**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001127 / Case Ref No: 1214-15930**

**Appellant Tenant:** Vians Vanags, Viktorija Sevalje

**Respondent Landlord:** Elaine Scanlon

**Address of Rented Dwelling:** 93 Littlepace Drive, Clonee , Dublin 15, D15CD7W

**Tribunal:** Roderick Maguire (Chairperson)

Dairine Mac Fadden, Vincent P. Martin

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

**Date & time of Hearing:** 18 August 2015 at 10:30

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| **Attendees:** | Vadim Karpenko, Appellant representative;  Marlene Scanlon, Respondent witness;  Joe Scanlon, Respondent witness. |
| **In Attendance:** |  |

**1. Background:**

On 23/12/2014 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 an Adjudication which took place on 05/03/2015. The Adjudicator determined that

1. The Notice of Termination served on the 29th December 2014 by the Respondent landlord on the Applicant tenants in respect of the tenancy of the dwelling at at 93, Littlepace Drive, Clonee, Dublin 15 is valid.

2. The Applicant tenants shall vacate and give up possession of the above dwelling within 28 days of the date of issue of the Order.

3. The Respondent tenant shall continue to pay rent at the monthly rate of €1100.00, or proportionate part thereof at the daily rate of €36.17, 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 they vacate the above dwelling.

4. The Respondent landlord shall refund the entire of the security deposit of €1200.00 to the Applicant tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeals were received:

Tenant’s Appeal received on 14/04/2015. The grounds of the appeal included:

Standard and maintenance of dwelling, Damage in excess of normal wear and tear, Invalid Notice of termination, Breach of landlord obligations.

The Appellant also submitted that the determination was unfair as it was based on the personal opinion of the adjudicator who had accepted the point of view of the Respondent; that the finding of arrears of rent was incorrect; that there had been breach of landlord obligations documented by a finding by Fingal County Council; that the lease agreement signed by the parties in November 2014 was invalid in its entirety as it provided for rent reviews more often that every 12 months; that the Appellant Tenants were victimised for their legal dispute with the Respondent Landlord; that as the deposit was paid and no rent was due. In addition, the Appellant Tenants submitted that they had repaired the house with the permission of the owner, and that the termination notice that issued on 29 December 2014 was after the dispute was lodged by the Appellant Tenants and was therefore penalisation of the tenants and was not valid. It was also stated that the Respondent Landlord had tried to enter the dwelling during the Appellant Tenants absence, and had walked around the property and taken photos. The Appellants claimed repayment from the Landlord for the works done and repair to the property and to be allowed to continue peaceful occupation of the dwelling. ; approved by the Board on 28/04/2015.

The PRTB constituted a Tenancy Tribunal and appointed Dairine Mac Fadden, Vincent P. Martin, Roderick Maguire as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Roderick Maguire to be the chairperson of the Tribunal (“the Chairperson”).

On 16/06/2015 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 18/08/2015 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:**

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 Applicants) would be invited to present his 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 Applicants.

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 or 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.

**5. Submissions of the Parties:**

Appellant Tenants’ Case:

It was submitted on behalf of the Applicant Tenants that no rent was due and that the Notice of Termination of 29 December 2014 was invalid as it referred to a deposit not being paid but there was documentary evidence that the deposit had been paid when the tenants went into occupation. It was also submitted that the Notice of Termination was a penalisation of the tenants as it was served at a time when they had already lodged a complaint and reference was made to section 14 of the Act.

In addition, it was submitted that works had been done to the property by the Appellant Tenants but that she was not expecting to be paid for these. She said that she had sent in a list of them to show that the tenants had also spent money on the Dwelling and that it was not fair to be asked to pay another deposit when they had also done work to the Dwelling.

It was submitted that the letting agreement entered into was not valid as it allowed a rent increase twice in the year and that this was prohibited by the Act.

The Appellant Tenant Viktorija Sevalje submitted that she had never been in charge of the payment of rent and was not aware of any discussion regarding the use of the deposit towards rent at any stage. The Appellant Tenant Viktorija Sevalje denied that she had sublet the dwelling as had been alleged by the Appellant Tenant Vians Vanags in writing to the Respondent Landlord. Mr. Vanags, who was not in attendance.

Ms. Sevalje stated that she and Mr. Vanags had both spoken to Threshold in advance of signing the new lease on 5 November 2014.

