**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001137 / Case Ref No: 0814-13459**

**Appellant Tenant:** Patrick Tierney

**Respondent Landlord:** Sean Moloney

**Address of Rented Dwelling:** 2 Portobello Place, Portobello , Dublin 8, D08F2K3

**Tribunal:** John Tiernan (Chairperson)

Dervla Quinn, Nesta Kelly

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

**Date & time of Hearing:** 20 August 2015 at 2:30

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| **Attendees:** | Camilla Devitt, Witness on behalf of Appellant Tenant;  Felicity McCall, Advocate and Witness on behalf of Respondent Landlord. |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 01/08/2014 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 28/10/2014. The Adjudicator determined that In the matter of Patrick Tierney (the Applicant Tenant) and Sean Moloney (the Respondent Landlord) in respect of a claim regarding invalid notice of termination and a counter claim regarding rent arrears and breach of tenant obligations, the Adjudicator, in accordance with section 97(4)(a) of the Residential Tenancies Act 2004 (“the Act”), determined that:

1. The Notice of Termination served on 22nd July 2014, by the Respondent Landlord on the Applicant Tenant, in respect of the dwelling at 2 Portobello Place, Portobello, Dublin 8, is invalid.

2. The Applicants Tenant shall pay the Respondent Landlord the sum of €1,500 in one instalment, payable within 28 days of the date of issue of the Order. This sum represents rent arrears owing up until 24th September 2014 in respect of the tenancy of the dwelling at 2 Portobello Place, Portobello Place, Dublin 8.

3. The Applicant Tenant shall pay the Respondent Landlord, within 28 days of the date of issue of the Order, the sum of €150 for a breach of s.16(c) of the Act, in not allowing reasonable access to the property to carry out an inspection.

4.The Applicant Tenant shall pay the Respondent Landlord, within 28 days of the date of issue of the Order, the sum of €200 for a breach of s.16 (l) of the Act, for changing the lock at the property without the Landlord's consent. This includes €57.00, the cost of replacement locks.

5 .The Applicant Tenant shall pay the Respondent Landlord, within 28 days of the date of issue of the Order, the sum of €50 for a breach of 16(n) of the Act, for not informing the Landlord of the identity of all the occupants at the property.

Subsequently the following appeal was received:

Tenant’s Appeal received on 19/04/2015. The grounds of the appeal: Breach of tenant obligations, Rent arrears, Standard and maintenance of dwelling ; approved by the Board on 28/04/2015.

The PRTB constituted a Tenancy Tribunal and appointed Dervla Quinn, John Tiernan, Nesta Kelly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Tiernan to be the chairperson of the Tribunal (“the Chairperson”).

On 24/06/2015 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 20/08/2015 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:**

• 1 photograph of the interior of the dwelling submitted by the Respondent Landlord.

• Copy email purporting to have been sent by Michali Hyams stated to be the proprietor of 1 Portobello Place, Portobello, Dublin 8 submitted by the Respondent Landlord.

• 8 page PRTB correspondence and Adjudicator’s Report in respect of Adjudication Ref No 1014-14945 submitted by the Appellant Tenant.

**4. Procedure:**

The Chairperson asked the Parties to identify themselves and to identify the capacity in which they were attending the Tribunal. He asked the Parties to confirm that they had received the relevant papers from the PRTB 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 party who requested to refer the Dispute to the Tribunal, the Appellants 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 Appellants. 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 is 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 (pursuant to section 123(3) of the Residential Tenancies Act, 2004, hereafter referred to as the Act).

The Chairperson also informed the parties that if it seemed that they might be able to resolve their dispute by agreement, the Tribunal would facilitate any such negotiations.

The Parties intending to give evidence were then sworn in.

