

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000621 / Case Ref No: 0214-10353

Appellant Landlord:	Antoinette Slattery
Respondent Tenant:	Imuentinyan Isaac
Address of Rented Dwelling:	31 Seafield Court, Lower Main Street, Rush, Co. Dublin
Tribunal:	Finian Matthews (Chairperson) Gene Feighery, Vincent P. Martin
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	23 June 2014 at 2:30
Attendees:	Imuentinyan Isaac, Tribunal Respondent, Tenant, Antoinette Slattery, Tribunal Appellant, Landlord, Patrick Slattery, Witness Magnus Izedomwen, Witness
In Attendance:	Gwen Malone Stenographers Ciara Aman, Interpreter

1. Background:

On 10/02/2014 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 19/03/2014. The Adjudicator determined that:

The Respondent Landlords shall pay the total sum of €5,597.70 to the Applicant Tenant within 90 days of the date of issue of the Order being damages of €6,000.00 for the unlawful termination of the tenancy having deducted the sum of €402.30 for rent arrears, in respect of the tenancy of the dwelling at 31 Seafield Court, Lower Main Street, Rush, County Dublin.

Subsequently the following appeal was received:

Landlord : received on 06/05/2014. The grounds of the appeal: Breach of tenant obligations ; Approved by the Board on 09/05/2014

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, Gene Feighery, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Finian Matthews to be the chairperson of the Tribunal ("the Chairperson").

On 21/05/2014 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 23/06/2014 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:

A receipt for the purchase of a laptop computer from DID Electrical in the sum of €499.99 was submitted at the Tribunal by the Respondent Tenant and shown to the Appellant Landlord, who objected to its being entered in evidence on the basis that it showed that the laptop was purchased in 2010, whereas she said the tenant had told her that the laptop was purchased in 2009. The Tribunal, while noting the Landlord's objection and stating that this would be taken into consideration, accepted the receipt into evidence

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Landlord against a determination made following an adjudication held on 19 March, 2014 in the case of a dispute between the Landlord and the Respondent Tenant in respect of a tenancy at 31 Seafield Court, Lower Main Street, Rush, Co Dublin. He introduced the members of the Tribunal to the parties.

He asked the Parties present and their witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. 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 and understood the PRTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Landlord would be invited first to present her case, including the evidence of her Witness; this would be followed by an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case, followed by an opportunity for cross-examination by the

Appellant Landlord. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant Landlord and the Respondent Tenant 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.

All persons giving evidence to the Tribunal were then sworn in, as was the Interpreter.

5. Submissions of the Parties:

Appellant Landlords Case:

The Appellant Landlord told the Tribunal that she accepted that it had been wrong for her to enter the dwelling in November, 2013 and to make arrangements shortly thereafter to re-let the dwelling. She said that she panicked when she could not make contact with the tenant and added that she was in financial difficulty and was dependent on the rental income to pay the mortgage on the dwelling. She said that she had been in contact with the tenant on 8 October, 2013 and gave her verbal notice requiring the tenant to leave the dwelling. She outlined various efforts she had made to contact the tenant, but said she made no further contact until 15 November, 2013 when the tenant told her in a short phone call that she was back in Nigeria. She said that she texted the tenant to find out if the dwelling was empty, checked with the Gardai to see if the tenant had been deported, and also asked the local welfare office if they were aware of the position in relation to the tenant. She said that no one had been able to shed any light on this. She added that she knew nothing about the tenant's having suffered a family bereavement. She also referred to a requirement under the lease agreement whereby the dwelling was not to be left vacant for more than 30 days.

The Appellant Landlord also said that after she took possession of the dwelling on 25 November, 2013, she cleared the tenant's possessions out from the dwelling, packed them in black sacks and brought them to her own house for storage. She said that these possessions mainly consisted of clothes, bathroom items, delph, a Hoover and wash stand. She added that some items of a similar nature e.g. delph, glasses and pots had been left behind in the dwelling. She said that she purchased similar replacement items on behalf of the tenant, but that the tenant had subsequently refused to accept these. She said that there was no jewellery or a laptop computer among those possessions. She noted also that no report of any such missing items had ever been made to the Gardai.

