**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001131 / Case Ref No: 0315-17529**

**Appellant Tenant:** Oluwatoromo Yemi Isaac Ajomale

**Respondent Landlord:** McGinley Construction Ltd

**Address of Rented Dwelling:** 27 Alexander Apartment, East Road, East Wall , Dublin 1

**Tribunal:** Eoin Byrne (Chairperson)

John Tiernan, Mary Doyle

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

**Date & time of Hearing:** 08 July 2015 at 2:30

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| **Attendees:** | Oluwatoromo Yemi Isaac AjomalE, Appellant Tenant  Daniel McGinley, Respondent Landlord’s Representative |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 26/03/2015 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 telephone mediation, however the mediation was unsuccesful and no agreement was reached by the parties.

Subsequently a valid appeal was received from the Tenant by the PRTB on 15/04/2015. The grounds of the appeal were Anti-social Behaviour, Breach of Fixed Term Lease, Deposit Retention, Invalid Notice of Termination and Unlawful Termination of Tenancy (Illegal Eviction). The Board at its meeting on 28/4/2015 approved the referral to a Tenancy Tribunal of the appeal.

The PRTB constituted a Tenancy Tribunal and appointed Eoin Byrne, John Tiernan and Mary Doyle as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Eoin Byrne 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 8/06/2015 the Tribunal convened a hearing at 2:30pm 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:**

PRTB File

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

There were no further documents submitted at the hearing.

**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 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 his 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 said that members of the Tribunal might ask questions of both Parties from time to time.

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.

The Chairperson asked the Parties if they had any queries about the procedure. There were none. The parties giving evidence were then sworn.

**5. Submissions of the Parties:**

**Appellant Tenant’s Case:**

The Appellant Tenant’s case concerned a number of issues arising from events at the end of the tenancy, in particular allegations of anti-social behaviour, breach of a fixed term lease, deposit retention, invalid notice of termination and unlawful termination of the tenancy. He explained that he had resided in the dwelling with another named tenant and that the security deposit that was paid was €1,000 being €500 from each tenant.

The Appellant Tenant outlined that there was generally a good relationship between the parties over the three years of the tenancy, there having been just three disagreements between them in that period.

The first issue concerned the payment of rent, which he stated was paid in cash, despite his request that it be paid via bank transfer. He stated that he did not know the exact identity of the landlord and was not aware until recently that the landlord was McGinley Construction Limited. He indicated that he believed Daniel McGinley was the landlord.

The second issue he raised was in respect of the breakdown of appliances stating that the fridge, washing machine, dishwasher and stove all broke during the tenancy but that all issues were ultimately resolved. In respect of the stove, he indicated that during the past year in or around October 2014, water entered the circuitry, causing a short circuit and sparks, which led to the stove being replaced.

The third issue concerned the water supply in one of the bathrooms being turned off for a number of days, while issues with the apartment below were being resolved. He said that the dwelling was accessed on that occasion without his prior knowledge or permission.

The Appellant Tenant stated that he always had a fixed term lease in place. He indicated that after the fixed term lease expired, he was advised by the Respondent Landlord’s representative that the rent was going to be increased. However, he stated that they agreed that the Respondent Landlord would allow them to remain in the dwelling at the old rent until the end of April 2015 when it was intended that he and his co-tenant would then vacate the dwelling.

The Appellant Tenant stated that on the 24 March 2015 he had put eggs on the hob part of the stove to boil and had then left the dwelling with a friend to walk her to the bus stop and to visit the shop. He accepted that he was out of the dwelling for 35 to 40 minutes. He indicated that when he returned to the dwelling, there was smoke coming from the dwelling and that he was not allowed to enter the dwelling until the fire brigade arrived. He stated that he wanted to turn the electricity off but that this was not done until one hour later when the fire brigade arrived. He accepted that it was negligent to walk out of the apartment and leave the hob on. However, he contended that the damage was only in the kitchen and balcony area and that he did not believe it should have cost the €22,000 the Respondent Landlord’s Representative has asserted. He stated that he had not been provided with a breakdown of the cost.

The Appellant Tenant also stated that he was not allowed to stay in the dwelling, despite the damage being in his view limited to the kitchen. He asserted that he was initially given only 24 hours to remove his belongings and had to ask for more time to remove his items. He indicated that he was not able to remove all of his belongings as he had nowhere safe to them. He accepted that he was provided access on the 26 March 2015 to remove his belongings from the dwelling, and that he removed a number of the less valuable belongings. However, he stated that he could not see properly to pack all his belongings as the electricity was off, despite the fact he believed only the electricity to the kitchen needed to be turned off. He indicated that a number of his more important and valuable belongings remained in the dwelling.

He stated that having been accommodated by a neighbour on the first night and by a friend in the immediately succeeding nights he secured a new dwelling for himself as of the 3 April 2015 and arranged to return to collect his remaining belongings on that date. However, he stated that he was texted on the 2 April to advise him that the belongings had been removed to a storage space. He said that his belongings were removed in bin bags and that a number of items of clothing were crumpled as a result and that there were footprints on a suit. He also stated that a pair of expensive headphones were broken and that not all his belongings were in the storage room. He indicated that the total cost of all broken and missing items was about €600 to €700. He stated that he did not receive any further access to the dwelling after that and that he understood new tenants took up occupation in May 2015.

