**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0415-001136 / Case Ref No: 0215-16585**

**Appellant Tenant:** Jim Quinn

**Respondent Landlord:** Genie Properties

**Address of Rented Dwelling:** Flat 6, 5 Kenilworth Road, Rathmines , Dublin 6, D06FC96

**Tribunal:** Dervla Quinn (Chairperson)

John Tiernan, 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 10:30

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| **Attendees:** | Tom Brady of Brady Property Management (first named Landlord’s agent);  Colin Brady of Brady Property Management (second named Landlord’s agent) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

The PRTB received an Application for Dispute Resolution Services on the 2nd of February 2015 from Jim Quinn, the Appellant Tenant. A mediation by telephone took place which was unsuccessful and the matter was referred to a Tribunal.

An appeal was submitted by the tenant on 16/04/2015. The grounds of the appeal: Breach of landlord obligations, Rent more than market rate, 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 Dervla Quinn 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 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:**

PRTB File

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

PRTB case file.

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. Tom Brady confirmed to the Tribunal that he was the authorised agent of Genie Property Management Company Limited, the Landlord in this matter. 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 stated that the Appellant Tenant would be invited first to present his case; this would be followed by an opportunity for cross-examination by the Respondent Landlord’s agents; that the Respondent Landlord’s agent would then be invited to present his case, followed by an opportunity for cross-examination by the Appellant Tenant. She said that members of the Tribunal would ask questions of both Parties from time to time. She also said that at the end of the hearing, both the Appellant Tenant and the Respondent Landlord would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

Finally, she indicated that if, at any stage during the proceedings, the parties felt that a settlement might be reached between them that the Tribunal could adjourn to facilitate negotiation discussions.

All persons giving evidence to the Tribunal were then sworn in.

**5. Submissions of the Parties:**

The Appellant Tenant’s Evidence:

The Appellant Tenant stated that he wished to give evidence on 4 points as follows:

* He wished to challenge the Landlord’s rent review dated 2 January 2015 which sought to increase the rent for the Dwelling from €800 to €920 per month.
* The failure of the Landlord to discharge his obligations regarding the standard of maintenance of the Dwelling.
* The failure of the Landlord to carry out maintenance on the Dwelling.
* The retention by the Landlord of his deposit of €750.

On the issue of the rent the Tenant stated that the initial rent for the property at the start of the letting in January of 2009 was €750. A deposit of €750 was paid at that time. The Tenant gave evidence that in October of 2013 he was coerced into paying an increased rent of €800. He referred the Tribunal to clause 5(b) of the letting agreement which purported to give the Landlord the right to terminate the lease on 7 days notice if the Tenant failed to pay the rent. The Tenant stated that he paid the increased sum of €800 to avoid being put out of the Dwelling.

The Tenant submitted evidence from the PRTB web site that rents in the Rathmines area had increased but argued that in his own letting the rent had never been reduced during the downturn in the rental market and so he argued that to apply a per cent increase to his rent of €800 per month was wrong.

The Tenant stated that the flat was approximately 30 square metres which is less than ½ the minimum size required under the Housing Regulations. The Tenant stated that the Landlord had more than 20 opportunities to fix the problems in the Dwelling and could have moved him into another flat whilst the work was carried out but that the Landlord chose not to do this. It was the Tenant’s evidence that the Landlord never intended to carry out repairs.

The Tenant said that he moved out of the Dwelling on 15 June 2015 on foot of a termination notice dated 6 March 2015. A second termination notice dated 16 March 2015 stated that the Tenant would be offered a tenancy on completion of the works. This he said never happened. The Tribunal asked the Tenant was he seeking to be reinstated in the Dwelling. The Tenant replied that this was not possible as someone else was now living on the Dwelling. The Landlord’s agent confirmed that a 3rd party was now renting the Dwelling for a rent of €975. The Landlord’s agent stated that they had not received written notice of the Tenant’s contact details as prescribed in the words of the Act and for this reason had not contacted the Tenant to offer him the opportunity to move back in. The Tenant replied that the Landlord was at all times aware of his e mail address and could have used this to contact him.

