

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000639 / Case Ref No: 0813-07205

Appellant Landlords:	William Connaughton, Carmel Connaughton
Respondent Tenants:	Lorraine Hens, Johan Hens
Address of Rented Dwelling:	Carrick Aneha, Drumraney, Athlone , Westmeath
Tribunal:	Vincent P. Martin (Chairperson) John Tiernan, Thomas Reilly
Venue:	Ante-Chamber, Athlone Civic Centre, Church Street, Athlone, Co. Westmeath
Date & time of Hearing:	10 July 2014 at 11:00
Attendees:	Attendees: For the Appellant Landlords: Carmel Connaughton (Second Named Appellant Landlord) John Farrell (representative on behalf of the Appellant Landlords) For the Respondent Tenants: Lorraine Hens (First Named Respondent Tenant)
In Attendance:	Representative of Gwen Malone Stenography

1. Background:

On 13/08/2013 the Tenants made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 78 of the Act. The matter was referred to a Paper Based Adjudication which took place on 04/03/2014. The Adjudicator determined that the then Respondent Landlords shall pay the total sum of €750 to the then Applicant Tenants, within 14 days of the date of issue of the Determination Order, being the unjustifiably retained security deposit of €450 (plus damages of €300 for retaining the said deposit), in respect of the tenancy of the dwelling at Carrickaneha, Drumraney, Athlone, Co Westmeath.

Subsequently the following appeals were received:

Landlords: received on 19/05/2014. The grounds of the appeal: Standard and maintenance of dwelling, Damage in excess of normal wear and tear, Rent arrears, Overholding; approved by the Board on 13/06/2014

The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, John Tiernan, Thomas Reilly 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").

All 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 10/07/2014 the Tribunal convened a hearing at Ante-Chamber, Athlone Civic Centre, Church Street, Athlone, County Westmeath.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

- The Appellant Landlords submitted a map of the dwelling and its surrounds

4. Procedure:

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received the PRTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so.

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be as informal as was possible. The Chairperson 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 and directed that neither Party should interrupt the other when oral testimony is being given.

He stated that the Party who appealed (the Appellant Landlords) would be invited to present their case first and that there would be an opportunity for cross-examination by the First Named Respondent Tenant. The First Named Respondent Tenant would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant Landlords. The Chairperson explained that following this, both Parties would be given an opportunity to make a final submission.

The Chairperson said that he would be willing to clarify any queries in relation to the procedures either then or at any stage during the course of the Tribunal hearing. He also stated that the Tribunal would be willing to consider an application made at any stage during the Hearing seeking a short adjournment for the purpose of allowing the Parties to try to negotiate, on a without prejudice basis, a consent settlement of the dispute.

The Chairperson stated that all evidence would be taken on Oath 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 or up to 6 months imprisonment or both.

The Chairperson also reminded the Parties that as a result of this Hearing, the Board would make a Determination Order which would be issued to the Parties and could be appealed to the High Court only on a point of law [reference section 123(3) of the 2004 Act].

The Parties giving evidence were then sworn in.

5. Submissions of the Parties:

The Appellant Landlords' Case:

Evidence of Carmel Connaughton (Second Named Appellant Landlord)

John Farrell, representative for the Appellant Landlords conducted the direct examination of the Second Named Appellant Landlord. It was submitted that the Appellant Landlords were justified in retaining the entire of security deposit in the sum of €450.00 on the following grounds:

(a) Monies for electricity usage due and owing: it was alleged that the Respondent Tenants contacted Electric Ireland and closed their account on the 30th June 2013 yet they had not fully vacated the dwelling until in or around the 16th July 2013. It was submitted that the rent was paid up to the 14th July 2013 which was the termination date of the tenancy of the dwelling yet one set of keys was not returned until the 15th of July 2013. It was also stated that video evidence of the inside of the dwelling which was submitted in evidence by the Respondent Tenants was recorded from inside the dwelling on the 16th July 2013. When invited by the Tribunal to comment in regard to this chronological account of events made by Second Named Appellant Landlord, the First Named Respondent Tenant stated that she was not in a position to dispute the account.

