**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001128 / Case Ref No: 0215-16983**

**Appellant Landlord:** Angela Plunkett, Kevin Plunkett

**Respondent Tenant:** Karen Cullen

**Address of Rented Dwelling:** 24 Seafield Court, Rush , Dublin, K56PP23

**Tribunal:** Gene Feighery (Chairperson)

Vincent P. Martin, Siobhan Phelan

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

**Date & time of Hearing:** 02 October 2015 at 10:30

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| **Attendees:** | Angela Plunkett (Appellant Landlord)  Kevin Plunett (Landlord's Representative)  Karen Cullen (Respondent Tenant) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 26 February 2015 the Landlord 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 23 March 2015. The Adjudicator determined that:

The Applicant Landlord’s application, concerning alleged rent arrears and overholding, in respect of the tenancy of the dwelling at 24 Seafield Court, Rush, County Dublin, is not upheld.

Subsequently a valid appeal was received from the Landlord by the PRTB on 15 April 2015 where he submitted, inter alia, the following.

• The Tenant was notified of her breach of obligations under Section 16 of Act, i.e. to pay to the Landlord or his Agent the rent provided for under the tenancy on the date it falls due for payment. However she failed to remedy this breach.

• It is incorrect to assert that future Department of Social Protection payments will cover rent arrears.

• Valid notifications have been given to the Tenant and these notifications should be upheld and Landlord’s rights protected.

The Board, at its meeting on 28 April 2015 approved the referral to a Tenancy Tribunal of the appeal. The PRTB constituted a Tenancy Tribunal and appointed Gene Feighery, Siobhan Phelan and Vincent P. Martin as Tribunal members, pursuant to Section 102 and 103 of the Act and appointed Gene Feighery to be the chairperson of the Tribunal (“the Chairperson”).

On 21 August 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 2 October 2015 the Tribunal convened a hearing at 10.30 at the offices of the 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:**

* Copy notice of termination dated 24 September 2015
* Letter from Department of Social Protection dated 21 September 2015
* AIB Lodgment slip dated 15 July 2015 for €250
* AIB Lodgment slip dated 29 July 2015 for €200
* Cardiology Department, Beaumount Hospital, Appointment Notice

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. She 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 then explained the procedure that would be followed; that the Tribunal was a formal procedure but that it would be held in an informal manner. She told them that the person who appealed (the Appellant Landlord in this case) would be invited to present her case first; that there would be an opportunity for cross-examination by the Respondent Tenant that the Respondent Tenant would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant Landlord.

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 would be recorded by the official stenographer present and she reminded the Parties that to knowingly provide false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 or up to 6 months imprisonment or both.

The Chairperson advised the parties that if they wished to compromise within the proceedings that the Tribunal would withdraw and give them an opportunity to discuss the matter. She told them that in the event of an agreement being reached, it would 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 posted on the PRTB website. The Determination Order could be appealed to the High Court on a point of law only under Section 123(3) of the Residential Tenancies Act, hereafter referred to as the Act of 2004.

Finally, the Chairperson explained to the attending parties that the Tribunal had read the dispute file and were familiar with case. She said it was noted that there were a number of issues raised by the parties that fell outside the jurisdiction of the Tribunal and the parameters of the Residential Tenancies Act 2004 and that the Tribunal would confine its deliberations to areas within its remit.

The parties were duly sworn.

**5. Submissions of the Parties:**

Appellant Landlord’s Case:

Evidence of Kevin Plunkett

On behalf of the Appellant Landlord he submitted that the tenancy commenced in 2006 when a signed lease agreement was entered into between the parties. A monthly rental payments of €1,150 was payable in advance by standing order directly to the Appellant Landlord’s designated account on the 6th day of each month.

He stated that the Respondent Tenant is in receipt of Department of Social Protection rent supplement payments which payments are controlled by the Tenant. He said that a Landlord has no control over such payments and any alteration in payments are not notified by the Department to the Landlord. He submitted that the Respondent Tenant’s monthly rental payments varied widely during the tenancy, ranging from €1,143.60 one month, to €348.70 another month, to no payments at all in some instances. He confirmed that he routinely signed the requisite ‘pink form’ on behalf of the Respondent Tenant for the Department of Social Protection renewing her rent supplement payment and he rejected any allegation that he had obstructed or delayed the submission of this form to the Department.

The Appellant Landlord’s representative further submitted that a persistent pattern of rent arrears existed during the tenancy and that in order to recoup rent arrears and receive monthly rental payments it was necessary to issue the Respondent Tenant with statutory notices of arrears and subsequent notices of termination. He said that in September 2013 he had issued the Respondent Tenant with such notices however he failed to enforce them because the Department of Social Protection paid the arrears in the sum of €1,174.40.

