**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001123 / Case Ref No: 1114-15314**

**Appellant Tenant:** Mary Flanagan

**Respondent Landlord:** Paul Cramp

**Address of Rented Dwelling:** 30 Milbridge, Naas , Kildare,

**Tribunal:** John FitzGerald (Chairperson)

Orla Coyne, Thomas Reilly

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

**Date & time of Hearing:** 22 July 2015 at 10:30

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| **Attendees:** | Mary Flanagan (Tenant)  Ray Lloyd (Witness for the Tenant)  Paul Cramp (Landlord) |
| **In Attendance:** | Gwen Malone Stenographers. |

**1. Background:**

On 18 November 2014 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 a Mediation which took place on 03 March 2015. The Mediator determined that Mediation was entered into and was unsuccessful in resolving the issue between the parties

Subsequently the following appeal was received from the tenant on 13 April 2015. The grounds of the appeal was Deposit retention, and the appeal was approved by the Board at their meeting on 28 April 2015.

The PRTB constituted a Tenancy Tribunal and appointed Orla Coyne, Thomas Reilly and John FitzGerald 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”).

On 19 June 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 22 July 2015 the Tribunal convened a hearing at The 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:**

One photograph of the carpet damage by the grill submitted by the Appellant Tenant.

**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 his 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 or affirmation 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 up to €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].

The Parties were then sworn in.

**5. Submissions of the Parties:**

Appellant Tenant Case:

Evidence of Mary Flanagan (Appellant Tenant)

The Appellant Tenant stated that when she moved into the dwelling she signed a letting agreement but received no rent book. She outlined that the dwelling was basic enough with old appliances, an old shower and in her five years of occupation there were no routine inspections by the Respondent Landlord. She gave evidence that there had been a leak in the upstairs bathroom which caused a stain in the ceiling visible from the sitting room below but that this issue had never been addressed by the Respondent Landlord nor had anything been done to remedy it. She went on to outline that on vacating the dwelling on the 27 October 2014 she had not received her security deposit back. She stated that the dwelling had been cleaned and apart from the intention to put in a new laminate floor for the purposes of the new tenancy the Respondent Landlord had not passed comment other than to say how well the Dwelling looked. The Appellant Tenant also told the Tribunal that she had agreed in the winter of 2014 to enter into a joint agreement with the Respondent Landlord about paving a portion of the rear garden to accommodate her two pet dogs, which she accepted, had become a bone of contention in the latter part of the tenancy. It was agreed that she would contribute €250 of the €500 required for the work to be done and she fulfilled this requirement. The work to the patio area had, she said, rendered the rest of the garden unusable and it became a wasteland of rubble and top soil and brambles. She also had no free access to the garden shed or to use the lawnmower because of the rubble, topsoil and brambles.

The Appellant Tenant accepted fully when asked by the Tribunal that she had not requested permission to have the dogs in the dwelling and never advised the Respondent Landlord that they were in the dwelling. She went on to accept his claim for €210 to clean the carpets on termination as the dogs had caused damage beyond normal wear and tear. She was less willing to accept liability for costs associated with replacing carpets with new tiling or the gardening maintenance costs, or replacing the vacuum cleaner which the Respondent Landlord was claiming. The Appellant Tenant alleged that the works which the Respondent Landlord was proposing upon her vacating the Dwelling were for the purpose of improving the dwelling to avail of higher rents which the market would pay. When asked by the Tribunal whether she had any proof to support this contention of her’s she said she did not. The Appellant Tenant also told the Tribunal, with the aid of a photograph, that the kitchen hot grill had caused two parallel marks on the living room carpet where it met the kitchenette area and she accepted also, that she must take responsibility for this occurance but stressed that rectification of this carpet burn did not require the amount of work which the Respondent Landlord subsequently carried out and concluded that he had chosen to carry out this bigger job in anticipation of higher rental income in his new tenancy as she had previously alluded to.

The Appellant Tenant summed up by stating that she had never used the vacuum cleaner provided in the tenancy as it had never worked properly and provided her own vacuum cleaner to clean the carpets. She stated that she may have mislaid or lost the pipe section of the Respondent Landlord’s vacuum cleaner during her move out but took the view that this could have been replaced online by the Respondent Landlord if he looked for the part. She outlined that no implements were provided to help her tidy up the garden area such as briar cutters or a wheel barrow and she gave evidence that the Respondent Landlord was willing to allow her former husband take up tenancy after she vacated the Dwelling at the original rent, but that her former husband’s circumstances changed and this did not happen. She rejected the suggestion that by having a car parked in the front drive over many months without moving it had impacted negatively on the dwelling.

The Appellant Tenant concluded by stating that the Respondent Landlord was disinterested in the dwelling until he returned from Australia and realised that higher rental income was attainable she outlined that she had notified him about damage to the ceiling caused by a leak but he neglected to deal with the matter.