In response to questions from the Respondent Tenant's legal representative, the Appellant Landlord said that the tenant had not contacted her to say that her father had died and that she did not hear about the tenant's bereavement until the tenant returned to Ireland. She accepted that the tenant was away for 21 days only and had no obligation to tell the Landlord that she was going to be away. She agreed that a new tenant had been installed within 7 days of her taking possession of the dwelling and said also that the locks on the dwelling had never been changed.

Respondent Tenants case

The Respondent Tenant told the Tribunal that she had contacted the Landlord to tell her that was going to Nigeria. She said that she also contacted the local welfare office, told them that she would be away until 30 November and was asked to make contact with the office again when she returned. She said that she travelled to Nigeria and saw some calls from the Landlord on her phone while she was there. She said that on her return to Ireland she stayed with a friend on her first night back and went to the dwelling where she found someone else was living. That person told her she had just moved into the dwelling. She said she then left the dwelling and called the Appellant Landlord who told her she was sorry but there was nothing she could do and that the tenant would have to go to Court. The Respondent Tenant said that she called the Gardai but they also said there was nothing they could do because her problem was a civil matter. She said that as a result of the Appellant Landlord's actions she found herself with nowhere to live.

The Respondent Tenant described how her belongings were returned to her when she found that her laptop computer and jewellery which she described as 'African Beads' were missing. She said that the African beads were of indeterminate monetary value but were a family heirloom which had been handed down from one generation to another and were of great sentimental value. She said that a separate necklace was also missing which the Landlord subsequently checked for, found in the dwelling and returned to the tenant. She said that this necklace and the African beads were different things.

The Respondent Tenant said that on the termination of the tenancy she had nowhere to live and was provided with hostel accommodation until about a month before the Tribunal hearing when she secured alternative accommodation. She said that she had a single room in hostels she stayed in and that the accommodation provided was of a bed and breakfast nature.

In response to questions on behalf of the Appellant Landlord, the tenant said that she had been in Ireland since 2008. She said also that it was her view that no one else could have taken her laptop or jewellery.

The Chair thanked both parties for attending and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the PRTB of that Determination.

6. Matters Agreed Between the Parties

Before inviting the parties to make their submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

- The tenancy commenced on 4 February, 2013
- The term of the tenancy specified in the initial letting agreement was 6 months
- A second letting agreement specifying a further term of 6 months duration was entered into between the parties with effect from 4 August, 2013
- The rent under the initial letting agreement was €800 per month, increased to €850 per month on the parties entering into a further letting agreement for a term of 6 months
- The Respondent Tenants paid a deposit of €800
- The deposit has been re-paid by the Appellant Landlord.

- The tenancy ended on 25 November, 2013, when the Appellant Landlord entered and took possession of the dwelling.
- The dwelling was re-let to another party on or around 1 December, 2013.

Both parties accepted that they were in agreement in relation to the foregoing matters.

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.

Finding 1: The Tribunal finds that the Appellant Landlord was in breach of her obligation under the Act to allow the Respondent Tenant to enjoy peaceful and exclusive occupation of the dwelling and finds that the tenancy was unlawfully terminated by the Appellant Landlord.

Reasons: Under the provisions of sub-section (1)(a) of section 12 of the Act, a landlord must allow the tenant of a dwelling to enjoy peaceful and exclusive occupation that dwelling. Under sub-section (1) of section 58 of the Act, a tenancy may not be terminated by a landlord or a tenant by means of a notice of forfeiture, a re-entry or any other process or procedure not provided for under the Act.

In her evidence to the Tribunal the Appellant Landlord stated that she entered the dwelling without invitation on 25 November, 2013 and took possession of the dwelling while the Respondent Tenant was away but remained lawfully entitled to the occupation of that dwelling.

Having regard to the manner in which the termination of the tenancy was effected the Tribunal is satisfied that, in contravention of the provisions of sub-section (1) of section 58 of the Act, the tenancy was terminated by means of a process other than one provided for under the Act.

Finding 2: The Tribunal finds that the Respondent Tenant is entitled to damages in the amount of €9,000 in respect of the unlawful termination of the tenancy.

Reasons: The Tribunal is satisfied, on the evidence before it, that the Respondent Tenant suffered distress, anxiety, loss, expense and inconvenience as a result of the unlawful termination of the tenancy by the Appellant Landlord. The Tribunal, having taken into account the manner in which the tenancy was terminated and over-all circumstances considers that the appropriate quantum of damages to award in the circumstances of this case is €9,000.

