

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0514-000627 / Case Ref No: 1013-08502**

<b>Appellant Landlord:</b>	Paul Boland
<b>Respondent Tenant:</b>	Michael McKay
<b>Address of Rented Dwelling:</b>	The Lodge, Monaquill House, Nenagh , Co Tipperary.
<b>Tribunal:</b>	John Tiernan (Chairperson) Vincent P. Martin, Thomas Reilly
<b>Venue:</b>	Exhibition Area, Limerick City Council, City Hall, Merchant's Quay, Limerick
<b>Date &amp; time of Hearing:</b>	18 November 2014 at 11:00
<b>Attendees:</b>	Paul Boland, Appellant, Landlord Gerard Kennedy, Witness, Landlord William Delahunty, Witness, Landlord Michael McKay, Respondent, Tenant Connolly, Witness, Tenant Garda Conor Gleeson, Witness
<b>In Attendance:</b>	Gwen Malone Stenographers

**1. Background:**

On 22/10/2013 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 03/03/2014. The Adjudicator determined that;

1. The notice of termination dated 18 October 2013, served by the respondent landlord on the applicant tenant, is invalid in respect of the tenancy of the dwelling at Monaquill House, Nenagh, Co. Tipperary
2. The Respondent Landlord shall pay the total sum of €1000.00 to the Applicant tenant within 28 days of the date of issue of the Determination Order, by the board, being damages, for his repeated breaches of the applicant tenant's right to peaceful and exclusive occupation of the property, in respect of the tenancy of the above dwelling.

Subsequently the following appeal was received from the Landlord on 07/05/2014. The grounds of the appeal being Damage in excess of normal wear and tear and Other was aproved by the Board on 16/05/2014.

The PRTB constituted a Tenancy Tribunal and appointed John Tiernan, Vincent P. Martin, Thomas Reilly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Tiernan 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 18/11/2014 the Tribunal convened a hearing at Exhibition Area, Limerick City Council, City Hall, Merchant's Quay, Limerick.

## **2. Documents Submitted Prior to the Hearing Included:**

PRTB File

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

1. Hand drawn sketch property layout map submitted on the part of the Appellant Landlord.
2. A set of photographs of the Dwelling submitted on the part of the Respondent Tenant.

## **4. Procedure:**

The Chairperson asked the Parties present and their witnesses 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". He explained the procedure that would be followed; that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as was possible. He said that members of the Tribunal might ask questions of both Parties from time to time.

The Chairperson explained to the Parties that in the event that agreement is reached between them the terms of any such agreement can be incorporated in to a determination of the Tribunal and thus become enforceable through the Courts.

He stressed that all evidence would be taken on Oath or 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 up to €4,000 or up to 6 months imprisonment or both.

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 enforced by either of the Parties or in some cases by the Board of the PRTB at its discretion. He also advised the parties that the Tribunal process was the final step in the dispute resolution process unless appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

He asked the Parties if they had any queries about the procedure. There were none.

The parties intending to give evidence were sworn in.

On the second day of the hearing the Chairperson reminded the participants in attendance and intending to give evidence that they were still under oath/affirmation.

## **5. Submissions of the Parties:**

Preamble: This case involves the tenancy of a 19th century substantial country period house, an adjacent separate apartment, a courtyard and associated sheds along with c.20 acres of land on the basis of a 29 month fixed term tenancy agreement. The Appellant Landlord stated that he had proffered a hurriedly prepared three page tenancy agreement document to the Respondent Tenant at the Airport on the day that he himself was leaving Ireland to reside in Canada. He attributed implied terms over and above those recorded in the written agreement to the contract which he said included shared access on his part to sheds and personal property and also attributed an interpretation of the stated monetary value of €500 in the written document to a higher value which required a further payment in the sum of €2,500 every 6 months. He stressed that he was relying upon honour and trust to uphold the genuine intention of the agreement between the Parties. The Respondent Tenant said that he rejected any inference of the said implied terms.

In the course of its deliberations the Tribunal also considered the matter of jurisdiction to hear a landlord and tenant dispute having noted that there were references in the case file to horse husbandry and dog breeding at the property.

At the commencement of the Tribunal hearing the Appellant Landlord confirmed as had been apparent in the appeal documentation that he was not contesting the finding that his Notice of Termination dated 17th October 2013 was invalid.