Submission

The Appellant Tenant submitted a request that the identity of his spouse whom he said is a witness and not a party to the proceedings and whom he stated was not a signatory to the tenancy agreement, be anonymised in respect of the hearing and reporting thereof. He said that his spouse is an academic and thus has a public profile. He expressed the view that the statement in correspondence on behalf of the Respondent Landlord that it was intended to invite members of the media to the hearing was a threat and was slanderous. He said that on arrival at the Tribunal venue there was a photographer outside the building.

The Tribunal referred to s.106 sub-sections (1), (2) & (3) of the Act and explained that any such decision on anonymity is within the remit of responsibility of the Board of the PRTB and is not the remit of the Tribunal. The Tribunal advised all persons in attendance that under the provisions of s.105 of the Act a witness before the Tribunal shall be entitled to the same immunities and privileges as if he or she were a witness before the High Court. The Tribunal also referred those in attendance of the consequences under the provisions of s.9 of the Act for a person found guilty of an offence.

The Appellant Tenant was asked whether he had any further supporting submission in regard to the request and when no such further argument was put forward the Chairperson undertook to refer the request to the Board of the PRTB for its decision and said that in the interim all persons should refrain from publication of the matters before the Tribunal pending the outcome of the Board’s decision.

**5. Submissions of the Parties:**

At the outset the Appellant Tenant queried the status of case reference DR1014-14945 being a case for dispute resolution in respect of the same tenancy that had been submitted on the part of the Respondent Landlord. He submitted a copy of the Adjudicators Report of the hearing that took place on 13th January 2015 and the Determination that was issued on 24th February 2015 and said that the outcome had not been appealed by either party. He said that there were matters determined therein that are also before the instant Tribunal particularly those relating to alleged denial of access to the Landlord and to the changing of locks in the dwelling without the consent of the Landlord.

The Tribunal adjourned to consider the submission and on resumption advised the parties that it would inquire fully in to all matters in the dispute ref DR 0814-13459, that evidence pertaining to any one issue in dispute may impinge on another such matter and that it will be only after hearing same that the Tribunal will be in a position to decide if some matters can be deemed to come under the doctrine of res judicata. The Tribunal advised that in such event such matters will not be determined by the Tribunal.

The Tribunal summarised the matters at issue between the parties as being:

1) The Validity of the Notice of Termination of 22nd July 2014.

2) Rent Arrears.

3) Whether the Appellant Tenant changed the locks in the dwelling without the consent of the Respondent Landlord.

4) Whether the Appellant Tenant did not allow the Respondent Landlord have reasonable access to the dwelling.

5) Breach of landlord obligation in regard to the Standard and Maintenance of the dwelling.

6) Breach of tenant obligation in regard to damage in excess of normal wear and tear.

7) Whether the Appellant Tenant was in breach of his obligations by not informing the Respondent Landlord of the number and identity of all persons residing at the dwelling.

Evidence of the Appellant Tenant

1) Validity of Notice of Termination of 22nd July 2014.

The Appellant Tenant said that he accepted the finding of the Adjudicator in respect of the Notice of Termination that it is invalid. The Appellant Tenant said that he was advised by a person at his bank that direct debits as required under the tenancy agreement be made on a 4 weekly cycle rather than by calendar month was not possible and that this was the reason behind any delays in payment of rent upon which the Notice of Termination had purported to rely. The witness on behalf of the Appellant Tenant said that the Notice of Termination was very upsetting for them.

2) Rent Arrears

The Appellant Tenant said that whereas the tenancy agreement that was dated 10th September 2013 had stipulated that the rent of €1,000 was payable by direct debit every 4 weeks, a person at his bank had advised him that this could not be accommodated and that he had sought consent from the Respondent Landlord to make a payment of €1,083 each calendar month but that the Respondent Landlord would not agree to this arrangement. He said that this had made it difficult for him to make his payments on time. He gave evidence that whilst some payments may have been late there were no rent arrears during the course of the tenancy except in relation to the rent that was due in August 2014 and for part of September 2014 which he said that he withheld following receipt of the invalid Notice of Termination. The Appellant Tenant said that in relation to the matter of rent arrears that were outstanding at the termination of the tenancy he had paid the sum of €1,500 by bank draft on 13th January 2015 the day of the hearing in respect of PRTB case referenced DR 1014-14945.

