

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000619 / Case Ref No: 0913-07771

Appellant Tenant:	Susi Medeiros
Respondent Landlord:	David McKay
Address of Rented Dwelling:	15 Avondale Road, Phibsboro , Dublin 7
Tribunal:	Gareth Robinson (Chairperson) Gene Feighery, John FitzGerald
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin
Date & time of Hearing:	26 June 2014 at 10:30
Attendees:	Susi Medeiros - Appellant Tenant Noel McCartan - Legal Representative David McKay - Landlord Lorenzo Dragos
In Attendance:	Gwen Malone - Stenographer

1. Background:

On 16/09/2013 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 05/03/2014.

The Adjudicator determined that;

1. The Applicant/Respondent Tenant's application, regarding anti-social behaviour, in respect of the tenancy of the dwelling at 15 Avondale Road, Phibsboro, Dublin 7, is not upheld.
2. The Notice of Termination served on 30 October 2013, by the Respondent/Applicant Landlord on the Applicant/Respondent Tenant, is valid.
3. The Applicant/Respondent Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the dwelling within 35 days of the date of issue of the Order.
4. The Applicant/Respondent Tenant shall pay the total sum of €20,600.00 to the Respondent/Applicant Landlord within 365 days of the date of issue of the Order, being rent arrears in the amount of €21,600, less the sum of €1,000 being damages awarded to the Applicant/Respondent Tenant for breach of landlord obligations in failing to provide peaceful and exclusive occupation in respect of the tenancy of the dwelling.
5. The Applicant/Respondent Tenant shall also pay any further rent outstanding from 5 March 2014, at the rate of €900 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 the above dwelling;

6. The Respondent/Applicant Landlord shall refund the entire of the security deposit of €900.00 to the Applicant/Respondent Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently, an appeal was received from the Tenant. The Grounds of the appeal were; breach of landlord obligations and anti-social behaviour. The appeal was approved by the Board on 09/05/2014.

The PRTB constituted a Tenancy Tribunal and appointed Gareth Robinson, Gene Feighery, John FitzGerald as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Gareth Robinson to be the chairperson of the Tribunal ("the Chairperson").

On 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 26/06/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin, Dublin.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

The Chairperson asked the parties to identify themselves and to identify in what capacity they were attending the Tribunal. He 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 as informal as possible; that the person who appealed (in this case the Appellant Tenant) would be invited to present her case first, that there would be an opportunity for cross-examination by the Respondent Landlord; that the

Respondent Landlord would then be invited to present his case and that there would be an opportunity for cross-examination by the Appellant Tenant. He also 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.

He stressed that all evidence would be taken on oath or by way of 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 €4,000 and/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 negotiation. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal and would be enforceable through the Courts.

The Chairperson also reminded the parties that, as a result of the Hearing that they would submit their findings to the Board who would make a legally binding Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only.

5. Submissions of the Parties:

The Appellant Tenant's Case:

Evidence of Susi Medeiros

The Respondent Tenant gave evidence that she moved into the Tenancy in approximately December 2010, when she paid a deposit in the sum of €900 plus a rental payment of €900. She said that the dwelling was in need of renovation and repair when she viewed it initially, however a lease was drawn up and she agreed to delay taking up occupation or paying any rent until such time as all renovations were complete. She did however give evidence that she had begun moving her belongings into the dwelling while the renovations were taking place.

She said that despite the fact that the renovations were incomplete, she moved into the dwelling because she had had an accident where her leg was injured and the house where she was staying had an upstairs bathroom. The dwelling had a downstairs bathroom which was suitable for her recovery.

She said that the Landlord told her that while renovations were taking place she did not have to make any rental payments.

She gave evidence that as a result of an accident she was unable to work and therefore make her rental payments however she said that the Respondent Landlord told her that her health was the priority and not to worry about the rent. She said that it was her intention to sublet the dwelling when it was fully renovated so that she could supplement her income and pay the Respondent Landlord Rent. She gave evidence that in 2011 she began making rental payments again and hoped to pay more than the rental amount of €900 to clear the backlog in rent arrears.

She gave evidence that a conflict arose between herself and the contractor engaged by the Respondent Landlord to renovate the dwelling. She said that the contractor had been promised by the Landlord that he and his family could live in the dwelling if she (the Tenant) moved out. She alleged that subsequently, the contractor engaged in a persistent campaign of intimidation and violence against her. She described an incident of a criminal nature which does not fall within the jurisdiction of the PRTB and she also described how the contractor and two associates threatened her personally and attempted to break down the entrance door of the dwelling with a claw hammer when she

was in the dwelling. She further alleged that the contractor deliberately damaged the dwelling, turned off her water at the mains and generally made living in the dwelling impossible.

The Appellant Tenant gave evidence that she told the Landlord about the alleged assault and he eventually, as a result of the intervention of Threshold and the Gardai, instructed the contractor to reinstate the entrance door to the dwelling.

She stated that she began looking for an alternative dwelling, however due to ill health, a slump in the rental market and the fact that she could not sublet the tenancy because the dwelling was in need of renovation she could not pay rent, however she carried out various repair and maintenance jobs within the dwelling herself.