Summary of the Appellant Landlord's Case:

The Appellant Landlord stated that following an advertisement he had placed in the Irish Field newspaper he leased the dwelling for a fixed term 29 month period to the Respondent Tenant commencing on 14th May 2013. He said that the rent was agreed to be €900 per month with an initial down payment of €2,500 in advance for each 6 months period and follow on payments of €500 per month on the 14th day of each month. When it was pointed out by the Tribunal to the Appellant Landlord that the €2,500 would yield a monthly rent of €916.67 and not €900 he did not explain the discrepancy. He contended that there was no security deposit in the said agreement.

He stated that apart from the initial down payment of €2,500 for the first 6 months of the tenancy the Respondent Tenant has been paying only €500 per month for this substantial rural country house and that the contract agreed between the Parties also included that €2,500 or €2,400 was also due every 6 months. The Appellant Tenant said that notwithstanding the absence of payment of the six monthly moiety of €2,500 the Respondent Tenant is in rent arrears as of the first Tribunal hearing date of 25th September 2014 for 5 months from May through to October 2014 inclusive being €2,500.

He adduced evidence that his second named Witness (Mr William Delahunty) had been a tenant residing in the adjacent one bed-roomed apartment and had been paying a monthly rent of €425 which included use of just 6 acres of the land was evidence that the interpretation of the signed agreement being for a monthly rent of just €500 was not reflective of the market rent.

The Appellant Landlord said that the relationship between the Parties began to deteriorate after he returned to Ireland on 15th October 2013 when he visited the dwelling. He said that when he arrived back having first emailed the Respondent Tenant that he would arrive in the afternoon of that day he found that the gates to the dwelling at

the main road were locked. He said that having climbed over the gate he was admitted to the dwelling by the Respondent Tenant's partner's mother. He said that in the course of that visit he noted that the wallpaper in the dining room, hall and landing had been painted over. He said that he had received a verbal estimate over the phone from a painter/wallpaper hanger that to rectify the matter would cost €2,700.

The Appellant Landlord said that many of his personal items were stowed in the storage area above the separate apartment which was not included in the contract for letting. Furthermore he said that his car and tractor were in the sheds and he needed access to them. This he said was testament that the letting contract included for his use of these areas on a shared basis with the Respondent Tenant.

The Appellant Landlord gave verbal testimony in regard to a number of incidents when he was prevented from accessing the sheds and yard area of the dwelling by the Respondent Tenant and or his partner. He described that the Gardai were called to preserve the peace on two occasions. He gave evidence that ultimately, access was arranged for inspection through their respective solicitors on 26th January 2014 and further access for maintenance purposes to rebuild a stone wall and to enable clean up of windfall branches and other debris in May 2014.

The Appellant Landlord gave evidence of a series of items with associated values including tools, equipment, timber doors and windows, an antique range, tram wheels, a gas cooker, a 20 gallon milk can, glass bricks, a roll of black windbreaker, fittings for sliding doors, part used cans of paint, a slab of oak,  $\frac{3}{4}$  of a bag of fertiliser and many other items that were in the sheds area of the dwelling when the tenancy commenced but were missing when he returned from Canada. The Appellant Landlord conceded that he had not made an inventory of the items for inclusion in the tenancy agreement because he had not had time. He said that he believed many of these items were placed in a skip and discarded by the Respondent Tenant.

The Appellant Landlord described how an electrified timber post and wire fence along the driveway to the dwelling was removed and further described that a granite stone pier on the driveway was broken and knocked. He said that he had received an estimate of €6.50 per linear metre for the re-erection of a replacement fence and that a new pair of matching piers would cost €1,050 to purchase and re-erect.

The first named Witness on behalf of the Appellant Landlord (Mr Gerard Kennedy) gave evidence of the condition of the dwelling prior to the commencement of the tenancy and prior to the departure of the Appellant Landlord to Canada. He described the rush to get the dwelling in order and remove the Appellant Landlord's belongings in to storage prior to his departure. He said that the pier on the driveway was intact as they left the property on the day the tenancy commenced.

The second named Witness on behalf of the Appellant Landlord gave evidence of his tenancy in the apartment and of his familiarity with the property. He said that he had maintained the electric fence along the driveway and that it comprised of 3 inch by 3 inch timber stakes with two strands of electrified wire. He said that he had been paying a monthly rent of €425 for the apartment, a 6 or 6.5 acre field adjacent to the driveway and the use of stables. He said that his tenancy terminated in September 2012.

