

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000625 / Case Ref No: 1213-09469

Appellant Landlord:	Frances O'Connor
Respondent Third Party:	Sean Dillon
Address of Rented Dwelling:	46 Avenue 3, Yellowbatter, Drogheda , Louth
Tribunal:	Vincent P. Martin (Chairperson) Gene Feighery, Finian Matthews
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	23 June 2014 at 10:30
Attendees:	For the Appellant Landlords: Frances O' Connor (Appellant Landlord) Madeline Brady (Agent, MB Rentals) Declan Farrell (Agent, MB Rentals) For Respondent Third Party: Sean Dillon (Respondent Third Party) Suzanne Caffrey Dinah Caffrey Ronan Caffrey Tenant residing in the dwelling: Kathleen Mongan Gwen Malone Stenographers
In Attendance:	

1. Background:

On 16/12/2013 the Third Party 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 11/03/2014. The Adjudicator determined that:

The Applicant Third Party's application, regarding the Respondent Landlord's breach of her duty owed to certain third parties, in failing to enforce tenant's obligations, in respect of the tenancy of the dwelling at 46, Avenue 3, Yellowbatter, Drogheda, County Louth, is upheld.

The Respondent Landlord shall pay the total sum of €4000.00 to the Applicant Third Party, within 56 days of the date of issue of the Determination Order, being damages for the Respondent Landlord's breach of duty owed to certain third parties, in failing to enforce tenant's obligations, in respect of the tenancy of the above dwelling.

Subsequently the following appeal was received:

Landlord: received on 06/05/2014. The grounds of the appeal: breach of landlord obligations, Invalid Notice of termination; Approved by the Board on 09/05/2014

The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, Gene Feighery, Finian Matthews as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Vincent P. Martin 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 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:

- None

4. Procedure:

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. He introduced the members of the Tribunal to the Parties. 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'.

He 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 (the Appellant Landlord) would be invited to present her case first; that there would be an opportunity for a cross-examination by the Respondent Third Party; that the Respondent Third Party would then be invited to present his case and that an opportunity would then follow for cross-examination by the Appellant Landlord. He also said that at the end of the hearing, both the Appellant Landlord and the Respondent Third Party would be given the opportunity to summarise their evidence and/or make final submissions.

He said that members of the Tribunal might ask questions of both Parties from time to time. He also stated that the Parties must follow any instructions given by the Chairperson. He directed that neither Party should interrupt the other when oral testimony was being given. He stated that all evidence would be taken on oath and he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable on conviction by a fine of €4,000 and/or up to 6 months imprisonment or both.

The Chairperson stated that an official stenographer present would record the evidence of the Tribunal hearing and that a transcript of the proceedings would be produced based on that audio recording. It was pointed out to the Parties herein that it was the policy of the PRTB to have an official stenographer present at all tribunal hearings and the said purpose of same was to furnish a transcript of the proceedings to the tribunal members in

order to assist them in their deliberations as the transcript gave an accurate record of what was said by all persons during the course of the hearing. He informed the Parties that if they wished, they could apply to the PRTB to be furnished with a copy of the said transcript for a fee to be agreed with the PRTB. He 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 [reference section 123(3) of the Act].

The Chairperson said that he would be willing to clarify any queries in relation to the procedures then or at any stage during the course of the Tribunal. He asked the Parties if they had any queries about the procedure. There were none.

The persons who indicated their intention to give evidence to the Tribunal were then sworn in.

5. Submissions of the Parties:

The Appellant Landlord's Case:

Evidence of Frances O' Connor (Appellant Landlord)

She stated that she was unavoidably absent for the adjudication hearing. She submitted that she had not failed in her duties as a landlord and that it was unfair that both parties herein were paying the price for anti-social behaviour.

However she accepted that the Respondent Third Party and others who resided in a house adjoining the 3 bed terraced dwelling which is the subject matter of this dispute did suffer as result of the anti-social behaviour of a person who started to reside in the dwelling with the tenant and added that she realised that they had genuine fears.

She stated that she received a mobile phone text message from Suzanne Caffrey on 10 December 2013, who resided in the next door residence (along with the Respondent Third Party), complaining about very serious anti-social behaviour resulting from the conduct of a male person who commenced residing in the rented dwelling. In response to the said text received, she submitted that she moved promptly by formally applying to the PRTB for dispute resolution on 16 December 2013, seeking, inter alia, an Order that her tenant vacate the dwelling. She stated that she did everything possible as soon as she was made aware of the problem. She stated that in relation to her separate PRTB case (dispute) against the tenant which was heard by an Adjudicator on the 11th March 2014, she had only in the past couple of days received the Determination of same from the PRTB which, inter alia, deemed her Notice of Termination served on the tenant to be invalid.