The Tenant then challenged the Landlord’s agent’s deposit refund calculations which set out a sum owing to the Landlord of €716.91 after deducting the retained deposit of €750. The Tenant acknowledged that €400 of the deposit had gone towards the last 2 weeks rent but stated that the balance of €350 was due to him.

When asked by the Tribunal to quantify the sums he felt that he was entitled to for the alleged failure by the Landlord to comply with his obligations regarding standard and maintenance of the Dwelling the Tenant stated that for the last 6 months of the letting he believed he should only have been paying €700 a month instead of €800 in light of the poor condition of the Dwelling.

The Tenant confirmed that he had moved out on 15 June 2015 but that by the Landlord’s calculations he was charged rent up to 6 July 2015 which was the termination date contained in the second Notice of Termination. The Landlord had begun refurbishment works almost immediately after the Tenant moved out. The Tenant queried how he could be charged rent for a time when the Dwelling was uninhabitable.

The Respondent Landlord’s evidence.

The first named Landlord’s agent set out the rents in place for the other apartments in the building as follows:

Flat 1 - €1,080 - rent set in Sept 2014 - size a little larger than the Dwelling.

Flat 3 - €1.080 - rent set in Oct 2014 - also a little larger than the Dwelling.

Flat 5 - €995 - rent set in Oct 2014 - this was the basement which was why the price was lower than Flats 1 and 3 above.

Flat 7 - €750 - rent set in Nov 2014 - this was a studio flat.

Regarding the standard and maintenance of the Dwelling the first named Landlord’s agent stated that they had only recently received confirmation from the Housing Authority that the location of the bathroom facilities outside of the Dwelling was in breach of the Regulations. He stated that as no stage did he refuse to carry out repairs.

The second named Landlord’s agent then went through the deposit refund calculations. He stated that the correct modified figure that should have been claimed by the Landlord as due was €125.67 and not €716.9. This was after taking into account the provisional sum of €200 for utility reconnection and a further reduction of €391.23 to reflect a reduction of rent that was included in the account in respect of the days up to 6th July 2015. He further confirmed that in this figure he had also included the sum of €45 being half the PRTB registration sum of €90. The Landlord’s agent stated that it was agreed with the Tenant at the start of the letting that this sum would be paid. He agreed with the Tribunal that the written lease agreement made no mention of this additional charge.

**6. Matters Agreed Between the Parties**

Rent was initially set at €750 which amount was increased in October 2013 to €800.

A deposit of €750 was paid.

The Tenant took up residence on 2nd January of 2009 and left the Dwelling on 15 June 2015.

**7. Findings and Reasons:**

Having considered all the evidence, including the documentary evidence and the oral testimony of each of the Parties herein, the Tribunal's findings and reasons thereof are set out hereunder:

1. Finding:

The Tribunal finds that the Appellant Tenant’s claim for a reduced rent of €700 in the period January 2015 and June 2015 is not upheld.

Reasons:

The Tribunal notes the evidence submitted by the Landlord’s agent of the comparable rent paid for the other flats in the same building as the Dwelling. The evidence of rents paid in the Rathmines area although useful in showing rental trends did not give any insight as to the type of properties involved. The Applicant Tenant’s claim for the sum of €600 being a €100 reduction for each of the last 6 months of the letting is not upheld.

2. Finding:

The Tribunal finds that the Appellant Tenant’s claim in respect of the return of his deposit is partially upheld. The Respondent Landlord shall refund the sum of €364.07 to the Appellant Tenant.

Reasons:

A Deposit Refund Calculation as prepared by the Landlord was submitted in evidence. This showed a balance owing by the Tenant in the sum of €716.91. The Landlord agreed at the Tribunal Hearing that the sum of €200 that was reserved in respect of a possible need for electricity reconnection was not required and thus the amount outstanding should be reduced accordingly to €516.91.