The Appellant Landlord said that he never received any letter as alleged by the Respondent Tenant's partner from the Respondent Tenant's solicitor or from the

Respondent Tenant regarding alleged necessary repairs to the un-surfaced gravel driveway at the dwelling and implying that rent would be withheld in lieu.

#### Summary of the Respondent Tenant's Case:

The Respondent Tenant said that the terms of the tenancy agreement were accurately reflected in the written document which was before the Tribunal. He stated that the rent was agreed at €500 per month and that the figure of €2,500 which was described in the document as a security deposit. He submitted that the Appellant Landlord was an Auctioneer/Estate Agent and knew how to prepare an agreement of letting. At the time of negotiation with the Appellant Landlord he said that the initial request was for a monthly rent of €1,000 but that when the Appellant Landlord told him that other interested Parties dropped out he offered €500 per month and promised that he would do a good job in looking after the property which he said the Appellant Landlord accepted.

The Respondent Tenant said that he had no difficulty with the Appellant Landlord gaining access to his car and tractor that were left at the dwelling subject to the normal arrangement of reasonable notification and agreed consent from him in advance. However he denied that there was any agreement in relation to shared access to the sheds, storage above the apartment and yard area.

The Respondent Tenants partner gave evidence that when she requested permission to carry out painting works within the dwelling she had not specifically sought nor received permission to paint over the wallpaper in the dining room, hall and landing. She disputed the estimated repair cost in the sum of €2,700 of any such work as submitted on the part of the Appellant Landlord.

The Respondent Tenant said that he had replaced the lock on the gateway because the original one was broken. He said that it had been his intention to provide the Appellant Landlord with a key to the new lock. He said that he had not advised the Appellant Landlord nor sought consent in advance in respect of this change of lock.

The Respondent Tenant and his partner both gave evidence of alleged unsanctioned intrusions on the part of the Appellant Landlord to the yard and sheds area of the dwelling. It was stated that on 30th November 2013 when the Respondent Tenant and his partner were away the Appellant Landlord had entered the property and removed timber from a shed. The Respondent Tenant's partner gave evidence of what she perceived as threatening and frightening behaviour on the part of the Appellant Landlord and that her teenage daughter was also frightened when on one occasion on 4th December 2013 he had knocked on the sitting-room window. The Respondent Tenant's partner alleged that in another incident in January 2014 an assault took place regarding which a formal complaint has been lodged with the Garda Authorities and the issue is now a matter for the Director for Public Prosecutions. She gave evidence that access was arranged for inspection on 26th January 2014.

The Respondent Tenant said that he was seeking recompense for necessary maintenance works he had carried out to the un-surfaced gravel driveway at the dwelling in the sum of €1,588. The Respondent Tenant's partner said that their solicitor had written to the Appellant Landlord about this matter on 27th November 2013 and that in more recent months they had placed the letter in the Appellant Landlord's letter box based upon the advice from their solicitor advising that they would withhold rent in lieu of the said driveway repairs. She said that when he did not object to the proposal they carried out the works themselves. She gave further evidence that they had not paid the €500

monthly rent that fell due in the four months of June through September 2014 inclusive and that this had been withheld with the advice of their solicitor in lieu of the cost of the necessary works incurred on the driveway. When given time on Day 1 of the Tribunal hearing to produce a copy of this letter which the Respondent Tenant believed they had with them she was unable to adduce same and did not do so on Day 2 either.

Summary of Evidence of Garda Gleeson:

The member of An Garda Síochána in attendance gave evidence that he was called to the dwelling on 2nd November 2013 by the Respondent Tenant's partner when she was locked out of the dwelling at the main gateway. This he said had happened due to the placement of a new lock on the gateway by the Appellant Landlord. He said that he spoke to both Parties in an effort to seek a resolution of matters and that as soon as requested by him the Appellant Landlord had reopened the gate. He related that there was a further incident when two other members of An Garda Síochána were called to attend at the dwelling on 7th December 2013 to alleviate a situation. He gave evidence that there are two allegations of assault one made by the Respondent Tenant's partner and the other by her daughter against the Appellant Landlord with the Garda Authorities arising from incidents relating to the tenancy of the dwelling.