In total she confirmed that 4 notices of termination were served on the tenant, dated the 23rd July 2013, the 9th August 2013 and the 6th February 2014 and again on the 29 April 2014. She conceded that the first 3 said notices (28 day notices) were, for various reasons, defective and invalid, and that she intends to take appropriate action re: the said fourth notice which is a 7 day notice.

She did not dispute the fact that the anti-social behaviour was first brought to the attention of her Agent in late July 2013.

In reply to a question raised by the Tribunal she stated that she was personally unaware of the problem of anti-social behaviour until she was informed by the said text (10th

December 2013) from Suzanne Caffrey and that prior to this her Agent Madeline Brady was dealing with the issue. She accepted the matter was very serious and was not disputing the on-going nature and authenticity of the complaints made by the Respondent Third Party.

Evidence of Madeline Brady (MB Rentals, Agent for the Appellant Landlord)

She stated that she is the Agent for the Appellant Landlord. She stated that the Appellant Landlord's tenant Kathleen Mongan and her children commenced residing at the dwelling on the 23rd May 2013 at monthly rental payment of €600.00 with €600.00 deposit paid. She stated that the trouble started about 2 months later in July 2013 and confirmed that she received a complaint (by way of a phone communication) from Suzanne Caffrey on the 23rd of the July 2013. She stated that at that time the main complaint of anti-social behaviour concerned aggressive and abusive behaviour, fighting, loud noise and alcohol related behaviour outside the dwelling and next door to where the Third Party resided.

She conceded that the content of the first notice of termination served on the tenant may have fallen short of the legal requirements under the Act but that it was deliberately very brief and easy to follow, as she wanted to make it easier for the residents to understand and ensure that the written communication was fully understood.

She accepted that she did not initially inform the Appellant Landlord about the problem because it was beginning 'to get very heated' with the tenant and that she was hoping to defuse the problem. She stated that usually when a tenant is served with a notice of termination, she/he vacates the dwelling but confirmed that in this case the tenant continues to reside in the dwelling. She and all parties present agreed that the problem of anti-social behaviour was not caused directly by the tenant herself but by a person who took up residency in the dwelling. She concurred with the oral testimony of the Appellant Landlord confirming that in total 4 notices of termination were served on the said tenant.

Evidence of Declan Farrell (MB Rentals, Agent for the Appellant Landlord)

He stated that he worked for MB Rentals and assisted Agent, Madeleine Brady re: the tenancy of the dwelling. He concurred with the evidence of Madeline Brady. He submitted that the Agents responded to a serious issue as best as they could in the circumstances but accepted that, 'in hindsight perhaps we should have informed the Appellant Landlord a bit earlier'. He submitted that in his opinion serving the notices of termination, 'added fuel to the fire'.

The Respondent Third Party's Case:

Evidence of Sean Dillon (Respondent Third Party)

He stated that a tenant residing in the dwelling has been engaging in anti-social behaviour since July 2013. He stated that Madeline Brady of MB Rentals was contacted soon after the first incident of anti-social behaviour arose but that she failed to resolve the problem and that things got worse since first making a complaint. He stated that the problem arose after a male person began residing in the dwelling. He alleged that numerous and varied incidents of anti-social behaviour carried out by a person residing in the dwelling had occurred including (non-exhaustive list):

- Being repeatedly threatened and harassed
- Weapons, including a slash-hook, being brandished in a threatening way immediately outside their home

- Attempting to enter their home in a very aggressive and violent way
- Breaking a window in their home
- Abusive, aggressive language and drunken behaviour
- He alleged he was assaulted by a person residing in the dwelling
- Threatening to burn their home
- Physically pulled out of their car when they returned from the cinema

He stated that he and his partner have suffered on-going upset, stress, loss and inconvenience. He had to install CCTV security cameras around the house for safety and security reasons and he felt compelled to call the Gardaí on a number of occasions. He also stated that their car parked outside their home was damaged but they did not witness same so could not say with certainty who damaged it.

Evidence of Suzanne Caffrey (witness for the Respondent Third Party)

She stated that she had been residing in their home since the onset of the problem and that the Appellant Landlord's Agent completely failed to tackle the problem but accepted that the Appellant Landlord herself did her best since first being made directly aware of the problem (December 2013). She stated that the gravity of the problem caused them at one stage to leave their home and stay with her sister for an 8/9-week period.

She stated that she was also threatened with a machete type sword. As a result of the matter going unresolved and the resulting upset and anxiety which it caused, she had to attend a medical doctor.

She stated that she worked as a full time shop and was often afraid to stay in the dwelling on her own and on occasion she felt it necessary to sleep at night in her car outside her place of work. She stated that on one occasion she had to be sent home from work because she was exhausted and experienced a panic attack fearing that the male person whom she alleged was engaging in serious anti-social behaviour at her home would come into the said shop.