Respondent Landlord’s Case

The Respondent Landlord stated that he had let the dwelling ‘as new’ in 2009 having repainted and re-carpeted it throughout. He told the Tribunal that it was an express term of the tenancy agreement that dogs were forbidden in the dwelling and he was cross when he discovered that the teneant had taken in two dogs into the dwelling, stating that it was the turning point in an otherwise good relationship which had developed. The landlord gave a brief background as to how the tenant took up tenancy in the dwelling- after the Appellant Tenant’s former dwelling was completely flooded the landlord had assisted her.

He gave evidence of being quite shocked to see the condition of the dwelling, as her two medium sized dogs were as he stated ‘wrecking the place’. He stated that it was his habit, rather than dwell on issues such as this, to sort them out and it was in this regard they had agreed to create the patio area outside at shared expense, but he highlighted to the Tribunal that it had cost him considerably more than the €250 each the Appellant Tenant had outlined above.

He went on to state that he understood she would sort the ceiling stain matter herself and had told him to leave it to her to get it fixed. He stated that he would normally do an annual inspection but not in an intrusive way and respected the privacy of the Appellant Tenant. The Respondent Landlord stated that he had agreed to a short-term tenancy with her ex-husband, the terms of which were agreed but never came about, the only changes being the agreement to supply a new fridge. He stated that he had to spend considerable monies on the dwelling and garden following the Tenant vacating the dwelling. He claimed damage to the dwelling was in the total sum of €1,472.27 and was being claimed as it was unlettable following her occupancy. He outlined that she had left a car parked for months on end to the front of the dwelling causing moss to grow underneath which is a recurring problem. He had removed up to ten wheelbarrow loads of ashes from the rear garden. The tiling of his kitchen into the living room area was the cheapest solution to the damage caused from the grill burns which were given in evidence. He said that the carpets throughout the dwelling were ruined by the two dogs and required full professional cleaning.

The Respondent Landlord summed up by stating that he had always been patient and generous to the Appellant Tenant. He accepted that some wear and tear would happen over a five year tenancy but concluded by saying that he always responded quickly to calls like the broken gas boiler and that he always acted as a problem solver and not someone who would prevent happy relations.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The tenancy commenced 12 December 2009.

2. The tenancy terminated 28 October 2014.

3. The security deposit paid was €700, held by the Respondent Landlord.

4. The monthly rent was €700.

5. There are no rent arrears.

**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 thereof, are set out hereunder.

Finding No. 1:

The Tribunal find that the Appellant Tenant is in breach of her obligation under section 16(f) of the RTA 2004 and of her tenancy agreement by keeping dogs in the dwelling without the permission of the Respondent Landlord and not notifying him of this which was contrary to the terms of her tenancy agreement. Damage in excess of normal wear and tear resulted from this breach.

Reasons:

1. The Appellant Tenant conceded that she had acted outside the terms of her tenancy agreement and its provisions concerning the keeping of pets in the dwelling. She accepted in oral evidence the claim in respect of damage above normal wear and tear to the carpets at a cost of €210 and the Tribunal award this amount as set out in the invoice presented to the Tribunal by the Respondent Landlord.

Finding No. 2:

The Tribunal find that the Appellant Tenant is in breach of her obligation by causing damage beyond normal wear and tear to the carpet by burning marks caused by the grill under section 16(f).

Reasons:

1. Section 16 (f) stipulates that a tenant of a dwelling shall not do any act which would cause a deterioration in the condition of a dwelling was in at the commencement of the tenancy and accept that the Respondent Landlord had to carry out work in the kitchenette area by laying new tiles for over flooring to meet the carpet area in order to relet the dwelling. The Tribunal calculate that the loss to the Respondent Landlord is €227 in total for this breach by the Appellant Tenant.

Finding No. 3:

The Tribunal find that Respondent Landlord claim for the replacement of the vacuum cleaner is upheld.

Reasons:

1. The Appellant Tenant conceded that she may have mislaid or lost the hose pipe section of the vacuum cleaner during moving and made no effort to replace or compensate for this action. The Tribunal awards the full claim of €89.95 to the Respondent Landlord for this action.

Finding No. 4:

The Tribunal find that the Respondent Landlord’s claim in respect of garden maintenance costs are not upheld.

Reasons:

1. The Tribunal accept that no liability rest with the Appellant Tenant in respect of additional ground clearance or material removal from the garden area and accept her evidence that no gardening implements were provided for any reasonable containment.

**8. Determination:**

**Tribunal Reference TR0415-001123**

**In the matter of Mary Flanagan (Tenant) and Paul Cramp (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

In the matter of Mary Flanagan, Appellant Tenant and Paul Cramp, Respondent Landlord, the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004 determines that:

The Respondent Landlord shall pay the total sum of €173.05 to the Appellant Tenant within 7 days of the date of the issue of the order, being the unjustifiably retained portion of the security deposit of €700 having deducted the total sum of €526.95 in respect of damages for breach of the Tenants obligations in respect of the tenancy at 30 Millbridge, Naas, Co Kildare.

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

**John FitzGerald Chairperson**

For and on behalf of the Tribunal.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 03/08/2015.