## **6. Matters Agreed Between the Parties**

- 1) The tenancy commenced on 14th May 2013.
- 2) The Respondent Tenant is still in residence.
- 3) The Appellant Landlord accepts that the Notice of Termination issued on 17th October 2013 is invalid.
- 4) That the dwelling the subject of the tenancy is a two storey, 4 bedroom house that was constructed circa. 1895.

## **7. Findings and Reasons:**

6. Findings of the Tribunal and Reasons Therefor:

Based upon the evidence provided and based on the balance of probabilities the Tribunal has made the following findings:

Finding No.1

The Tribunal finds that it has jurisdiction to determine the case.

Reason:

The Tribunal has had regard to s.4(1) of the Act of 2004 wherein the definition of 'dwelling' includes 'a property let for rent as a self contained residential unit and includes any building or part of a building used as a dwelling and any out office, yard, garden or other land appurtenant.....'

The Tribunal has also considered inter alia the provisions of s.3(1) & s.3(2) of the Act of 2004 wherein it is provided that the Act applies to every dwelling the subject of a tenancy and to the exclusion of a dwelling used wholly or partly for the purpose of carrying on a business such that the occupier could, after the tenancy has lasted 5 years, make an application under section 13(1)(a) of the Landlord and Tenant (Amendment) Act 1980 in

respect of it. Section 13(1)(a) of the Landlord and Tenant Act 1980 states: '13-(1) This Part applies to a tenement at any time if - (a) the tenement was, during the whole of the period of three years ending at that time, continuously in the occupation of the person who was the tenant immediately before that time or of his predecessors in title and bona fide used wholly or partly for the purpose of carrying on a business,' and if such conditions exist the tenant shall be entitled to a new tenancy under s. 16 the said Act of 1980.

Having considered the evidence of the Parties and in particular the evidence of the Respondent Tenant and of his partner, the Tribunal considers that any activity carried out at the dwelling and associated lands in relation to keeping of horses is related to sport horses and hobby activity and is not as part of a business venture. The Tribunal also further accepts the evidence of the Respondent Tenant that any activity in relation to breeding or keeping of dogs is not a bona fide business venture but rather incidental to the use of the dwelling as a home.

#### Finding No.2

The Tribunal finds that the monthly rent payable in respect of the tenancy of the dwelling at Monaquill, Nenagh, Co. Tipperary is €500.

#### Reason:

The Tribunal has had regard to the documentary evidence and oral testimony of the Parties and accepts the testimony of the Respondent Tenant as supported by the contents of the written tenancy agreement that the monthly rent due in respect of the tenancy is €500. The Tribunal also notes the assertion of the Appellant Landlord that the written document was prepared hurriedly and his acceptance that it was not adequate in his view with hindsight to reflect the intentions of the parties. The Tribunal is also mindful of the pleading on the part of the Appellant Landlord that honour between the Parties should take in to account his stated implied terms. Nevertheless, particularly bearing in mind the conflicts of evidence in the case, the Tribunal considers that the weight of evidence in respect of the rent payable in the tenancy is €500 per month. Furthermore the Tribunal accepts that the monthly rent reflected that the Respondent Tenant would adopt a caretaker role in respect of the property.

#### Finding No.3

The Tribunal finds that the Respondent Tenant is in rent arrears in the sum of €2,000 as of the Day 2 of the Tribunal hearing on 18th November 2014 and this sum is due and owing to the Appellant Landlord.

#### Reason:

It was agreed between the Parties on Day 2 of the hearing that monies had been paid in the interim since Day 1 of the hearing in respect of October 2014 and November 2014. The sum of €2,000 comprises of rent that fell due on the 14th day of the months of June, July, August and September all in 2014 which on the evidence of the Respondent Tenant and of his partner was withheld in lieu of payment for repair works on the driveway at the dwelling. Finding No.12 below is relevant to the withholding of rent and the repairs to the driveway.

#### Finding No.4

The Tribunal finds that the sum of €2,500 paid by the Respondent Tenant to the Appellant Landlord is a refundable security deposit and did not constitute payment of rent.