3) Whether the Appellant Tenant changed the locks in the dwelling without the consent of the Respondent Landlord.

The Appellant Tenant said that he changed the locks on the dwelling on the evening of 7th September 2014. He said that despite the provisions of the Act there was a context to this action. He said that this was done on the advice of his solicitor who had concluded from the tone of correspondence from the Respondent Landlord that the Respondent Landlord might try to gain access to the dwelling without consent when both he and his wife were at work. When asked by the Tribunal whether he had a copy of that advice in writing he said that he said that he had no such advice in written form. When asked by the Tribunal to point out where in the documentation submitted any threat of forcing entry was evident he said that the communications from the Respondent Landlord were abrupt and upsetting and cited the threats from the Respondent Landlord to tell his father that the rent had not been paid.

The Appellant Tenant said that his action in replacing the locks was subsequently vindicated because the Respondent Landlord had attempted to gain access to the dwelling on 8th September 2014 when both he and his wife were at work. When asked how he knew this he said that his brother was in the dwelling at the time and had told him so.

The Appellant Tenant further argued that if the Respondent Landlord had responded to his text of 23rd September 2014 wherein he had sought to clarify the address to which the keys were to be returned the Respondent Landlord would not have needed to incur the cost of replacement locks and that therefore any claim for damages in respect of the such cost involved should be rejected.

4) Whether the Appellant Tenants had denied reasonable access to the dwelling on the part of the Respondent Landlord.

The Appellant Tenant said that following receipt of the invalid Notice of Termination he and his wife formed the conclusion that the Respondent Landlord was going to attempt a forced entry in to the dwelling and remove their possessions. He said that he was suspicious of the request for access for an inspection on the part of the Respondent Landlord with his Agents on 12th or 13th August 2014 and subsequent letter from the Respondent Landlords Solicitor seeking to be allowed entry on 21st August 2014.

5) Breach of landlord obligation in regard to the Standard and Maintenance of the dwelling.

The witness on behalf of the Appellant Tenant gave evidence that due to the poor condition of the dwelling at the commencement of the tenancy she had requested the Respondent Landlord to engage a professional cleaning company to clean up the dwelling. She said that this request was rejected.

The Appellant Tenant said that the dwelling had been infested by rodents. He said that there was a rat in the dwelling and submitted text messages that he had sent to the Respondent Landlord on the issue attesting to the presence of rodents. He said that there was a rat in the dwelling. He said that the Respondent Landlord’s response on the matter was inadequate and accused him of not being careful with food storage. He said that the Respondent Landlord had forwarded mouse traps and adduced evidence.

6) Breach of tenant obligation in regard to damage in excess of normal wear and tear.

The witness on behalf of the Appellant Tenant said that she had cleaned the dwelling thoroughly and that the dwelling was in a better condition at the end of the tenancy than it had been at the commencement. The Appellant Tenant adduced evidence of text messages to engage a person who he stated to be a professional cleaner at the time following the commencement of the tenancy.

7) Whether the Appellant Tenant was in breach of his obligations by not informing the Respondent Landlord of number and identity of all persons residing at the dwelling.

The Appellant Tenant said that the only persons who resided in the dwelling were his spouse and himself. The Appellant Tenant denied that his brother resided with them as had been alleged by the Respondent Landlord. He said that his brother often called to the dwelling as a visitor or to share a meal. He said that his brother who had his own accommodation in Donnybrook was in the dwelling on the morning of 8th September 2014 at his request because he feared that the Respondent Landlord would attempt to gain entry without consent.

Evidence of the Respondent Landlord

1) The Validity of the Notice of Termination dated 22nd July 2014.

