**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001119 / Case Ref No: 0115-16095**

**Appellant Tenant:** Brian Donnelly

**Respondent Landlord:** Simon Coyle Receiver, Patrick Cahill

**Address of Rented Dwelling:** 308 Palmerstown Woods, Clondalkin , Dublin 22, D22K8X0

**Tribunal:** Finian Matthews (Chairperson)

Gene Feighery, Vincent P. Martin

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

**Date & time of Hearing:** 04 August 2015 at 2:30

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| **Attendees:** | Suzanne Ennis on behalf of Simon Coyle, Receiver |
| **In Attendance:** | Gwen Malone, Stenographers |

**1. Background:**

On 08/01/2015 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 13/03/2015. The Adjudicator determined that

1. The Notice of Termination served on the 21st December, 2014, on the Applicant Tenant, in respect of the tenancy of the dwelling at 308 Palmerstown Woods, Clondalkin, Dublin 22, is invalid.

2. The Notice of Termination served on the 17th December, 2014, by the Respondent Landlord (in receivership) on the Applicant Tenant, in respect of the tenancy of the above dwelling is valid.

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

4. The Applicant Tenant shall pay the total sum of €3,057.53 to the Respondent Landlord (in receivership) within 56 days of the date of issue of the Order of the Board, being rent arrears in respect of the tenancy of the above dwelling.

5. The Applicant Tenant shall also pay any further rent outstanding from the 13th March, 2015, at the rate of €800 per month, or at the proportionate rate of €26.30 per day where the monthly rate does not apply, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as he vacates the above dwelling.

6. The Respondent Landlord shall refund the entire of the security deposit of €800 to the Applicant Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received:

Tenant : received on 10/04/2015. The grounds of the appeal: Other, Unlawful termination of tenancy (Illegal eviction), Breach of fixed term lease, Invalid Notice of termination ; Approved by the Board on 28/04/2015.

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, Gene Feighery, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Finian Matthews to be the chairperson of the Tribunal (“the Chairperson”).

On 15/06/2015 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 04/08/2015 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, 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:**

None

**4. Procedure:**

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Tenant against a determination made following an adjudication held on 13 March, 2015 in the case of a dispute between the tenant and the Respondent Landlord in respect of a tenancy at 308, Palmerstown Woods, Clondalkin, Dublin 22. He introduced the members of the Tribunal to the attending party.

He asked the attending party to identify herself and to state the capacity in which she was attending the Tribunal hearing. He confirmed with the attending party that she had received the relevant papers from the PRTB in relation to the case and that she had received and understood the PRTB document entitled “Tribunal Procedures”. The Chairman said that he 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 explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the attending party must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the 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. The attending confirmed that she had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenant had informed the PRTB that he would not be attending the hearing and had requested that the hearing proceed on the basis of his written submissions in the case. In those circumstance the Chairperson said that the Tribunal proposed to draw the attention of the Landlord’s representative to the matters raised in the Tenant’s submissions and to ask her for any response she wished to put forward in respect of these matters. The Chairperson said that the Respondent Landlord’s representative would then be invited to make any further submissions she wished to make on behalf of the Respondent Landlord. He said that members of the Tribunal would address questions to the attending party from time to time.

The Chairperson also said that at the end of the hearing the Respondent Landlord’s representative would be given the opportunity to make a final submission should she so wish.

The Chairperson reminded the attending Party that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issues in dispute between the parties and could be appealed to the High Court on a point of law only.

The attending party was sworn in.

**5. Submissions of the Parties:**

Appellant Tenants Case:

In setting out his reasons for seeking dispute resolution the Appellant Tenant submitted that the Landlord was in breach of a fixed term lease through failure to comply with certain procedural requirements as outlined in part 5 of the Act; that the Landlord had failed to comply with certain obligations as outlined in section 12 of the Act; that in issuing an invalid notice of termination the Landlord had failed to comply with certain procedural requirements and other matters as outlined in Part 5 of the Act; and that the Landlord had failed to comply with certain obligations related to standard and maintenance of the dwelling as outlined in section 12 of the Act and with reference to the dwelling maintenance standards as outlined in the Housing (Miscellaneous Provisions) Act, 1991.