Reason:

The Tribunal has had regard to the written tenancy agreement signed between the Parties and in particular to the words:

‘Rent and Booking Deposit €500 per month plus deposit 2,500e’

The Tribunal accepts the evidence of the Respondent Tenant that the said sum was paid as a security deposit and was not paid as part rent in advance for 6 months at the commencement of the tenancy.

#### Finding No.5

The Tribunal finds that the Respondent Tenant has been in breach of his obligations under the provisions Section 16(n) of the Act of 2004 in having failed to notify the Appellant Landlord in writing of the identity of a person residing ordinarily for the time being at the dwelling for a period without informing the Appellant Landlord. The Tribunal makes no award of damages in regard to this breach.

Reason:

The Respondent Tenant conceded that his partner's teenage son resided ordinarily at the dwelling for a period without having been previously notified to the Appellant Landlord.

Having regard to the accommodation at the dwelling and to the absence of any relevant stated material consequences on the part of the Appellant Landlord the Tribunal considers that no damages in consequence of this breach arise.

#### Finding No.6

The Tribunal finds that the Appellant Landlord's claim for losses and damages in respect of items of property missing or removed from the dwelling and its surrounds is not upheld.

Reason:

The Appellant Landlord did not present sufficient evidence of the existence and presence of the items in the dwelling and its surrounds at the material time at the commencement of the tenancy. He did not prepare an inventory of the said items and ensure that the Respondent Tenant was aware of each such item and of any responsibility he was to undertake in regard to their safe keeping and return. Whereas the Respondent Tenant did concede that some timber and plastic were disposed of and that some carpet samples were damaged during the course of the tenancy the Appellant Landlord did not adduce sufficient evidence to justify the award of any damages in respect of these items.

#### Finding No.7

The Tribunal finds that the Respondent Tenant has removed an electrified fence comprised of timber stakes and 2 strands of wire from the driveway of the dwelling without the consent of the Appellant Landlord. Prior to the termination of the tenancy the Respondent Tenant shall erect a fence comprising of 75mm X 75mm X 2.65 metre long pointed and treated timber oak stakes set at 3.0 metre centres and with two strands of 2.5mm diameter galvanised wire to comply with I.S EN 10244-2 (Galvanised to Class A or B utilising Galfan alloy) along the left hand side of the driveway from the main entrance gates to the small paddock at the front of the dwelling-house for a distance of approximately 250 metres or thereabouts. All workmanship shall will comply with the



provisions of Department of Agriculture, Food and the Marine Minimum Specification for Farm Fencing Ref; S 148 of 2014.

Alternatively the Respondent Tenant shall compensate the Appellant Landlord in the sum of €1,250 in lieu of the replacement of said fence on vacation of the dwelling.

Reason:

The Tribunal is satisfied on the basis of the evidence adduced at the hearing that the Respondent Tenant removed a fence from the above location and that he has a responsibility to replace same or to compensate the Appellant Landlord in lieu of same.

The Respondent Tenant said in the course of his evidence that he removed the fence and he said that he would consent to an order that required him to replace it with the same materials or an equivalent fence prior to vacation of the tenancy. Notwithstanding this the tribunal considers that it would be impractical to endeavour to re-erect the fence utilising to original materials and accordingly has specified that any replacement materials be new.

#### Finding No.8

The Tribunal finds that the Respondent Tenant is responsible for the replacement of the stone pier that has been broken in the course of the tenancy. Prior to the termination of the tenancy the Respondent Tenant shall provide and erect a stone pier on the driveway to the dwelling as a replacement for the pier that has been damaged in the course of the tenancy. This stone pier shall match the existing pier on the opposite side of the driveway in dimensions and in composition in so far as practicable.

Alternatively the Respondent Tenant shall compensate the Appellant Landlord in the sum of €400 in lieu of the replacement of said pier prior to vacation of the tenancy.

Reason:

The Tribunal accepts the evidence of the Appellant Landlord and of his witness that the said pier was in place and intact at the commencement of the tenancy. Notwithstanding the lack of any evidence in regard to how the pier was damaged the Tribunal finds that the pier has been damaged in the course of the tenancy and that it is the responsibility of the Respondent Tenant to ensure that it is replaced prior to his vacation of the tenancy or alternatively to compensate the Appellant Landlord in lieu of its replacement.