In exercise of its powers, therefore, under section sub-section (2)(d) of section 115 of the Act the Tribunal directs that damages in respect of the unlawful termination of the tenancy in the amount of €9,000 shall be paid by the Appellant Landlord to the Respondent Tenant.

In assessing the extent of the distress, anxiety, expense, loss and inconvenience suffered by the Respondent Tenant, for the purposes of determining the appropriate quantum of damages to be awarded, the Tribunal has taken into consideration the fact that the Respondent Tenant and her child were left homeless for a period of approximately six months, forcing them to stay in hostels providing bed and breakfast accommodation for that period until they found alternative accommodation.

Finding 3: The Tribunal finds that the Respondent Tenant is entitled to damages in the amount of €500 in respect of damage to her possessions following the unlawful termination of the tenancy.

Reason: The Tribunal finds the evidence of the Respondent Tenant that a laptop computer and jewellery were missing from her possessions when these were partially returned to her was inclusive. Nevertheless the Tribunal also accepts the Respondent Tenant's evidence that she suffered losses as a result of the manner in which her possessions were partly taken into the custody of the Appellant Landlord and partly left behind in the dwelling by the Appellant Landlord following which the dwelling was rented to another party. The Tribunal considers that the appropriate quantum of damages to award in respect of losses in relation to the Respondent Tenant's possessions is €500.

In exercise of its powers, therefore, under section sub-section (1)(d) of section 115 of the Act the Tribunal directs that damages in the amount of €500 shall be paid by the Appellant Landlord to the Respondent Tenant in respect of losses incurred by her as a result the manner in which her possessions were dealt with by the Appellant Landlord following the unlawful termination of her tenancy.

Finding 4: The Tribunal finds that the rent in respect of the dwelling was unlawfully increased by the Appellant Landlord from €800 per month to €850 per month with effect from 4 August, 2013

Reason: Notwithstanding the fact that the parties entered into a further fixed term lease of 6 months duration with effect from 4 August, 2013, a review of the rent under the tenancy of the dwelling could not, by virtue of sub-section (1)(b) of section 20 of the Act, could not occur in the period of 12 months beginning on the commencement of the tenancy. In this case the tenancy commenced on 4 February, 2013. Under sub-section (2) of section 20 the foregoing provision has effect notwithstanding any provision to the contrary in the lease or tenancy agreement concerned.

In accordance with the foregoing statutory provisions the rent which the Respondent Tenant was required to pay in respect of the months for August, September and October, 2013 remained at the €800 per month set at the commencement of the tenancy, and the tenant is accordingly entitled to a refund of €50 in respect of the increased rent of €850 per month which the Appellant Landlord purported to charge for each of those three months.

Finding 5: The Tribunal finds that the Appellant Tenant was in breach of her obligations under the Act in relation to the payment of rent.

Reasons: Under sub-section (a)(i) of section 16 of the Act, a tenant must pay to the landlord the rent provided for under the tenancy concerned on the date it falls due for payment. In failing to ensure that her rent was paid when it became due on 25 November, 2013 the Appellant Tenant was in breach of the foregoing requirement.

Evidence before the Tribunal showed that the rent was paid in full up to 3 November, 2013. Rent due and owing for the period from 4 November, 2013 to 24 November, 2013 (the day before the tenancy was unlawfully terminated) is calculated at €552.30 (i.e. 21 days at a rent of €26.30 per day, which daily rent is calculated by multiplying the monthly rent of €800 by 12 and dividing the result by 365)

8. Determination:

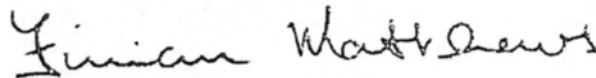
Tribunal Reference TR0514-000621

In the matter of antoinette slattery (Landlord) and Imuentinyan Isaac (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the total sum of €9,097.70 to the Respondent Tenant within 21 days of the date of issue of the Order by the Board, being damages of €9,000 for the unlawful termination of the tenancy plus damages of €500 for losses incurred by the Respondent Tenant in respect of her possessions plus €150 in overpaid rent, having deducted the sum of €552.30 for rent arrears, in respect of the tenancy of the dwelling at 31, Seafeld Court, Lower Main Street, Rush, Co. Dublin.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 04/07/2014.

Signed:



Finian Matthews Chairperson

For and on behalf of the Tribunal.