(i) The Respondent tenant stated that an ideal situation from her perspective was if one of the following scenarios was undertaken by the Landlord: she continues to remain in the dwelling when she would source co-tenants with whose rental payments she could address back payments of overdue rent to the Landlord, or

(ii) she will vacate the dwelling with all debts cleared.

The Appellant Tenant also stated that if she were to leave the dwelling she would require compensation for all the trouble allegedly caused by the Landlord's contractor.

The Respondent Landlord' cases

Evidence of David McKay

With the exception of seven payments of €900 which were made by the Appellant Tenant during the entire tenancy from 2010 to date, the Respondent Landlord claimed that the Appellant has failed to make her rental payments as they fell due, accumulating in arrears due as at 1 September 2013 in the sum of €25,752.00. He said that the Tenant remains in the dwelling and that arrears continue to accumulate.

The Landlord rejected the assertion by the Tenant in her evidence that he had allowed the Tenant live rent free for any period with the exception of the first two months when renovations were being carried out. The Landlord gave evidence that he served the Notice of Termination on the 30th of October, 2013 through the offices of his solicitors, Messrs. McCartan & Burke terminating the tenancy on the basis of rent arrears.

The Respondent Landlord could not comment on the alleged anti-social behaviour of the contractor, however he did concede that the door to the dwelling was broken and he instructed its reinstatement.

6. Matters Agreed Between the Parties

1. Address of Dwelling: 15, Avondale Road, Phibsboro, Dublin 7
2. Tenancy commenced: December, 2010 (precise date unknown)
3. Deposit: €900 paid on commencement
4. Monthly rent: €900 p.m.
5. Tenant still in occupation.

7. Findings and Reasons:

Finding 1:

The Tribunal finds that the Landlord is in breach of his obligations under section 12 (i)(b) (i) and (ii) by reason of his failure to maintain the dwelling.

Reason:

The contractor engaged by the Landlord in protracted and unsatisfactory maintenance of the dwelling. In addition the door to the dwelling was knocked down and had to be reinstated while the tenant was in situ.

Finding 2:

The Tribunal finds that the Appellant Tenant is in breach of her obligations under Section 16 (a)(i) of the Act by failing to pay to the landlord or his or her authorised agent the rent provided for under the tenancy concerned on the date it falls due for payment

Reason:

The Tribunal is satisfied with regard to the significant arrears of rent. On the basis of the evidence presented on behalf of the Landlord, and on the oral testimony of the Appellant Tenant in which she conceded that she has failed to make her rental payments the Tribunal is satisfied that the accumulated rent arrears to the date of the tribunal amounts to €33,484.62 which is calculated as follows:

Arrears of Rent to 1 September 2013	€24,300.00
Bord Gais Energy Bill	€ 1,452.00
Arrears of Rent for Period September 2013 - May 2014 (8 months)	€ 7,200.00
Arrears of Rent to 18 June (date of hearing)	€ 532.62
(€900 X 12 months Divided by 365 days = 29.59 daily rate)	€33,484.62

Finding 3:

The Tribunal finds that the Tenant was not obliged to pay rent at the beginning of the Tenancy for two months.

Reason:

The Tribunal is satisfied that this was as a result of works being carried out at the property during this period, and on the basis of the rental payment schedule adduced in evidence to the Tribunal by the Respondent Landlord. This concession however was not an invitation from the Landlord to the Tenant to continue on in the tenancy of the dwelling rent free.

Finding 4:

The Notice of Termination served by the Landlord on the Tenant dated 30 October 2013, specifying a termination date of 29 November 2014 is valid.

Reason:

In seeking to terminate the tenancy, the Respondent Landlord has complied with his obligations under Section 34, 62, and 67 of the Act, wherein the Landlord requested payment of rent arrears from the Appellant Tenant on a number of occasions. This was

followed by a 14 day notice of arrears issued to the Appellant Tenant on 8 October 2013, and this was further followed by a valid notice of termination dated 30 October 2013, specifying a vacation date of 29 November 2014.

8. Determination:

Tribunal Reference TR0514-000619

In the matter of Susi Medeiros (Tenant) and David McKay (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on the 30th October, 2013 specifying a termination date of 29 November 2014 by the Respondent Landlord is valid.
2. The Appellant Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the dwelling on 29 November 2014.
3. The Appellant Tenant shall pay rent arrears in the sum of €33,484.62 to the Respondent Landlord within 365 days of the date of issue of the Order by the Board. Payment shall be made in 12 equal instalments of €2,790.38 commencing on the 28th day of the month immediately following the date of issue of the Order by the Board. The enforcement of this Order for such payment of €33,484.62 will be deferred and the sum owing reduced by the cumulative sum paid in the instalments made by the Appellant Tenant to the Respondent Landlord on each due date until such time as the total sum of €33,484.62 has been paid in full. For the avoidance of doubt, any default in the payment of an instalment shall act to cancel any further deferral and the balance due at the date of default of any such payment shall immediately become due and owing to the Respondent Landlord.
4. The Tenant shall also continue to pay any further rent outstanding from the 18 June, 2014, at the rate of €900 per month, or €29.59 per day 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 the above dwelling less the sum of €1,000 for breach of Landlord obligations for failure to allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling.
5. The Respondent Landlord shall refund the entirety of the security deposit of €900.00 to the Appellant Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Signed:



Gareth Robinson Chairperson

For and on behalf of the Tribunal.