Respondent Landlord's Case:

The Respondent Landlord submitted that the Termination Notice of 29 December 2014 was valid as the Appellant Tenants had initially paid a deposit, but part of this had been used against rent as was evident from the case file and the contact with the Appellant Tenant Vians Vanags. EUR 1,000 of this amount had remained as a security deposit but given that there had been a number of missed rental payments detailed in the case file, the Landlord wanted a new lease with an additional security deposit. The parties all signed a new lease providing for the payment of a new deposit, and this had not been done.

The Respondent landlord stated that the rent had not been paid according to the new agreement of November 2014. It had been agreed that there would be an increased rent from June 2015 being EUR 1,230, an increase of EUR 130 per month but the Appellant Tenants had not paid the increase. This was in addition to the new deposit of EUR 1,230.

The Respondent Landlord said that she had gone through serious rent reductions with the tenants and made compromises and also that in relation to some of the tenants’ expenses that she had reduced the rent. She said that over the period of the tenancy that there had been serious rent arrears.

The Respondent Landlord stated that she had suffered stress and inconvenience as a result of the new deposit not being paid and she had failed to pay her mortgage because of the failure to pay the increased rent. The Respondent Landlord also stated that two months’ rent had been missed in 2009 and this had never been remedied.

**6. Matters Agreed Between the Parties**

1. The tenancy commenced on 21 January 2009.

2. A deposit was paid of EUR 1,200 on the commencement of the tenancy.

**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.

7.1 Finding:

The Tribunal finds that the Notice of Termination served on 29 December 2014 was a valid notice under the Residential Tenancies Act 2004.

Reason:

The Tribunal is satisfied that the Appellant Tenants signed the lease of 5 November 2014 knowing that they had to pay a new deposit. Although the term in the lease providing for rent reviews every 6 months is not valid under section 20(2) of the 2004 Act, the inclusion of a term to that effect in the contract signed by the parties does not act to invalidate the whole contract. The other terms in the contract survive as agreed by the parties. Therefore, the Appellant Tenants were in breach of that agreement in not paying a deposit of EUR 1,200 as agreed. They were warned that the failure to pay the deposit could result in termination of the tenancy by email on file on 27 November 2014 and subsequently they were afforded time to remedy this breach of their obligation. They did not do so and the termination notice dated 29 November 2014 is valid.

7.2 Finding:

The Tribunal finds that the Tenants are overholding and awards EUR 1,000 in damages to the Respondent Landlord.

Reason:

The Respondent Landlord submitted with supporting documentation that she has not been paid the market rent for the property for a significant period of time and the failure of the Appellant Tenants to vacate the property on foot of the valid notice of termination has caused her significant stress and difficulties with her mortgage repayments..

7.3 Finding:

The Tribunal finds that there was no breach of Landlord obligations.

Reason:

The Tribunal finds that the only notice of issues with the dwelling provided to the Respondent Landlord were in relation to the washing machine, the cost of the new machine being deducted from the rent due, and in relation to the radiators. It was not shown that the response was inadequate. The report of Fingal County Council is dated 4 February 2015 and it was not shown that the matters found to be lacking or needing remediation, which the landlord stated she had now remedied, were complained of at any stage to the Respondent Landlord.

**8. Determination:**

**Tribunal Reference TR0415-001127**

**In the matter of Vians Vanags, Viktorija Sevalje (Tenant) and Elaine Scanlon (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

Vians Vanags and Viktorija Sevalje Appellant Tenants and Elaine Scanlon, Respondent Landlord, the Private Residential Tenancies Board, in accordance with Section 121 of the Residential Tenancies Act, 2004, determines that:

(a) The Notice of Termination served on 29 December 2014 by the Respondent Landlord on the Appellant Tenants in respect of the tenancy of the dwelling at 93 Littlpace Drive, Clonee, Dublin 15 is valid.

(b) The Appellant Tenants and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 28 days of the date of issue of this Order.

(c) The Appellant Tenants shall pay the total sum of EUR 1,000 to the Applicant, within 70 days of the date of issue of this Order, being damages for failure to comply with the Notice of Termination.

(d) The Appellant Tenants shall also continue to pay rent outstanding from 18 August 2015 to the Respondent Landlord at the rate of EUR 1,230 per month or proportionate part thereof at the rate of EUR 40.44 per day, 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 they vacate the above dwelling.

(e) The Respondent Landlord shall refund the security deposit paid in 2009, being EUR 1,000 to the Appellant Tenants, upon the Appellant Tenants vacating and giving up 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 03/09/2015.

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

**Roderick Maguire, Chairperson**

For and on behalf of the Tribunal.