**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001144 / Case Ref No: 0115-16502**

**Appellant Landlord:** Martin Corboy

**Respondent Tenant:** Vanda Navickiene

**Address of Rented Dwelling:** 4 Silk Park, Platin Road, Drogheda , Co. Louth

**Tribunal:** Gene Feighery (Chairperson)

Vincent P. Martin, Aidan Brennan

**Venue:** Board Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dubblin 2

**Date & time of Hearing:** 09 September 2015 at 10:30

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| **Attendees:** | Martin Corboy, Appellant Landlord  Vanda Navickiene, Respondent Tenant |
| **In Attendance:** | Zieduna Kuncevieiene (Translator)  Word Perfect Translations  Gwen Malone Stenographers |

**1. Background:**

On 6 February 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 an adjudication which took place on 23 March 2015. The Adjudicator determined that:

The letter, purporting to be a Notice of Termination, served on the 12th of November 2014, in respect of the tenancy of the dwelling at 4 Silk Park, Platin Road, Drogheda, Co Louth, is invalid.

The Respondent Landlord shall pay the total sum of €1,640.00 to the Applicant Tenant, within 35 days of the date of issue of the Determination Order, being damages of €1,500 for breach of obligations in serving an invalid notice of termination and unlawful termination, together with the security deposit of €800.00, less the sum of €660 for damage in excess of normal wear and tear, in respect of the tenancy of the above dwelling.

Subsequently a valid appeal was received from the Landlord by the PRTB on 28 April 2015.

The Board, at its meeting on 15 May 2015 approved the referral to a Tenancy Tribunal of the appeal scheduled to take place on 23 July 2014. The PRTB constituted a Tenancy Tribunal and appointed Gene Feighery, Dairine McFadden 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”). The Tribunal adjourned the hearing dated 23rd July and a second hearing, at which an Interpreter was present was constituted and Aidan Brennan replaced Dairine Mc Fadden at that hearing.

On 19 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 9 September 2015 the Tribunal convened for the adjourned hearing 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:**

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 and understood 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 Landlord in this case) would be invited to present his 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 explained that the Tribunal was a De Novo hearing and that the dispute would be heard afresh. She said that all evidence would be taken on oath or affirmation and 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 up to €4,000 or up to 6 months imprisonment or both.

The Chairperson noted that should the parties indicate that they would be able to resolve the dispute through negotiation, the Tribunal would facilitate any such settlement. The terms of any such agreement can 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 day, the Tribunal would notify the Board of their decision and a Determination Order would be issued to the parties and posted on the PRTB website. She told the attending parties that 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.

The parties were duly sworn.

**5. Submissions of the Parties:**

Appellant Landlord’s Case:

Evidence of Martin Corboy

The Appellant Landlord described the dwelling as a three bedroom terraced house built between 2003 and 2004. At that time he spent €10,000 on a package to furnish the dwelling and supply appliances. He said that there were four tenants residing in the dwelling, and although individual tenants changed from time to time throughout the tenancy, the Respondent Tenant was a constant resident in the dwelling since June 2004. He said that each year he issued the tenants with a new lease wherein they acknowledged that the fixtures and fittings were in good condition and he never had any complaints from them. He said that he carried out inspections, however as bedrooms were routinely locked, he was not always able to inspect them. He was in a position to confirm that the kitchen and common area in the dwelling was always in good condition.

The Appellant Landlord explained that on 24 October 2014 he issued the four tenants, including the Respondent Tenant with a notice of increase in rent from €750 per month to €850 per month with effect from 31 November 2014. He said that the tenants accepted the increase in rent without dispute. However, following the notice, two of the tenants approached him seeking character references and they told him they were moving to alternative accommodation. Subsequently, a third tenant indicated that he too intended to leave the dwelling as he could no longer afford the increased rent. He said that the Respondent Tenant remained in the dwelling.

He told the Tribunal that during this period he was approached by an investor, who was also responsible for looking after the dwelling. He said the investor was interested in purchasing the dwelling. In tandem with this, he said his dweling was close to being in negative equity and his bank had offered him two options, (i) that he could sell the dwelling voluntarily or (ii) the bank would pursue a forced sale of the dwelling. He said he was keen on the voluntary sale option so on 4 November 2014 he issued the Respondent Tenant and her fellow three tenants with a termination notice. He said that the issuing of the notice of termination was moot in relation to three of the tenants who had already indicated that they were leaving the tenancy.