The Respondent Landlord said that notwithstanding the finding of the Adjudicator that the Notice of Termination of 22nd July 2014 is invalid he would nevertheless wish the Tribunal to rule on the matter. He submitted written correspondence from three Banks to say that a 4 weekly direct debit cycle could be readily accommodated. He said that the Appellant Tenant was late with his monthly rental payments on nine occasions in the course of the 12 month tenancy. He submitted a number of text messages referring to late payments that he had received from the Appellant Tenant during the course of the tenancy to support this contention. He said that when his first Notice of Termination that had been sent by registered post was returned to him he personally handed the Notice of Termination of 22nd July 2014 to the Appellant Tenant’s spouse at the dwelling on 22nd July 2014.

2) Rent Arrears

The Respondent Landlord said that in May 2014 when the Appellant Tenant asked regarding a revised calendar monthly payment schedule he had advised him that he would discuss any revised arrangement in relation to the payment of rent with him at the time of termination or renewal of the tenancy in August/September 2014.

He confirmed that the rent arrears in the sum of €1,500 was paid by bank draft to his Solicitor by the Appellant Tenant on 13th January 2015 the day of the hearing in respect of case referenced DR 1014-14945. The Respondent Landlord said however that the consequent losses due to his being deprived of the money that had been withheld and outstanding from August 2014 to January 2015 should also be considered. He submitted evidence relating to the matter of rent arrears of legal costs in the sum of €396.60 having been incurred on his part.

3) Whether the Appellant Tenant changed the locks in the dwelling without the consent of the Respondent Landlord.

The Respondent Landlord said that when he arrived at the dwelling on 8th September 2014 he noted that a new lock to which he had no key had been installed in the front door. He said that when the Appellant Tenant vacated the dwelling on 24th September 2014 he did not pay the €1,500 outstanding rent that was due and did not return the keys to the dwelling as he had requested. He gave evidence that he had to drill the out the new lock and the original Chubb lock to gain entry, the latter being necessary because the Appellant Tenant had not returned the keys to the dwelling and stated at the hearing that the keys have not been returned since.

4) Whether the Appellant Tenant had denied reasonable access to the to the dwelling on the part of the Respondent Landlord

The Respondent Landlord gave evidence that on 6th August 2014 he communicated his wish to gain entry to the dwelling accompanied by his Agents for inspection purposes giving proposed dates of 12th or 13th of August 2014 whichever suited. He adduced evidence of a text response from the Appellant Tenant saying that there was no provision in the tenancy agreement to permit such access and that if he does attempt to do so the Gardai would be called. The Respondent Landlord said that his Solicitor had sent a letter dated 21st August 2014 to the Appellant Tenant seeking that he and his Agents would be allowed access immediately but that this had not been conceded. He said that when he called to the dwelling on 8th September 2014 he noted that there was a new lock on the door. He said that he knocked for about 5 minutes but that the person whom he knew to be inside would not open the door. He gave evidence that he was aware that the Appellant Tenant and his wife had departed for work some time earlier. He said that the person in the dwelling called the An Garda Siochána and two Garda members subsequently arrived at the dwelling who advised that they could not arrange for him to enter the dwelling because it was a civil matter.

5) Breach of landlord obligation in regard to the Standard and Maintenance of the dwelling

The Respondent Landlord gave evidence that the Appellant Tenant had lived in the adjacent dwelling at No.1 Portobello Place prior to taking up tenancy of the subject dwelling at 2 Portobello Place. He said that during the course of carrying out renovations at the dwelling the Appellant Tenant had approached him and had requested that he be assigned the tenancy of the dwelling. He said that he had agreed to this and that the tenancy was assigned to the Appellant Tenant earlier than had been anticipated on the understanding that some works still needed to be completed. He said that the rent for the dwelling reflected this.