#### Finding No.9

The Tribunal finds that the Respondent Tenant is in breach of his obligations under Section 16(l) by altering the dwelling by painting over or allowing painting over wall paper without the consent of the Appellant Landlord. The Tribunal awards damages to the Appellant Landlord in lieu of this breach in the sum of €750.

Reason:

The Tribunal accepts the evidence of the Appellant Landlord in regard to the events and communication between the parties leading up to the painting as undertaken in the dwelling by the Respondent Tenant's partner. The Tribunal also considers that the evidence of the Respondent Tenant's partner in this regard was credible and precise.

The Tribunal finds that in the circumstances it would not be practical to seek to restore the wallpaper, given its description, and considers that in the circumstances monetary compensation to be paid at the termination of the tenancy provides the most appropriate,

reasonable and proportionate resolution of this issue. Whereas the Appellant Landlord provided an uncorroborated verbal estimate in respect of this work, which he said included for the necessary scaffolding, which estimate had been provided to him over the phone by a professional painter/wallpaper hanger who had been present as a teenager 15 years previously when the original paper was been hung amounting to €2,700 the Tribunal has reduced this estimate allowing for the age of the wallpaper to €750.

#### Finding No.10

The Tribunal finds that the Respondent Tenant has been in breach of his obligations under Section 16 and Section 17 of the Act of 2004 by placing a lock on the gate to the dwelling without the consent of the Appellant Landlord. The Tribunal awards damages in the sum of €200 to be paid to the Appellant Landlord for the consequences of this breach.

#### Reason:

The Respondent Tenant in his oral testimony agreed that he had placed a new lock on the gateway to the dwelling without the consent of the Appellant Landlord. He also gave evidence that he had not provided the Appellant Landlord with a key to the said new lock.

The Tribunal is satisfied on the basis of the evidence adduced particularly the email correspondence between the Parties that on the date of the return of the Appellant Landlord from Canada on 15th October 2013 there was reasonable notification of the intended visit provided to the Respondent Tenant.

#### Finding No.11

The Tribunal finds that the Appellant Landlord has been in breach of his obligation under the provisions of Section 12(1)(a) of the Act of 2004 to allow the tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling and that there was no implied agreement on shared access to part of the letting property. The Tribunal awards damages to the Respondent Tenant from the Appellant Landlord in the sum of €1,000 in respect of the consequences of this breach.

#### Reason:

Whereas the Tribunal accepts that the Appellant Landlord did leave his car and tractor along with many other possessions at the dwelling the Tribunal does not accept that this implied or bound the Respondent Tenant to any duty of care or any duty to provide access to same over and above the provisions of the Act and or the goodwill of the Respondent Tenant. The Tribunal has also taken in to account the failure of the written tenancy agreement to refer to such access in any form notwithstanding in any case that such access provision may have contravened Section 18 of the Act of 2004. The Tribunal considers that the Appellant Landlord's demands for access to the sheds and yard area of the letting have been excessive. Whereas relations between the Parties became adversarial on both sides it is also the case that the unannounced presence of the Appellant Landlord in the yard and sheds on occasions constituted a breach of his statutory obligation under the Act of 2004. The Tribunal awards damages on the basis of the consequent inconvenience and distress suffered on the part of the Respondent Tenant and of other persons residing at the dwelling. Furthermore the Tribunal considers that the action of the Appellant Landlord in placing a lock on the gateway thus preventing access on the part of the Respondent Tenant and his partner albeit for a short period was in breach of the said obligation under the Act of 2004.

#### Finding No.12

The Tribunal finds that the Appellant Landlord is not responsible for the cost of €1,588 incurred on the part of the Respondent Tenant in November 2013 in relation to the maintenance of the un-surfaced gravel driveway.

Reason:

The Tribunal has had regard to the averment of the Respondent Tenant under cross examination to the following 'That was part of the agreement that we had, is that the rent was low but that any expense against the place, we would incur it ourselves'. The Tribunal also notes that the Respondent Tenant gave verbal evidence in regard to this alleged expenditure and did not adduce any vouched expenses that may have been incurred on his part. The Respondent Tenant failed to adduce evidence of an alleged letter said to have been written by his solicitor and to have been placed in the Appellant Landlord's letter-box at the time relating to the repair of the driveway and the proposed withholding of rent on foot of same notwithstanding the propriety or impropriety of such action. Furthermore the Tribunal accepts the evidence of the Appellant Landlord that he was not served with a letter through his letter-box at that time.