Evidence of Ronan Caffrey (witness for the Respondent Third Party)

He stated that he was the grandfather of Suzanne Caffrey and was, 'very upset because his eldest granddaughter was getting untold hassle'. He stated that he resided only a couple of minutes drive away from their home. He stated that his granddaughter had informed him on numerous occasions about the problem and was aware of the resulting annoyance and upset that this repeated harassment was causing his granddaughter and her partner.

Evidence of Dinah Caffrey (witness for the Respondent Third Party)

She stated that she was grandmother of Suzanne Caffrey (partner of the Respondent Third Party) and concurred with the evidence given by and on behalf of the Respondent Third Party.

The Chairperson enquired from the tenant present (Kathleen Mongan) whether or not she wished to give evidence indicating that she was welcome to give sworn oral testimony if she so wished. Kathleen Mongan he did not accept this invitation.

Both parties present indicated to the Tribunal that Kathleen Mongan did not personally engage in anti-social behaviour.

The Chairperson advised the persons present that following the hearing the Tribunal will prepare a report and will incorporate the agreement that the Parties reached in the report's Determination and that the Tribunal will notify the PRTB of that Determination.

6. Matters Agreed Between the Parties

None

7. Findings and Reasons:

Having considered all of the documentation before it and the evidence presented to it, the Tribunal's findings and reasons therefore are set out hereunder:

1. The Tribunal finds that a person residing in the dwelling (deemed to be, 'an other occupier of' the dwelling) did engage in varied and numerous serious episodes of anti-social behaviour. In accordance with Section 15(1) of the Act, a landlord owes to each person, who could be potentially affected, for example, by anti-social behaviour, a duty to enforce the obligations of the tenant under the tenancy. Pursuant to Section 16(h) a tenant has an obligation not to 'behave within the dwelling, or vicinity of it, in a way that is anti-social or allow other occupiers of, or visitors to the dwelling to behave within it, or in the vicinity of it, in such a way'. The Tribunal finds that the Appellant Landlord and/or the persons who acted at all material times as the Appellant Landlord's Agent failed to enforce the tenants' obligations and breached her duty of care to her neighbours in failing to so do

2. Under Section 17(1) of the Act, to behave in a way which is anti-social is defined, inter alia, as to

(b) engage in behaviour that causes or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity and, without prejudice to the generality of the foregoing, includes violence, intimidation, coercion, harassment or obstruction of, or threats to, any such person,

(c) engage, persistently, in behaviour that prevents or interferes with the peaceful occupation-

The Tribunal finds, on the balance of probabilities, that the actions of the Tenant, as alleged, satisfy the definition of anti-social behaviour contained under both Section 17(1)(b) and 17(1)(c) of the Act. In the circumstances of this case, a 7-day notice and not a 28 notice (incidentally which was unsuccessfully attempted on 3 occasions) would have been appropriate.

3. The Tribunal finds that the degree and persistent nature and type of the anti-social behaviour to be very serious. The Tribunal finds that the Appellant Landlord and/or Agent did respond to the said problem but that their response and actions taken were inadequate and inappropriate. The said inadequate and inappropriate response occurred between the period of the 25th July 2013 (when first informed about the problem) and the 16th December 2013 when the Appellant Landlord applied to the PRTB dispute resolution service, seeking, inter alia, an order terminating the said tenancy. The said response ought to have been appropriately professional and/or effective and/or competent, prioritising this serious matter as urgent. Therefore the Tribunal awards the Respondent

Third Party damages in the sum of €3,500.00 which said award takes account of the upset, stress and inconvenience suffered by the Respondent Third Party.

8. Determination:

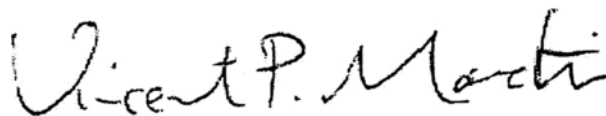
Tribunal Reference TR0514-000625

In the matter of Frances O'Connor (Landlord) and Sean Dillon (Third Party) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Respondent Third Party's application, regarding the Appellant Landlord's breach of her duty owed to certain third parties, in failing to enforce tenant's obligations in respect of the tenancy of the dwelling at 46, Avenue 3, Yellowbatter, Drogheda, County Louth is upheld.
2. The Appellant Landlord shall pay the total sum of €3,500.00 to the Respondent Third Party within 28 days of the date of the issue of the Determination Order, being damages for the Appellant Landlord's breach of duty owed to certain third parties in failing to enforce tenant's obligations in respect of the tenancy of the said dwelling.

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

Signed:



Vincent P. Martin Chairperson

For and on behalf of the Tribunal.