The Respondent Landlord said that there was no evidence of the presence of any rodent in the dwelling other than the statement of the Appellant Tenant. He referred to a letter from the next door neighbour of the dwelling who had lived at that address for over twenty years and in which it was denied that any rodent or rat problem had manifested itself in the terrace of houses. He agreed that initially when he received the text message relating to the presence of rodents he had despatched mouse traps and other expanding foam from his home in Co Donegal to the Appellant Tenant.

6) Breach of tenant obligation in regard to damage in excess of normal wear and tear.

The Respondent Landlord gave evidence that the cooker and fridge had not been cleaned by the Appellant Tenant on vacation of the dwelling. He alleged that there was rubbish left at the dwelling.

7) Whether the Appellant Tenant was in breach of his obligations by not informing the Respondent Landlord of number and identity of all persons residing at the dwelling.

The Respondent Landlord said that he had been told by a neighbour who resided next door that she had met the Appellant Tenant’s brother at the dwelling regularly. He submitted an email statement purporting to have been sent by the neighbour to him which he said confirmed this. He also referred to the fact that the Appellant Tenant’s brother was at the dwelling early on the morning of 8th September when he had called to the dwelling. He said that he believed that the Appellant Tenant’s brother resided at the dwelling and that he either slept on the couch or in the spare room.

**6. Matters Agreed Between the Parties**

1) That the Appellant Tenant paid the sum of €1,500 to the Respondent Landlord in respect of the outstanding rent arrears on 13th January 2015.

2) That the rent in respect of the tenancy was €1,000 per 4 week period.

3) That there was no security deposit sought or paid in respect of the tenancy.

4) That the tenancy terminated on 24th September 2014.

**7. Findings and Reasons:**

Based upon the evidence provided and on the balance of probabilities the Tribunal has set out hereunder its findings and the reasons therefor

Finding No.1and Reason:

Having regard to the findings and determination arising from PRTB Case Reference DR 1014-14945 and having regard to the doctrine of res judicata the Tribunal finds that it has no jurisdiction to determine matters relating to the changing of the ‘Yale’ lock on the front door at the dwelling.

Finding No.2 and Reason:

Having regard to the findings and determination arising from PRTB Case Reference DR 1014-14945 and having regard to the doctrine of res judicata the Tribunal finds that it has no jurisdiction to determine matters relating to the denial of reasonable access to the Respondent Landlord by the Appellant Tenant.

Finding No.3:

The Appellant Tenant was in breach of his obligations under s.16(a) of the Act by failing to pay rent on the date it fell due. The Tribunal awards damages to the Respondent Landlord in the sum of €100 to be paid by the Appellant Tenant in respect of the consequences of this breach.

Reasons:

The Tribunal notes that both parties acknowledged that the Appellant Tenant was in rent arrears of €1,500 at the end of the tenancy on 24th September 2014 and that this sum was finally remitted on 13th January 2015. The Tribunal further notes the testimony of the Appellant Tenant that these rent arrears arose due to his decision not to pay consequent upon the then purported invalid Notice of Termination. The Appellant Tenant had not paid the rent that fell due on 10th August 2014 and on 10th September 2014. The tribunal notes that the Respondent Landlord was deprived of the use of that sum for a significant period and incurred costs in pursuance of the outstanding rent. Notwithstanding the obligation to pay the rent on the day that it fell due the Tribunal considers and is of the view that the Appellant Tenant had a continued obligation to pay the overdue rent on the date of vacation as requested by text message on the part of the Respondent Landlord. The Appellant Tenant failed to turn up or to make reasonable alternative arrangements to pay the monies promptly. The Tribunal makes no finding in respect of and no award of damages in respect of any late payments of rent that occurred purportedly because of a stated difficulty in processing direct debit transactions at the Appellant Tenant’s bank.

Finding No.4:

The Appellant Tenant was not in breach of his obligations under the s. 16(n) of the Act by failing to inform the Respondent Landlord of the number of and identity of all persons residing at the dwelling.