Finding No.13

The Tribunal finds and hereby orders that during the three month period commencing 14 days following the issuance of the Order by the Board and once per annum for as long as the tenancy remains in existence the Respondent Tenant, his agents and all persons residing or visiting at the dwelling shall facilitate the Appellant Landlord and/or his authorised agents in gaining access to the exterior of the dwelling for the purposes only of cleaning all gutters, valleys and the external rainwater disposal channels and downpipes as well as trimming back any ivy growth within 1 metre of their vicinity at the dwelling over a period, if required by the Appellant Landlord, of 4 full consecutive working days between the times of 9.00 hours and 18.00 hours Monday to Friday inclusive. This includes unhindered access provision for ladders, scaffolding, a cherry picker or other motorised access equipment or cleaning apparatus. The Appellant Landlord shall provide fourteen days advance notification to the Respondent Tenant in writing by registered post addressed to him at the dwelling, which said notification shall include an address for reply, of the precise proposed dates on which it is intended to execute the cleaning work and in the event that for good reasonable reason the nominated days cannot be accommodated by the Respondent Tenant he shall immediately reply in writing to the Appellant Landlord by registered post to the address provided and shall nominate with at least 7 clear days advance notice such 4 other full consecutive working days between 9.00 hours and 18.00 hours Monday to Friday inclusive that shall be accommodated for the execution of the works but within the three month timeframe set out above and the Appellant Landlord shall arrange to execute the works within such other timeframe in that event. In the event that no reply is received within 7 days from the Respondent Tenant to the original communication from the Appellant Landlord the original dates provided by the Appellant Landlord shall be deemed to be the nominated dates for the execution of the works. Having regard to the nature of the works involved the Tribunal deems that it will not be necessary that the Respondent Tenant and any persons residing at the dwelling to be in attendance at the dwelling during the execution of the works. Any such attendance shall be a matter of choice for the Respondent Tenant. Furthermore the Tribunal orders that the Appellant Landlord shall proceed with the works in a diligent, continuous and workmanlike manner without interruption on his or his agent's part save for normal necessary food consumption and breaks. Notwithstanding the above specific provision all

other access for inspection or for the purposes of carrying out works which are the responsibility of the Appellant Landlord shall be arranged between the Parties in accordance with the provisions of s. 16(c) and s. 16(e) of the Act of 2004.

Reasons:

Notwithstanding that the Respondent Tenant stated at the Tribunal hearing that he could carry out the works to the gutters, valleys and roof drainage system nevertheless having regard to the provisions of the Act of 2004 and in particular the provisions of Section 12(1)(b)(i) and Section 16(c) and Section 16(e) of the Act of 2004 and having regard to the history of difficulties between the Parties the Tribunal considers that it is appropriate to set parameters for the execution on the part of the Appellant Landlord of the necessary maintenance works to the roof and its associated drainage system as requested.

Having regard further to the responsibilities of the Appellant Landlord under the provisions of the Housing (Standards for Rented Houses) Regulations 2008, S.I. No.534 of 2008 and of the Housing (Standards for Rented Houses)(Amendment) Regulations 2009, S.I. No. 462 of 2009 the Tribunal considers that it is appropriate to make provision for and stipulate the manner of the fulfilment of the Appellant Landlords statutory obligations which he has expressed a desire to complete.

## **8. Determination:**

**Tribunal Reference TR0514-000627**

**In the matter of Paul Boland (Landlord) and Michael McKay (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Respondent Tenant shall pay the sum of €1,950 to the Appellant Landlord within 28 days of the date of issue of this Order being rent arrears of €2,000 plus damages in the sum of €750 for the consequences of the Respondent Tenant's breach of obligation in altering the dwelling without consent plus damages in the sum of €200 for the consequences of the Respondent Tenant's breach of his obligation in regard to placement of a lock on the gateway to the dwelling less damages in the sum of €1,000 for the consequences of the Appellant Landlord's breach of his obligation in failing to allow the Respondent Tenant enjoy peaceful occupation of the dwelling.
2. The Respondent Tenant shall continue to pay rent at a rate of €500 per month on the date it falls due being the 14th Day of the each month unless this amount is lawfully varied until the tenancy has terminated.
3. The Appellant Landlord's claim for damages in respect of items of property allegedly missing from the sheds and the yard at the dwelling is not upheld.
4. Prior to the termination of the tenancy the Respondent Tenant shall erect a fence comprising of 75mm X 75mm X 2.65 metre long pointed and treated timber oak stakes set at 3.0 metre centres and with two strands of 2.5mm diameter galvanised wire to comply with I.S EN 10244-2 (Galvanised to Class A or B utilising Galfan alloy) along the left hand side of the driveway from the main entrance gates to the small paddock at the front of the dwelling-house for a distance of approximately 250 metres or thereabouts. All workmanship shall will comply with the provisions of Department of