He said that the Respondent Tenant subsquently challenged the validity of the 28 day notice of termination issued on 4 November 2014, citing the relevant section of the Act and specifying the legal requirement for 112 days notice to vacate the dwelling as she was in occupation of the dwelling in excess of 4 years. He said he sent a clarifying letter to her dated 12 November 2014 agreeing to the requisite 112 time period and indicating that she could remain in the dwelling until 24 February 2015. He said he was challenging the Adjudicator’s finding that the notices of termination were invalid because he submitted that both the notice of termination dated 4th November 2014 and the clarifying letter of 12 November 2014 agreeing to the extended notice period should be read in conjunction with each other and thereby comply with the requirements of the Act.

The Appellant Landlord said that he rejected the allegation that he did not intend to sell the dwelling. He said the investor had declined to purchase the dwelling and he was given an extra year by the banks in order to improve on the capital value of the dwelling. He further explained that had he wanted an excuse to terminate the tenancy, he could have used the fact that he needed to carry out refurbishment of the property, which he said was in very poor condition arising from the Respondent Tenant’s breach of her obligations in relation to excessive wear and tear. He said the Respondent Tenant’s bedroom was in particularly bad condition, specifically the carpet which was dirty and had burn marks on it and had to be replaced. He said that he had replaced appliances in the dwelling throughout the tenancy as required and that as recently as two years ago he had replaced the washing machine which no longer functioned. He said that when the investor inspected the dwelling with a view to purchasing it, he was discouraged from doing so because of the poor condition of the dwelling.

The Appellant Landlord submitted that although tenants individually paid rent, they were jointly and severally liable and a single cash payment was made directly to his bank account on a monthly basis for the entire rental sum. He said the tenants themselves took responsibility for replacing a tenant in the event one of them left the tenancy.

The Appellant Landlord rejected that he had interfered with the Respondent Tenant’s peaceful occupation of the dwelling. He said the tenancy was subject to a standard lease that required routine maintenance and repairs which he always carried out with the Respondent Tenant’s consent. He said the complaint by the Respondent Tenant regarding his entry into the dwelling to carry out painting is without foundation because he called to the dwelling, having given the Respondent Tenant notice and she opened the door to him by arrangement and let him enter. He said no objection to his presence was raised at any stage.

Respondent Tenant’s Case:

Evidence of Vanda Navickiene

The Respondent Tenant stated that she has been in occupation of the dwelling for 10.5 years. She said that when she took up occupancy of the dwelling it was furnished with second hand furniture which was functional, but which deteriorated over the lifetime of the tenancy. She said that everything in the dwelling was old and that she had repeatedly asked the Appellant Landlord for replacements, including carpets, however the Appellant Landlord had failed to comply with her requests. She said that she purchased her own curtains and she cleaned the carpets with a proprietary carpet cleaner. She rejected the assertion made that the Appellant Landlord replaced various items with new appliances, and said it was necessary for the Tenants to purchase a fridge at their own expense. She said the washing machine was repaired and not replaced. She said the microwave replacement took two weeks to arrive.

The Respondent Tenant said that the nature of the tenancy was that of four separate individuals, leading four separate lives, using the dwelling, in particular the kitchen and appliances separately with commensurate wear and tear.

She said that during the lifetime of the tenancy there was some movement of tenants and that she took responsibility for replacing tenants and refunding deposits to the departing tenant with the deposits of the incoming tenants. She said she personally lodged the entire monthly rental sum into the Appelant Landlord’s account and she also took responsibility for payment of utility bills. She said it was inconvenient having to source new tenants when one left, however she liked the house and its location was convenient to her place of employment and amenities. She said this was a major consideration for her remaining in the dwelling because she had no family in the country and she did not drive or have a car.

She said that for 10.5 years she was exceptionally loyal to the Appellant Landlord, keeping the house clean and he was happy with her occupation, renewing her lease annually without dispute. She said that on 24 October 2014 she received a notice of increase in rent from €750 per month to €850 per month. She said that she did not dispute this, however very shortly afterwards she received a notice of termination from the Appellant Landlord which was totally unexpected. She said she had 10.5 years of belongings and attachments gathered and she was very distressed and she had to vacate within 28 days.

She said she did not know what to do and she had no family support. Her research indicated that she was entitled to 112 days notice to terminate from the Appellant Landlord arising from the fact that she was in excess of four years in the dwelling and she wrote to him to this effect. She said that her fellow tenants’ search for alternative accommodation had been successful. She said the Respondent Landlord was aware that she intended to remain in the dwelling for her requisite notice period. She said that she explained that arising from his termination of the tenancy, the other tenants had left and that she was not in a position to pay the full rental sum of €850 and she paid him €450 fof the month of December. She said he told her she must pay the entire rental sum or leave the dwelling.