Reasons:

The Tribunal accepts the evidence of the Appellant Tenant that his brother was an occasional visitor to the dwelling. The Tribunal considers that the Respondent has not submitted any reliable evidence upon which to base a conclusion that the Appellant Tenant’s brother resided ordinarily at the dwelling. The Tribunal also notes the response of the Respondent Landlord under questioning that the Appellant Tenant’s brother that it was plausible that the Appellant Landlord’s brother may have stayed overnight from time to time as a casual visitor.

Finding No.5:

The Respondent Landlord was not in breach of his obligations in regard to the standard and maintenance of the dwelling.

Reasons:

The Tribunal considers that the Appellant Tenant did not submit sufficient evidence to establish the presence of rodents at the dwelling and that if such was the case that any such presence was the responsibility of the Respondent Landlord. The Tribunal also has had regard to the response of the Respondent Landlord to the notification by text that was sent to him and to the subsequent texts which passed between the parties on the matter. The Tribunal also accepts the Respondent Landlord’s submission that he had come to the dwelling with the intention to carry out some remedial work relating to the issue but that he failed to gain access.

Finding No.6:

The Appellant Tenant was in breach of his obligations under s.16(f) of the Act in having failed to return the keys to the dwelling thereby necessitating replacement of the ‘Chubb’ lock on the front door and thus causing a deterioration in the condition the dwelling was in at the commencement of the tenancy in excess of normal wear and tear. The Tribunal awards damages in the sum of €125 to the Respondent Landlord in respect of the replacement of the said lock.

Reasons:

Under the provisions of s.16(f) of the Act the Tribunal considers that the Appellant Tenant had an obligation to ensure that the keys were returned to the Respondent Landlord on the day he was vacating the dwelling. The Tribunal does not accept that because the Appellant Tenant sent a text message to seek clarification of the arrangement that had been previously advised to him and then do nothing in regard to the matter when no reply was received absolved him from that responsibility. The Appellant Tenant had knowledge of the Respondent Landlord’s Solicitor’s address to which he had previously been advised by Solicitor’s letter of 21st August 2014 to forward the keys on vacation of the tenancy. The Tribunal considers that the Appellant Tenant had an obligation to ensure that the requirements of the text message from the Respondent Landlord requesting that the keys be brought to the dwelling along with the outstanding rent amount of €1,500 were fulfilled. The Tribunal accepts the evidence of the Appellant Tenant and of his spouse in regard to the cleaning of the dwelling and the condition in which it was left at the termination of the tenancy.

Finding No.7:

The Notice of Termination dated 22nd July 2014 as served by the Respondent Landlord on the Respondent Tenant was invalid.

Reasons:

The notice of Termination did not comply with the requirements of the Act of 2004. In particular the said Notice did not comply with the provisions of s.62 of the Act by failing to provide the prescribed date of service, it did not notify the Appellant Tenant that he had the whole 24 hours of the date of termination to vacate the dwelling. Furthermore the Notice of Termination did not provide the requisite 35 days advance notice to the Appellant Tenant as required by s.66 of the Act.

**8. Determination:**

**Tribunal Reference TR0415-001137**

**In the matter of Patrick Tierney (Tenant) and Sean Moloney (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

Patrick Tierney, Appellant Tenant and Sean Moloney, Respondent Landlord the Tribunal in accordance with the provisions of section 108 of the Residential Tenancies Act 2004, determines that:

The Appellant Tenant shall pay the total sum of €225 to the Respondent Landlord within 28 days of the date of this Order being damages of €100 in respect of the unlawful withholding of rent and €125 in respect of causing damage in excess of normal wear and tear at the dwelling all in respect of the tenancy of the dwelling at 2 Portobello Place, Portobello, Dublin 8.

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

**John Tiernan Chairperson**

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 03/09/2015.For and on behalf of the Tribunal.