In the grounds of his appeal to the PRTB, the Appellant Tenant submitted that the dwelling was the subject of disputed receivership. He also referred to various statutory discovery requests submitted to various bodies to assist in the generation of the grounds for his appeal and said that these requests had uncovered significant anomalies which had been referred to the Data Protection Commissioner. The Chairperson said that any issues relating to any alleged breaches of the Data Protection Acts were a matter for the Commissioner and were not a matter for a Tenancy Tribunal. In a subsequent e-mail to the PRTB the Appellant Tenant asked that unlawful termination of tenancy (Illegal eviction), breach of fixed term lease and invalid notice of termination be added to the grounds for his appeal.

In a subsequent e-mail dated 29 April, 2015 to the PRTB the Appellant Tenant alleged that ‘two security guys and a locksmith came to our house last Sunday evening to evict us. They failed to remove us due to some decent neighbours who came out to help and intervened on our behalf’. Then in a further e-mail dated 19 May, 2015 to the PRTB the Appellant Tenant said ‘Just to let you know those guys are back again. Called to the door on Saturday evening wanting to know when we are leaving. They also took photographs on their phones’.

Respondent Landlords case:

In response to the Appellant Tenant’s written submissions, the Respondent Landlord’s representative said that the Appellant Tenant had not engaged in any way with the Receiver since he was appointed on 17 November, 2014 and that the tenant had provided the Receiver with no information whatever relating to the tenancy. She said she was not therefore in a position to comment on the terms of any lease that may have been in place between the Tenant and the Landlord. She said that no alleged breaches of any of the Landlord’s obligations under section 12 of the Act had ever been brought to the Receiver’s attention. She had no comment in relation to notice of termination that appeared to have been issued to the Tenant on 21 December, 2014 by a person unknown to her. She said that a notice of termination issued by the Receiver on 16 December, 2014 had been deemed to be valid and the Receiver was standing by that notice. She also said that the Receiver had not been granted access to the dwelling to carry out an inspection and could not be expected to have responded to any issues that had not been communicated to him.

In relation to the alleged disputed Receivership, the Respondent Landlord’s representative said that no dispute in relation to the receivership had been lodged by the borrower over whose assets a Receiver had been appointed.

She said that according to her records the most recent occupancy check in relation to the dwelling had been carried out by a security company on behalf of a the Receiver on Friday, 15 May, 2015 at 15.45. The company had reported that there was no response when they knocked at the door but that they could hear noises from the dwelling on the basis of which it was evident that the dwelling was occupied as at that date. She said that where the security company finds on checking a dwelling that it is occupied, the company is under instructions to leave without attempting to enter the dwelling and that is what the company did on this occasion. She added that for this to happen there would have been no need for neighbours to intervene as alleged by the Appellant Tenant.

The Respondent Landlord’s representative said that as far as the Receiver is concerned the Appellant Tenant was served with a valid notice of termination which has expired and the tenant is now over-holding in the dwelling. She stated that the Receiver’s wish is to obtain vacant possession of the dwelling for the purpose of selling it. The Receiver is also seeking payment of rent arrears in the amount of €6400 i.e. 8 months rent at €800 per month, with an additional €800 due on 1 August, 2015.

**6. Matters Agreed Between the Parties**

Not applicable

**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 notice of termination purported to have been served on the Appellant Tenant on 21 December, 2014 by a person unknown to the Receiver is invalid.

Reasons: The notice failed to comply with the provisions of section 62(1)(c), (f)(ii) and (g) of the Act in that it did not specify the date of service of the notice, it did not advise that the applicant had the whole of the 24 hours of the termination date to vacate the dwelling, nor did it specify that the tenant had 28 days to refer any dispute as to the validity of the notice to the PRTB. No evidence was provided to the Tribunal in relation to the identity of the person who signed the notice, the capacity in which that person signed the notice nor whether that person had any entitlement to serve the notice. The Tribunal finds accordingly that the notice was invalid.