She said that the Appellant Landlord’s wife came to the dwelling and told her she must vacate the dwelling straight after the New Year. She said she had planned to return to her family abroad over the Christmas period but it was necessary to cancel her flights because she needed the time to source alternative accommodation. She said she was very alone and distressed and she required medication through this stressful period. She said she is currently living in a small room with a single bed in an old apartment with students because it was the only available alternative accommodation within her price range and at short notice. She said it was necessary for her to move her belongings by herself without the assistance of a car.

The Respondent Tenant rejected the Appellant Landlord’s assetion alleging that he intended to sell the house. She said that there was no evidence of advertising or signage indicating that the dwelling was for sale. She said that when her fellow tenants vacated the dwelling the Appellant Landlord entered the dwelling with workmen and put all of the furniture from the bedrooms into the main sitting room. He carried out painting, refurbishment and repairs to the dwelling without her consent. She said that the Appellant Landlord replaced appliances and restored the dwelling to a condition that she had been requesting and deserved during her tenancy. She said that she returned to the dwelling in January to collect her post where she met the new occupants, a couple and their child. They invited her in and she saw the newly refurbished dwelling. She said the occupants were renting the dwelling.

**6. Matters Agreed Between the Parties**

* The tenancy of the dwelling commenced on 30 June 2004.
* The tenancy of the dwelling terminated on 27 December 2014.
* The monthly rental payment was €750 per month until 31st November 2014 when it increased to €850 per month by agreement between the parties.
* A deposit in the sum of €850 was at 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 therefore, are set out hereunder:

7.1 Finding:

The Tribunal finds that the notice of termination issued by the Appellant Landlord on the Respondent Tenant dated 4 November 2014 is invalid.

Reason:

Chapter 2 section 62 of the Act is prescriptive in its requirements for issuing a valid notice of termination by a Landlord or a Tenant.

For a notice of termination to be valid it shall:

(a) be in writing,

(b) be signed by the landlord,

(c) specify the date of service,

(d) be in such form as may be prescribed,

(e) if the duration of the tenancy is a period of more than 6 months, state the reason for termination,

(f) specify the termination date, that is to say the day (stating the month and year in which it falls,

a. on which the tenancy will terminate, and

b. on or before which the tenant must vacate possession of the dwelling concerned (and indicating that the tenant has the whole of the 24 hours of the termination date to vacate possession),

(g) state that any issue as to the validity of the notice or the right of the landlord to serve it must be referred to the Board under Part 6 within 28 days from the date of receipt of it.

The Appellant Landlord has failed in relation to a number of the vital procedural requirements namely; (f) - that the tenant has the whole of 24 hours to vacate possession, and (g) - that if the tenant has any issue as to the validity of the termination notice that they have 28 days in which to refer it to the PRTB.

Furthermore, Chapter 3, section 66 (2) provides a table of time periods for termination of tenancies by a Landlord. Table 1 specifies that for tenancies the duration of which is equal to or exceeds 4 years, there is a requirement to provide 112 days notice to a tenant. The Appellant Landlord failed in this regard when issuing the Respondent Tenant with a notice of termination.

The Tribunal rejects the Appellant Landlord’s contention that by reading the invalid notice of termination (for reasons specified above) and the subsequent letter rectifying the notice period in conjunction, that the result is a valid notice of termination. The incorrect notice period was one of a number of flaws in the notice of termination dated 4 November 2014, issued by the Appellant Landlord on the Respondent Tenant. The issuing a new and correct notice period does not remedy the invalid notice of termination in that respect or in other respects.

Finally, when terminating a Part 4 tenancy, regard must be had to section 34. This section deals with grounds for termination by a Landlord.

The ground for terminating the tenancy on which the Appellant Landlord relied in this instance is contained at no. 3 in the Table to section 34 which provides for a situation where the landlord intends to enter into a contract to sell the dwelling within 3 months after the termination of the tenancy.

Section 56 allows the tenant to bring a complaint to the Board claiming unjust deprivation of possession where a tenancy is terminated on the basis of one of the grounds listed in section 34 (relating to a landlords’ intentions) and the ground turned out to be false. The tenant is also entitled under the provisions of this section to put in issue the bona fides of the intention of the landlord. The Tribunal may, if appropriate, make a determination comprising an award damages or a direction that the tenant shall be permitted to resume possession of the dwelling, or both. The Tribunal finds from the oral testimony of the parties, that the dwelling was not put on the open market for sale, and further finds that the withdrawal of the investor who was allegedly discouraged by the condition of the dwelling is not credible in circumstances where the investor was also responsible for looking after the dwelling during the period of the tenancy. In such circumstances, the Tribunal awards the Tenant €1,500 in damages.