The Appellant Tenant denied any assertion that the fire was caused by a deep fat fryer and said that it was simply an accident. He indicated that he was unaware until the hearing date that the Respondent Landlord’s loss was not fully insured and that he did not believe, in any event, that the cost of repair should have exceeded the amount of his own claim. He stated he would be happy with the return of his portion of the security deposit of €500 and the cost of his missing and damaged items of €600 to €700.

**Respondent Landlord’s Case:**

The Respondent Landlord’s Representative stated that the correct landlord was McGinley Construction Limited and that he was attending the hearing on their behalf.

In respect of the background issues raised, he asserted that the Appellant Tenant had been given the option of paying rent into the bank but had asked for the facility of payment by cash. He stated also that he had asked permission from the Appellant Tenant in advance to enter the dwelling to turn off the water and that consent for this had been given. He accepted that there had been issues with other items and appliances during the tenancy but that these had been dealt with. He indicated that the hob had been replaced as a result of the short circuit issue and that the replacement hob which at the time was new had been sourced from another vacant apartment in the development.

In respect of the issues on the 24 March, he stated that Seamus Flanagan, the Respondent Landlord’s employee, visited the dwelling after receiving a phone call about smoke coming from the dwelling. He stated that, from watching CCTV, it could be seen that the Appellant Tenant was out of the building for approximately 40 to 45 minutes. He asserted that the hob had not simply short circuited as had previously happened, as that would have blown the trip switch. He contended that the cause of the fire was a deep fat fryer and that, when during the repair works the electrician turned on the electricity, it was evident that all four hob rings had been on and the switches had melted in the ‘on’ position. He denied any suggestion that a request for an itemised detailed bill for the damages had been received from the tenant.

He stated that at no stage was the possibility of the Appellant Tenant moving back into the dwelling after the fire discussed. He stated that the Appellant Tenant was asked to make alternative arrangements, as the dwelling was not habitable and the insurance assessor had indicated that vacant possession was required. He accepted that the dwelling was under-insured but that this was only discovered subsequent to the fire. He also stated that it was not safe to turn on the electricity to the kitchen until the dwelling was repaired. He relied upon the photographs submitted in respect of the damage including smoke damage to the dwelling. He indicated that all wires in the kitchen had to be removed, new cupboards installed and the electrical work re-certified. He stated that the total cost of repair was as outlined in the documentation submitted, being €22,777 and that the insurance only covered €8,984.87, albeit the Respondent Landlord reserved their position and intended to bring proceedings in respect a claim for the difference between the amount of the deposit and the total cost of repair.

The Respondent Landlord’s Representative stated that he moved the Appellant Tenant’s belongings on the 1 April 2015, to a safe, secure, dry downstairs storage area. He stated that all items in the dwelling belonging to the Appellant Tenant remaining on the 1 April 2015 were put into shopping trolleys and removed by him. He stated that he did not understand why the Appellant would have left valuable belongings in the dwelling as stated, given that he had been given an opportunity on the 26 March 2015 to remove belongings and did so, especially also as the door to the dwelling was open from the 24 March 2015 to the 27 March 2015, due to its having been broken open in the course of the fire.

The Respondent Landlord’s representative thus asserted that the deposit was retained to cover part of the cost of the repairs and that they were not responsible for any damage to the Appellant Tenant’s belongings or any missing items.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. That the monthly rent in respect of the tenancy was €1,000, along with €50 in respect of heating, and that the Appellant Tenant paid €515 per month.

2. That the deposit in respect of the tenancy was €1,000 per month, of which €500 belonged to the Appellant Tenant.

3. That the Appellant Tenant’s rent was paid until the end of March, 2015.

4. That the correct address of the dwelling is: Apartment 27, Alexandra Place, 55 - 58 East Road, Dublin 3.

**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.

**7.1 Finding:**

The Tribunal finds that the Appellant Tenant has not established that the Respondent Landlord was in breach of obligations such as would entitle the Appellant Tenant to any damages for breach of fixed term lease, unlawful termination of the tenancy or invalid notice of termination.

**Reasons:**

The Tribunal is satisfied that the fire in the dwelling was caused as a consequence of the actions or omissions of the Appellant Tenant by leaving the hob on and vacating the dwelling for approximately 35 to 45 minutes. The Tribunal is supported in this finding by the account of the events provided by the Appellant Tenant. The Tribunal is also satisfied that the dwelling was not habitable as a consequence of the actions or omissions of the Appellant Tenant and the resulting fire. The Tribunal finds that it became necessary for the Appellant Tenant to reside elsewhere but that this was not caused by any fault or negligence on the part of the Respondent Landlord. The Appellant Tenant found a new dwelling to live in as of the 3 April 2015 before the damage to the dwelling was repaired or could have been repaired. The Tribunal considers that the Appellant Tenant mitigated any loss he may have suffered as a result of any refusal by the Respondent Landlord to allow him to live in the dwelling in the immediate aftermath of the fire. The Tribunal accepts the evidence on behalf of the Respondent Landlord that the dwelling was uninhabitable for a period, until the repairs were completed, as a consequence of the Appellant Tenant’s actions or omissions.