Finding 2: The notice of termination served by the Receiver on the Appellant Tenant on 17 December, 2014 is valid

Reasons: The notice is in full compliance with each of the relevant provisions of section 62 of the Act. Having been served on 17 December, 2014 and with an expiry date of 14 January, 2015, the tenant was given a period of notice of 28 days. No evidence was provided by the Appellant Tenant to show that he had a fixed term tenancy nor did he provide any evidence to show the duration of the tenancy. Having regard to the tenant’s failure to provide any such evidence the Tribunal is of the view that the weight of evidence in this case in determining whether the tenant was given the correct statutory period of notice falls in favour of the Respondent Landlord. The Tribunal finds accordingly that the required period of notice was given and that the notice of termination is valid. The tenant has been over-holding in the dwelling since the expiry of the notice of termination and the Respondent Landlord is entitled to gain vacant possession of the dwelling.

Finding 3: The Appellant Tenant is in breach of his obligations in relation to the payment of rent.

Reasons: Under section 16(a) of the Act a tenant is obliged to pay the rent in respect of a tenancy on the date it falls due for payment. On 17 November, 2014 the Receiver notified the Appellant Tenant that all future rent payments in respect of his occupation of the dwelling were to be made to the Receiver through a new designated receivership bank account. The Tribunal accepts the evidence of the Receiver’s representative that no subsequent rent payments were made by the Appellant Tenant. This means that the tenant now owes 8 months rent to the Receiver for the period from December, 2014 to July, 2015 at a rate of €800 per month resulting in arrears in the amount of €6,400. In addition the tenant owes rent for the 3 days in August, 2015 prior to the date of the Tribunal, which at a daily rate of €26.30 amounts to €78.90. (The daily rate is calculated by multiplying the monthly rent by 12 and dividing by 365).

The total in rent arrears owed by the tenant as at the date of the Tribunal hearing amounts therefore to €6,478.90.

The Tenant remains liable for the continued payment of rent until such time as he vacates the dwelling.

Finding 4: The Respondent Landlord is not in breach of any of his obligations under section 12 of the Act

Reason: Section 12 of the Act sets out the various obligations of a landlord in relation to a tenancy. The Appellant Tenant provided no evidence to support his assertion that the Respondent Landlord breached any of his obligations as set out in that section of the Act.

Finding 5: The Tribunal finds that the Respondent Landlord is not in breach of any of his obligations related to the standard and maintenance of the dwelling.

Reason: The Appellant Tenant provided no evidence to support his assertion that the Respondent Landlord breached any of his obligations in relation to the standard and maintenance of the dwelling.

Finding 6: The Tribunal finds that the tenancy has not been unlawfully terminated by the Respondent Landlord.

Reason: Under sub-section (1) of section 58 of the Act a tenancy may not be terminated by a Landlord or a Tenant by means of a notice of forfeiture, a re-entry or any other process or procedure not provided for under the Act. In this case the tenancy has been lawfully terminated by means of the service of a valid notice of termination. The Tribunal is satisfied that the Tenant remains in occupation of the dwelling following the expiry of that notice of termination and that the tenant is accordingly over-holding in the dwelling. In such circumstances the tenancy cannot be held to have been unlawfully terminated. The Tribunal is further satisfied that the Respondent Landlord is in compliance with section 86 of the Act in that no steps have been taken to effect the termination of the tenancy pending the determination of the dispute referred by the tenant to the PRTB.

**8. Determination:**

**Tribunal Reference TR0415-001119**

**In the matter of Brian Donnelly (Tenant) and Simon Coyle (as Receiver over certain assets of Patrick Cahill), Patrick Cahill (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on the 21st December, 2014, on the Appellant Tenant, in respect of the tenancy of the dwelling at 308 Palmerstown Woods, Clondalkin, Dublin 22, is invalid.

2. The Notice of Termination served on the 17th December, 2014, by the Respondent Landlord on the Appellant Tenant, in respect of the tenancy of the above dwelling, is valid.

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

4. The Appellant Tenant shall pay the total sum of €6,478.90 to the Receiver within 56 days of the date of issue of the Order of the Board, being rent arrears in respect of the tenancy of the above dwelling.

5. The Appellant Tenant shall also pay any further rent outstanding from 4 August, 2015, at the rate of €800.00 per month, or at the proportionate rate of €26.30 per day in respect of any part thereof, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as he vacates the above dwelling.

6. The Respondent Landlord shall refund the entire of the security deposit of €800.00 to the Appellant 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 18/08/2015.

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

**Finian Matthews Chairperson**

For and on behalf of the Tribunal.