The Second Named Appellant Landlord submitted that on average the standard rate for electricity is €50 for every two week period but accepted that she had no relevant documentary evidence to support this assertion. She stated that she could view the dwelling from her own home which was located close by and referred to a map which she said showed the close proximity of the two houses. She stated that she witnessed a lot of activity around the dwelling with electricity lights switched on at night-time on numerous occasions during the said 2-week period. She stated that she was therefore seeking compensation for this electricity costs incurred in the sum of €50.00. The First Named Respondent Tenant stated that most of their belongings were removed from the dwelling at the end of June and that her husband had stayed at their new tenancy during the period. She did agree that there was a mattress amongst the items remaining in the dwelling that time.

(b) Condition of the dwelling: The Second Named Appellant Landlord stated that whilst there was no structural damage to the dwelling, it required essential deep clean cleaning. She submitted that the condition of the dwelling represented deterioration far in excess of normal wear and tear. She stated that there were, inter alia, crayon marks and grease staining on the walls. She stated that professional cleaners had to be employed and sugar soap detergent was necessary to be used on the walls. She stated that at the time the tenants vacated the dwelling that there was also some smoke damage, dirty drawers in the kitchen and a dirty fireplace. She referred to photographic evidence to support these claims.

She stated that prior to the commencement of this letting (which was a first time letting), it was her family home but it was not her intention to sell it. She referred to an invoice for cleaning costs incurred in the total sum of €400 which she conceded has put the dwelling in a condition where it is ready for sale and in the circumstances was seeking a proportion of this amount compensation in the sum of €260.00 for all cleaning related costs caused to be incurred by the actions and omissions of the Respondent Tenants.

(c) Respondent Tenants' property left in the dwelling: She referred to a photograph showing items of private property belonging to the tenants which have remained in the garage of the dwelling. Following discussions between the parties, with the agreement of both parties, it was agreed that this said property would be collected and removed by the First Named Respondent Tenant.

Evidence of Lorraine Hens (First Named Respondent Tenant)

The First Named Respondent Tenant stated that she did not wish to go into detail regarding her evidence as she was satisfied for the Tribunal to rely on the submissions already made by the Respondent Tenants to the PRTB and were on file. She denied that they left the dwelling in the condition alleged and/or that it was beyond normal wear and tear although she did accept that the drawer (used for storing pots and pans) was not clean but expressed the opinion that this would not adversely impact on the value of a re-letting. She stated that they wanted to have their full deposit returned which she submitted was unjustifiably retained by the Appellant Landlords. She stated that being deprived of the use of their deposit caused them to suffer inconvenience and they were relying on the said deposit to help pay for a gas connection in their new dwelling.

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 regard to the return of the Respondent Tenants' goods in Determination Order of that report and that the Tribunal will notify the PRTB of that Determination.

6. Matters Agreed Between the Parties

1. The tenancy commenced on the 15th November 2010 and the monthly rent was €450.00. There was no dispute re: rental arrears.
2. The issue in dispute between the Parties was the issue of deposit retention.
3. The Respondent Tenant paid the Appellant Landlords a security deposit in the sum of €450.00 and the Appellant Landlords retained same.

7. Findings and Reasons:

1. The Tribunal finds that there was a conflict of evidence in relation to the condition of the dwelling at the end of the tenancy. The Tribunal finds, on the balance of probabilities, that the evidence offered by the Appellant Landlords (including the photographic and documentary evidence) to be more persuasive and convincing. The Tribunal finds that the Respondent Tenants were in breach of their statutory obligations under Section 16(f) of the Act in causing some deterioration in the condition of the dwelling in excess of normal wear and tear. The statutory breach necessitated the Appellant Landlords having to employ professional cleaners in order to restore the dwelling to the condition at the commencement of the tenancy. A claim of €260.00 was sought by the Appellant Landlords to compensate them for the said deterioration caused but having considered all the evidence, on the balance of probabilities, the Tribunal find that a total sum of €150.00 is appropriate and proportionate compensation for the loss suffered.