Furthermore, the Tribunal is satisfied that the Appellant Tenant had adequate opportunity to remove his belongings from the dwelling, in particular valuable belongings, on the 26 March 2015 prior to the remaining items being removed by the Respondent Landlord’s Representative on the 1 April, 2015. The Tribunal is also satisfied that vacant possession of the dwelling was required for the purposes of repairing the damage to the dwelling caused by the fire and that the Appellant Tenant was provided sufficient opportunity to remove his belongings. In the absence of any independent evidence as to the condition of the Appellant Tenant’s belongings prior to the fire, and given the fact that the door to the dwelling was open for a number of days following the fire, as a result of the door having to be broken down, the Tribunal are not satisfied that the alleged damage to the Appellant Tenant’s belongings was caused by the Respondent Landlord’s Representatives or that the Respondent Landlord should be liable for this alleged loss or that the Respondent Landlord should be liable for damages for any alleged missing items. Accordingly, the Tribunal is satisfied that the Appellant Tenant has not adduced sufficient evidence to support his claim of being entitled to damages.

**7.2 Finding:**

The Tribunal finds that the Respondent Landlord has justifiably retained the Appellant Tenant’s deposit of €500.

**Reasons:**

The Tribunal is satisfied that the fire in the dwelling was caused as a consequence of the actions of the Appellant Tenant, in leaving the dwelling with the hob switched on, and that the damage caused to the dwelling was beyond normal wear and tear. Thus the Tribunal considers that the Appellant Tenant was in breach of obligations under section 16(f) of the Residential Tenancies Act in this respect. From an assessment of the evidence as adduced at the Tribunal Hearing including the level of damage exhibited in the photographic evidence the Tribunal has assessed that the reasonable cost of repair to the dwelling significantly exceeds the amount of the deposit and also the total amount claimed by the Appellant Tenant.

The Tribunal is also satisfied that the net matter for determination before it in this respect is whether or not the Appellant Tenant is entitled to the return of the deposit. The Tribunal considers that he has not shown sufficient evidence to justify an entitlement to the return of the deposit and finds accordingly. The finding of the Tribunal and the Order in this case is without prejudice to any further claim the Respondent Landlord may have in any separate legal process in this respect.

**7.3 Finding:**

The Tribunal finds that the tenancy of the dwelling was terminated abruptly in a manner not in compliance with the provisions of the Act of 2004. However Tribunal makes no award to the Appellant Tenant in this regard.

**Reasons:**

The tenancy of the dwelling was terminated as a necessity following the occurrence of a fire as a consequence of certain actions or omissions on the part of the Appellant Tenant. The Tribunal accepts that it was not feasible on the Respondent Landlord’s part to allow the Appellant Tenant remain in occupation for a number of practical reasons including the possibility of fumes, unavailability of electricity and other potential unknown factors in such circumstances. The Tribunal has noted that the Appellant Tenant found temporary accommodation immediately and further mitigated his losses rapidly having procured alternative living accommodation on 3 April 2015.

**7.4 Finding:**

The Tribunal finds that the Appellant Tenant’s claim in respect of anti-social behaviour on the part of the Respondent Landlord’s agent is not upheld.

**Reasons:**

The Appellant based his claim in this regard upon allegations relating to an occasion when the Appellant Tenant was collecting some of his items of property from a storeroom and that an agent of the Respondent Landlord allegedly pushed him out of the room. The Tribunal considers that the evidence of such incident was not sufficient to establish such activity. The Tribunal also has had regard to the provisions of s. 16 of the Act which places an obligation on the tenant and not on the landlord of a dwelling in regard to such anti-social behaviour. The Tribunal considers that such activity on the part of an Agent of the Respondent Landlord in the circumstances as described does not come within the meaning or scope of s. 16 and s. 17 of the Act.

**8. Determination:**

**Tribunal Reference TR0415-001131**

**In the matter of Oluwatoromo Yemi Isaac Ajomale (Tenant) and McGinley Construction Ltd (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Tenancy of the dwelling at Apartment 27, Alexandra Place, 55 - 58 East Road, Dublin 3 was unlawfully terminated. The Tribunal makes no award of damages in this regard.
2. The Appellant Tenant’s claim in respect of unlawful deposit retention and for the return of his deposit in respect of the tenancy is not upheld.
3. The Appellant Tenant’s claim in respect of breach of obligation on the part of the Respondent Landlord including damage to the Appellant Tenant’s property is not upheld.
4. The Appellant Tenant’s claim in respect of anti-social behaviour on the part of an agent of the Respondent Landlord is not upheld.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 22/07/2015.

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| **Signed:** | H:\Common\Signatures\Adjudicators\Eoin Byrne.png |

**Eoin Byrne Chairperson**

For and on behalf of the Tribunal.