.

Evidence of Nicole Gallagher (First Named Respondent Tenant)

The First Named Respondent Tenant stated that her mother had contacted the Agent on her behalf in the first week of November 2013, and had indicated that she would be vacating imminently. According to the First Named Respondent, the Agent had informed her mother that it would be acceptable for her share of the deposit to be retained in full satisfaction of any rent arrears. The First Named Respondent had vacated in the first week of November 2013, and had removed the remainder of her belongings from the Dwelling in the final week of November 2013. The First Named Respondent Tenant confirmed that she had only paid rent of €140 for the month of November, and accepted that she owed the sum of €165 in respect of rent due for November 2013.

**6. Matters Agreed Between the Parties**

Before inviting the parties to make their submissions, the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

• The rent was set at €915 per month and a deposit of €915 was paid at the outset of the tenancy, which commenced on 1 September 2013 under a nine month fixed term agreement due to expire on 31 May 2014.

• The Agent issued a 14 day warning letter to the Respondents on 16 December 2013 threatening termination of the tenancy if arrears of €775 were not discharged within 14 days.

• The Agent issued a Notice of Termination to the Respondents on 6 January 2014, specifying a termination date of 4 February 2014, on the grounds of rent arrears of €1690.

• The Respondents paid the sum of €2980 in rent up to 1 February 2014.

**7. Findings and Reasons:**

Having considered all the evidence, the Tribunal’s findings and reasons therefor, are set out hereunder:

Rent arrears

Finding:

The Tribunal finds that the Respondent Tenants are in breach of their obligations under section 16(a)(i) of the Act, and section 3.2 of the tenancy agreement dated 1 September 2013, to pay rent as it fell due. The Respondents are liable for unpaid rent up to the date of 31 January 2014.

Reason:

The tenancy agreement between the parties includes the following clauses:

“2.2 “The Tenant” includes the successors in title. Whenever there is more than one Tenant, each and every covenant and obligation can be enforced against all the tenants jointly and against each individually.

Under sub-section (a)(i) of section 16 of the Act, a tenant must pay to a landlord the rent provided for under the tenancy concerned on the date it falls due for payment. In failing to pay their rent when it became due, the Respondent Tenants were in breach of this obligation.

The Respondent Tenants agreed that rent of €2980 had been paid up to 31 January 2014. The rent due under the agreement between the parties to the date of 31 January 2014 was €4575 (5 months x €915 monthly rent). The Agent expressly stipulated in her evidence that she was foregoing any claim to rent arrears which may have accumulated after this date. The balance of rent considered due therefore is €1595. The Landlord is entitled to retain the deposit of €915 in lieu of rent, and the Tenants are jointly and severally liable to pay the sum of €680 in unpaid rent to the Landlord. The Tenants are also directed to pay the sum of €50 in damages to the Landlord, for having deprived the Landlord of the rent as it fell due.

Finding:

The evidence before the Tribunal contained a copy of a Notice of Termination served on behalf of the Appellant Landlord on the Respondent Tenants, dated 6 January 2014 and specifying a termination date of 4 February 2014, on the grounds of rent arrears, following the issuance of a 14 day warning letter in respect of rent arrears on 16 December 2013. The Tribunal finds that this Notice of Termination was valid.

Reason:

The tenancy commenced on 1 September 2013 under a written tenancy agreement stipulating a duration of nine months.

For a Notice of Termination to be valid, it must comply with section 62 of the 2004 Act, and meet all relevant requirements in Part 5 of the 2004 Act. Section 67 of the 2004 Act applies where the tenancy is being terminated by a landlord by reason of the failure of the tenant to comply with any of the obligations of the tenancy.

Termination of a tenancy for failure to pay rent as it falls due must be preceded by prior notification to the tenant specifying the amount owed and stating that, if the sum due is not received in full within 14 days from receipt by the tenant of the notification, the tenancy will be terminated. If the tenant fails to discharge the sums due following receipt of the warning letter, the landlord may issue a notice of termination giving 28 days’ notice.

Section 62(1) of the Act states as follows:

62.—(1) A notice of termination to be valid shall—

(a) be in writing,

(b) be signed by the landlord or his or her authorised agent or, as appropriate, the tenant,

(c) specify the date of service of it,

(d) be in such form (if any) as may be prescribed,

(e) if the duration of the tenancy is a period of more than 6 months, state (where the termination is by the landlord) the reason for the termination,

(f) specify the termination date, that is to say, the day (stating the month and year in which it falls)—

(i) on which the tenancy will terminate, and

(ii) on or before which (in the case of a termination by the landlord) the tenant must vacate possession of the dwelling concerned, (and indicating that the tenant has the whole of the 24 hours of the termination date to vacate possession), and

(g) state that any issue as to the validity of the notice or the right of the landlord or tenant, as appropriate, to serve it must be referred to the Board under Part 6 within 28 days from the date of receipt of it.

The notice of 6 January 2014 complied with the above provisions.

Finding:

The notice of termination sent by email by the mother of the Second Named Respondent Tenant to the Agent, on an unspecified date between 22 and 29 November 2013, was invalid.

Reason:

The Tenants sought to rely on Special Condition 1 of the tenancy agreement to reduce their liability. As noted above, Special Condition 1 reads as follows:

“This agreement may be determined at any time during the course thereof by either party by given one months notice in writing of such termination to the other party.”

Section 61(1) of the 2004 Act reads as follows:

“A reference in this Part to a particular period of notice to be given by the notice of termination concerned is a reference to such a period that begins on the day immediately following the date of service of the notice”.

It is clear that although the copy of the notice submitted into evidence did not carry a date, as it was sent by email, the date of service would have been clear from the face of the original. Even if one allows for the longest period of possible notice to be assigned to the email in question (22 November 2013), as the period from the day following service of the notice to 29 November 2013 was less than one month, the Notice of Termination served by Paula Duffy on behalf of the Second Named Respondent Tenant, is invalid.

Finding:

The First Named Respondent Tenant failed to validly terminate her tenancy.

Reason:

As per the above, for a notice of termination to be valid, it needs to comply with section 62(1) of the 2004 Act. As the First Named Respondent Tenant failed to issue the Landlord with a written Notice of Termination, she did not validly terminate the tenancy agreement.

**8. Determination:**

**Tribunal Reference TR0415-001108**

**In the matter of Amanda Brady (Landlord) and Kirby Mahon, Aine Duffy, Nicole gallagher (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination dated 6 January 2014 served by the Appellant Landlord on the Respondent Tenants, in respect of the tenancy of the dwelling at 17 Brookfield, Ballinode, Sligo, is valid.

2. The Respondent Tenants shall pay the total sum of €730 to the Appellant Landlord, within 28 days of the date of issue of this Order, being rent arrears of €1595, together with damages of €50 for the consequences of the breach by the Respondent Tenants of their obligation to pay rent as it falls due, having deducted the justifiably retained security deposit of €915, in respect of the above tenancy.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 12/08/2015.

|  |  |
| --- | --- |
| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\blank.png |

**Deirdre Bignell, Chairperson**

For and on behalf of the Tribunal.