He stated that he had attempted to work with the Respondent Tenant in relation to her rent arrears, but with hindsight he believes that he had been over lenient with her. During the tenancy he had reduced the rent and he had allowed her to use €150 from her security deposit of €1,150 in lieu of rent arrears.

He said that in 2014 rent arrears accumulated despite repeated requests from him for payment. He said that in September 2014 the Respondent Tenant had given him an undertaking that she would lodge €45 per week into his account to address her rent arrears but this she had failed to do. He said that he understood the social side of the Respondent Tenant’s predicament however a turning point in the Landlord/Tenant relationship came on 26 January 2015 from which there was no turning back. He said is no longer prepared to be blackmailed into providing a social service that is the responsibility of the County Council.

The Appellant Landlord’s Representative said that when his repeated requests for rental payments failed, a 14 day warning notice issued to the Respondent Tenant on 9 January 2015 for rent arrears in the sum of €551.20. A subsequent notice of termination dated 26 January 2015 issued, following which he had received an abusive and threatening text message from the Respondent Tenant. He said he reported the text to the Garda Siochána and he issued the Respondent Tenant with an anti-social behaviour warning notice under section 17 of the Act. He said he took a step back from dealing directly with the Respondent Tenant and he engaged the services of a property management agency to act on the Appellant Landlord’s behalf in relation to the tenancy.

In April 2015 the property management agent made contact with the Respondent Tenant and established the new arrangement wherein the Respondent Tenant would lodge future rental payments into the management agent’s client property account. When no payments were received from the Respondent Tenant, a statutory 14 day notice of arrears of rent was issued to the Respondent Tenant on 28 April 2015. On 1 May 2015 a notice of increase in rent in the sum of €1,125 to take effect from 4 June 2015 was issued to the Respondent Tenant on behalf of the Appellant Landlord.

Following a contribution towards her rent arrears in the sum of €180 on 5 May 2015 a further 14 day warning notice of rent arrears in the sum of €963.40 was issued to the Respondent Tenant on 6th July 2015. Partial compliance with this demand was made by the Respondent Tenant when payments of €250 were made on 15 July 2015 and a further payment of €200 on 29 July 2015. However these amounts failed to rectify the accumulated rent arrears and a notice of termination was issued on 21 July 2015 giving the Tenant until 18 August 2015 to vacate and give up possession of the dwelling. The Appellant Landlord’s Representative submitted a schedule of payments in support of this claim. The schedule of rent arrears further records that the Respondent Tenant’s rent arrears continued to accumulate to the sum of €1,210.80 as at the 6 September 2015, and the Appellant Landlord’s representative confirmed that no rental payments have been made by the Respondent Tenant up to and including the date of the Tribunal hearing. This schedule of rent arrears was uncontested by the Respondent Tenant.

The Appellant Landlord’s representative stated that following these notices the property management agent received abusive and threatening texts from the Respondent Tenant and has indicated that he will withdraw his services. The Respondent Tenant was issued with a further anti social behaviour notice on 26 August 2015.

Respondent Tenant’s Case:

Evidence of Karen Cullen

She submitted that in 2013 following the tragic death of a family member she experienced severe personal difficulties and was vulnerable. She said that she began to experience difficulties paying her rent and she felt intimidated by the Appellant Landlord’s representative who carried a big file when he called to the dwelling to discuss rent arrears.

In July 2014 she submitted that following a course of dialectical behaviour therapy she was recovering well and feeling much better. She said that she and her family were reunited in the dwelling. She stated that in January 2015 she was up to date with her rental payments having paid all of her rent arrears. However, that summer she had a major health setback resulting in her hospitalisation, during which period she fell back into rent arrears.

She stated that she was allocated a mental health social worker by the Health Service Executive who, on 25 July 2015, interceded on her behalf with the Appellant Landlord’s property managent agent in relation to her rent arrears. She alleged that any delay in the payment of rent was as a direct result of the property agent’s delay in returning the ‘pink form’ required by the rents officer from the Department of Social Protection to process her claim.

The Respondent Tenant submitted that for eight years in a row prior to 2015 there had never been a problem getting the ‘pink form’ signed. She rejected that she had been abusive to the Appellant Landlord’s property managent agent stating that her texts merely told them to ‘pull their socks up’ and do their job. She said that she had been successfully granted a rent cap exemption and was now in a position to send the required documentation to the rents officer of the Department of Social Protection. She anticipated that her rental payments will be backdated for the entire year and that her arrears will be paid.

She stated that she does not want to live in the dwelling where she is being continually harassed by the Appellant Landlord’s representative and property management agent who persist in issuing her with documentation she does not understand and notices of termination. She stated that she has been searching for alternative accommodation and that she is 141 on the housing list with her local County Council.