It was also agreed by the Agents that the calculation of deposit refund in respect of rent arrears should be reduced by a sum of €391.23 being his assessment in respect of 14 days rent at the end of the tenancy that had been included in the deposit refund calculation and was in respect of a period from 22nd June 2014 to 6th July 2014 during which the Landlord had works in progress in the dwelling and the Tenant had vacated. This has the effect of reducing the amount calculated by the Landlord from €516.91 by €391.23 leaving a balance assessed by the Landlord of €125.68

The Tribunal notes the agreed evidence that the keys to the dwelling were given to the Agent by the Tenant on 17 June 2014 and considers that the Landlord was in possession of the dwelling from that date. The Tribunal considers therefore that a further 5 days rent should be deducted from the Deposit Refund Calculation. Therefore the Tribunal has further reduced the Landlord’s claim for the balance of €125.68 of the original claim in respect of the rent charged in respect of the 5 days from 17 June 2014 to 21 June 2015 inclusive by a further sum of €139.75 which sum has been calculated as follows:

To calculate a daily rate in respect of a tenancy the PRTB has adopted a standard methodology whereby the monthly rent is first multiplied by12 to yield an annual rent rate = €850 X 12 = €10,200

This sum is then divided by 365 to yield the daily rate = €10,200 ÷ 365 = €27.95

For 5 Days the Daily Rate is multiplied by 5 = €27.95 X 5 = €139.75

The monthly rent that was included in Agent’s calculation in the relevant period was €850

Furthermore having regard to the Deposit Refund Calculations as submitted in evidence this reduction coupled already reductions of €391.23 and €200 results in a an extra amount owing to the Tenant from that calculation in the sum of €14.07 in respect of Deposit Refund Calculation. This is calculated by adding the 3 adjustments viz;

€391.23 + €200 + €139.75 = €730.98

Which exceeds the assessed sum calculated by the Agent in the Deposit Refund Calculation by €730.98 - €716.91 = €14.07

This results in a final refund amount owing to the Appellant Tenant of €350 + €14.07 = €364.07 in respect of partial refund of his deposit.

In all of the above the Tribunal has had regard to the provisions of s. 12(4) whereby a landlord is only entitled to retain the difference between the amount of rent that is in arrears and the amount of the deposit.

3. Finding

The Tribunal finds that the Landlord was in breach of his obligations in regard to the standard and maintenance of the dwelling in the course of the tenancy. The Tribunal makes no award of damages in respect the consequences of these breaches.

Reasons :

The Tribunal finds that the works that were required to be carried out by the Landlord to bring the Dwelling into line with the Housing (Standards for Rented Dwellings) Regulations 2008 as required under the provisions of s.12(1)(b)(i) and s. 18 of the Housing (Miscellaneous Provisions) Act 1992 were substantial and that it was reasonable that the Tenant would have had to leave the Dwelling whilst these were being carried out. The Tribunal accepts that in the course of an ongoing existing tenancy it was reasonable from the point of view of the tenancy for the Landlord to have deferred the works until such time that the tenant vacated. Furthermore the Tribunal accepts the evidence of the first named Agent on behalf of the Landlord that the Agent had offered to the Appellant Tenant to have the heating controls altered to bring the heating system in to compliance with the Regulations but that this was declined at the time. In the circumstances the Tribunal makes no award for damages in respect of the consequences of such breach.

**8. Determination:**

**Tribunal Reference TR0415-001136**

**In the matter of Jim Quinn (Tenant) and Genie Property Management Limited (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Respondent Landlord shall pay the sum of €364.07 to the Appellant Tenant within 28 days of the date of this Determination Order being the balance of the Appellant Tenant’s security deposit of €750 having deducted €385.93 in respect of rent arrears in respect of the tenancy of the Dwelling at Flat 6, 5 Kenilworth Road Rathmines, Dublin 6.

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The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08/09/2015.

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

**Dervla Quinn Chairperson**

For and on behalf of the Tribunal.