Section 118 gives discretion not to allow a party wrongly deprived of possession of a dwelling to resume possession in circumstances where another party, who is not party to the dispute and was not complicit in the deprivation, is now in possession of the dwelling.

The instant tenancy was due to terminate on 24 February 2015 but ended when the Respondent Tenant vacated the dwelling under pressure on 27 December 2014 and on the understanding that the property was to be sold. The dwelling, which was not for sale, was re-let by the Appellant Landlord and third party tenants, who are not a party to the dispute commenced a new tenancy in January 2015. Accordingly the landlords’ intention to sell the property ended on or before January 2015, and thus fell short of the requirement of the condition at number 3 in the Table to section 34.

The Tribunal does not make a direction for repossession by the tenant as this would cause an injustice to the “new” tenants who had no involvement or knowledge of the matter.

Finding 7.2

The Tribunal finds that the Respondent Tenant is not liable for rent arrears claimed by the Appellant Landlord.

Reason: The Appellant Landlord issued the tenants, including the Respondent Tenant with a 28 day invalid notice of termination on 4 November 2014. He told the Tribunal that the notice of termination was moot in relation to three of the tenants who had already told him that they were terminating the tenancy following an increase in rent and that he had accepted their notice because he intended to enter into an enforceable contract for sale of the dwelling. This arrangement is permissible under section 69 of the Act. Therefore, having accepted this arrangement, it is unacceptable that he then sought the entire rental sum of €850 from the Respondent Tenant.

Finding 7.3.

The Tribunal finds that the Respondent Tenant is not in breach of her obligations under section 16(f) of the Act relating to damage to the dwelling in excess of normal wear and tear.

Reason:

The Respondent Tenant was a credible witness who described the gradual deterioration of the dwelling over the 10.5 year period of the tenancy. The Appellant Landlord supported the Respondent Tenant’s evidence by stating that his investor, who also looked after the dwelling, was discouraged in purchasing the dwelling arising from its poor condition. In accordance with the Act, when determining whether or not damage caused to the dwelling by a tenant is in excess of normal wear and tear, the Tribunal shall disregard any deterioration to that condition owing to normal wear and tear, that is to say, wear and tear that is normal having regard to: (i) the time that has elapsed from the commencement of the tenancy (ii) the extent of occupation of the dwelling the landlord must have reasonably foreseen would occur since that commencement, and (iii) any other relevant matters. The tenancy was in existence for 10.5 years, with transient individual tenants leading separate lives and using the dwelling on an individual and separate basis. The Tribunal further notes that the Appellant Landlord engaged in refurbishment of the dwelling and replacement of appliances in advance of offering the dwelling to new tenants.

Finding 7.4

The Tribunal finds that the Appellant Landlord shall return the Respondent Tenant’s security deposit in the sum of €850 the withholding of which has caused distress, disturbance and inconvenience to her when attempting to secure alternative accommodation following an invalid notice of termination.

Reason:

The security deposit remains, at all times, the property of the Tenant, which is held on their behalf in trust by the Landlord. The Tribunal, having found that the Respondent Tenant is not responsible for damage in excess of normal wear and tear to the dwelling, and that there are no rent arrears arising from the tenancy, the Respondent Tenant is entitled to the return of the security deposit in the sum of €850 which has been unlawfully withheld by the Appellant Landlord. The withholding of the said security deposit has caused distress, disturbance and inconvenience to the Respondent Tenant and the Tribunal awards €350 in damages.

**8. Determination:**

**Tribunal Reference TR0415-001144**

**In the matter of Martin Corboy (Landlord) and Vanda Navickiene (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The notice of termination served by the Appellant Landlord on the Respondent Tenant dated 4 November 2014 is invalid.
2. The Appellant Landlord shall pay the total sum of €2,700 to the Respondent Tenant within 28 days from the date of issue of this order being damages of €1,1850 arising from a breach of landlord obligations by invalidly terminating the tenancy in the sum of €1,500 together with damages for unjustifiably retaining the entire of the Respondent Tenant’s security deposit in the sum of €350, together with the return of the security deposit in the sum of €850 in respect of the tenancy of the dwelling at 4 Silk Park, Platin Road, Drogheda, Co. Louth.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 29/09/2015.

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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.