The Respondent Tenant stated that she has been a loyal tenant but that, in her opinion, the Appellant Landlord wants her out of the house and he wants new tenants to replace her.

**6. Matters Agreed Between the Parties**

• The tenancy of the dwelling commenced on 6 February 2006.

• The Respondent Tenant remains in occupation of the dwelling together with her two children.

• A security deposit in the sum of €1,150 was paid by the Respondent Tenant at the commncment of the tenancy and this was reduced by €150 in March 2013 to cover 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.

7.1 Finding: The Tribunal finds that the tenancy of the dwelling is a further Part 4 tenancy.

Reason:

The tenancy of the dwelling commenced in 6 February 2006 when a fixed term 12 month tenancy was entered into between the parties. The Respondent Tenant acquired Part 4 security of tenure under the Act, the tenancy having been in existence for in excess of the requisite 6 month period. A fixed term tenancy runs concurrently with a part 4 tenancy.

When a part 4 tenancy continues to the expiry of the 4 year period without a notice of termination having been served in respect of it before that expiry, then a new tenancy shall come into being between the Landlord and the Tenant on that expiry and shall be referred to as a further part 4 tenancy. The commencement date of the further Part 4 tenancy is the expiry of the 4 year period.

The Respondent Tenant’s tenancy has continued on foot of renewal leases between the parties and the first part 4 tenancy expired through the effluxion of time in February 2010 when a further Part 4 tenancy commenced. The Respondent Tenant again acquired security of tenure under this tenancy having remained in the dwelling for a period in excess of the requisite 6 months.

The current further part 4 tenancy commenced in February 2014 and the Tenant remains in occupation of the dwelling on the date of the hearing.

7.2. Finding: The Tribunal finds that the Tenant is in breach of her obligations under section 16 (a)(i) of the Act arising from her failure to pay to the Landlord and his authorized Agent the rent provided for under the tenancy on the date it falls due for payment.

Reason:

It is undisputed between the parties that a pattern of arrears existed during the tenancy. The Tenant explained that arrears of rent accrued at times of personal difficulty, family bereavement and as a result of ongoing health issues.

7.3. Finding: The Tribunal is satisfied that the Landlord issued a valid notice of termination to the Tenant on 21 July 2015.

Reason:

The notice of termination was issued to the Tenant by the Landlord following verbal requests and reminders to pay rent and 14-day notice of arrears dated 6 July 2015 with which the Tenant only partially complied. Under section 34, a Part 4 tenancy may be terminated by the Landlord if a tenant fails to comply with any of his or her obligations in relation to the tenancy and (a) the Tenant has been notified of the failure by the Landlord and that notification states that the Landlord is entitled to terminate the tenancy if the failure is not remedied within a reasonable time specified in that notification and (b) the Tenant does not remedy the failure within that specified time. The Notice of Termination complies with section 62 of the Act and the Tenant raised no issue as to the validity of the notice and the right of the Landlord to serve it under section 6 of the act within the 28-day period.

Finding 7.4 The Tenant is overholding in the dwelling with effect from 18 August 2015 following the issuing of a valid notice of termination by the Landlord on 21 July 2015.

Finding 7.5. As at 2 October 2015, the Tenant is in rent arrears in the sum of €2,172.28.

Reason:

The Landlord submitted a schedule of payments by the Tenant culminating in a rent arrears figure of €1,210.80 as at 6 September 2015. The Tenant up to an including the date of the hearing has made no further rental payments. The rental payment is calculated as follows.

€1,125 X 12 (months) divided by 365 = daily rate of €36.98.

6 September 2015 to 2 October 2015 (date of hearing) = 26 days.

€36.98 X 26 = €961.48 + €1,210.80 = €2,172.28.

**8. Determination:**

**Tribunal Reference TR0415-001128**

**In the matter of Angela Plunkett, Kevin Plunkett (Landlord) and Karen Cullen (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Notice of Termination served on 21 July 2015, by the Appellant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at 24 Seafield Court, Rush, Co. Dublin is valid:

The Respondent Tenant 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 the Order.

The Tenant shall pay the total sum of €2,172.28 to the Appellant Landlord within 28 days of the date of issue of the Order, being rent arrears for the Respondent Tenants breach of her obligations under the Act 24 Seafield Court, Rush, Co. Dublin.

The Respondent Tenant shall also pay any further rent outstanding from 2 October 2015 (date of hearing), at the rate of €1,125.00 per month, 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 she vacates and gives up possession the above dwelling;

The Respondent Landlord shall refund the entire portion of the security deposit of €1,000 to the Respondent 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 13 October 2015.

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

**Gene Feighery Chairperson**

For and on behalf of the Tribunal