Agriculture, Food and the Marine Minimum Specification for Farm Fencing Ref; S 148 of 2014.

Alternatively the respondent Tenant shall compensate the Appellant Landlord in the sum of €1,250 in lieu of the replacement of said fence prior to vacation of the tenancy.

5. Prior to the termination of the tenancy the Respondent Tenant shall provide and erect a granite stone pier on the driveway to the dwelling as a replacement for the pier that has been damaged in the course of the tenancy. This stone pier shall match the existing pier on the opposite side of the driveway in dimensions and in composition in so far as practicable, Alternatively the Respondent Tenant shall compensate the Appellant Landlord in the sum of €400 in lieu of the replacement of said pier prior to vacation of the tenancy.

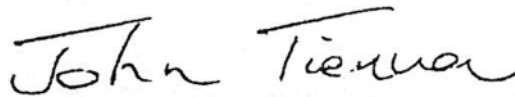
6. On termination of the tenancy the Appellant Landlord shall promptly repay the entire of the Respondent Tenant's security deposit of €2,500 less any amounts properly withheld in accordance with the provisions of Section 12(1)(d) and 12(4) of the Act.

7. During the three month period commencing 14 days following the issuance of the Order by the Board and once per annum for as long as the tenancy remains in existence the Respondent Tenant, his agents and all persons residing or visiting at the dwelling shall facilitate the Appellant Landlord and/or his authorised agents in gaining unhindered access to the exterior of the dwelling for the purposes only of cleaning all gutters, valleys and the external rainwater disposal channels and downpipes as well as trimming back any ivy growth within 1 metre of their vicinity at the dwelling over a period, if required by the Appellant Landlord, of a maximum of 4 full consecutive working days between the times of 9.00 hours and 18.00 hours Monday to Friday inclusive. This includes unhindered access provision for ladders, scaffolding, a cherry picker or other motorised access equipment or cleaning apparatus. The Appellant Landlord shall provide fourteen days advance notification to the Respondent Tenant in writing by registered post addressed to him at the dwelling, which said notification shall include an address for reply, of the precise proposed dates on which it is intended to execute the cleaning work and in the event that for good reasonable reason the nominated days cannot be accommodated by the Respondent Tenant he shall immediately reply in writing to the Appellant Landlord by registered post to the address provided and shall nominate with at least 7 clear days advance notice such 4 other full consecutive working days between 9.00 hours and 18.00 hours Monday to Friday inclusive that shall be accommodated for the execution of the works but within the three month timeframe set out above and the Appellant Landlord shall arrange to execute the works within such other timeframe in that event. In the circumstance that no reply is received from the Respondent Tenant to the original communication from the Appellant Landlord the original dates provided by the Appellant Landlord shall be deemed to be the nominated dates for the execution of the works. Having regard to the nature of the works involved the Tribunal deems that it will not be necessary that the Respondent Tenant and any persons residing at the dwelling be in attendance at the dwelling during the execution of the works. Any such attendance shall be a matter of choice for the Respondent Tenant. Furthermore the Tribunal orders that the Appellant Landlord and/or his Agents shall proceed with the works in a diligent, continuous and workmanlike manner without interruption on his or his agent's part save for normal necessary food consumption and breaks. Notwithstanding the above specific provision all other access for inspection or for the purposes of carrying out works which are the

responsibility of the Appellant Landlord shall be arranged between the Parties in accordance with the provisions of s. 16(c) and s. 16(e) the Act of 2004.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 31/12/2014.

**Signed:**

A handwritten signature in black ink that reads "John Tiernan". The signature is written in a cursive style with a large initial 'J' and a long horizontal stroke at the end.

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**John Tiernan Chairperson**

For and on behalf of the Tribunal.