2. Re: the claim of the Appellant Landlord seeking €50.00 compensation for electricity costs incurred- on balance of probabilities, the Tribunal prefers the evidence of the Appellant Landlord that there was in fact some level of usage of the electricity between

the 29th June 2013 and the 15th July 2013. The Tribunal notes that documentary evidence confirms that the Respondent Tenants did transfer the electricity account removing their name from the account (and thus removing any exposure to incurring costs for electricity usage from the 30th June 2013 until the time when they vacated the dwelling in or around mid July. The Tribunal awards the Appellant Landlords €25.00 for this electricity cost incurred and in the circumstances of the evidence given, the Tribunal deems this sum to be just and reasonable.

3. The Tribunal finds that whilst the rent was paid up until the 14th July 2013, the Respondent Tenants did not vacate the dwelling until the 16th July 2013 on which said date the First Named Respondent Tenant accepts the Second Named Respondent Tenant was still in the dwelling. In the circumstances the Respondent Tenants were overholding for these 2 further days which amounts to total rent in the sum of €29.59 which the Tribunal hereby awards to the Appellant Landlords. The sum of €29.59 which represents 2 day of rent due and owing is calculated as follows $\text{€450.00} \times 12 \text{ (months)} = \text{€5,400.00}$ (annual rent) divided by 365 (days) = €14.79 (daily rent)

4. Considering and in line with our findings above, the Tribunal finds that the Appellant Landlords justifiably retained part of the entire security deposit of €450.00 in the amount of €204.59 which said sum of €204.59 is calculated as €29.59 (2 days overholding), €150.00 (cleaning expenses) and €25.00 for electricity costs incurred. The Tribunal finds that the Appellant Landlords shall return to the Respondent Tenants the balance of the said deposit deemed unjustifiably retained in the sum of €245.41. In the circumstances of the case and this finding, the Tribunal has decided not to award any damages against the Appellant Landlords for their unjustified partial retention of the said deposit.

5. The Tribunal notes that the Parties have agreed to the orderly exchange of the goods/property which at the date of this hearing still remained on the premises of the dwelling.

8. Determination:

Tribunal Reference TR0514-000639

In the matter of William Connaughton, Carmel Connaughton (Landlord) and Lorraine Hens, Johan Hens (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

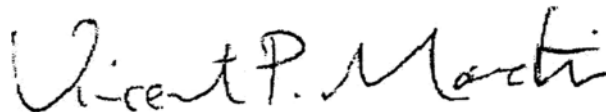
1. The Appellant Landlords shall pay to the Respondent Tenants the sum of €245.41 within 14 days of the date of the issue of this Determination, being the portion of the entire security deposit of €450.00 which is deemed to be unjustifiably retained by the Appellant Landlord having justifiably retained the sum of €204.59 comprising €29.59 (compensation for 2 days overholding), €150.00 (for cleaning expenses incurred) and €25.00 (for electricity costs incurred) resulting from the Respondent Tenants breaching their statutory obligations under the Act in respect of the tenancy of the dwelling at Carrickaneha, Drumraney, Athlone, County Westmeath.

2. If the return of the Respondent Tenants' goods/property in the dwelling has not already been effected as agreed between the parties at the Tribunal Hearing then within 7 days of the date of issue of this Determination Order the First Named Respondent Tenant shall provide effective details for the purpose of making contact with her, even if only of a temporary nature or through an intermediary, to the Second

Named Appellant Landlord and within 7 days of that contact detail being provided the Appellant Landlords shall send notification to the Respondent Tenants of the availability of their goods for collection and the Respondent Tenants shall collect all of the said goods on a date and time to be notified at least 48 hours in advance by the Respondent Tenants to the Appellant Landlords and that date shall be within 14 days of the original date of notification by the Appellant Landlord to them. The appointed time shall be between the hours of 8 a.m. and 7 p.m. on the appointed day. The Appellant Landlords shall facilitate and shall ensure that there is no impediment or obstruction present to the removal of the goods by the Respondent Tenants through in particular ensuring that access to the goods on the Appellant Landlords' property from the public road is not obstructed at the time of removal of the goods. All of the above actions are to be carried out in a manner that ensures effective compliance with the intent and meaning of this Order. For the purposes of clarity of record all communications and notifications cited in this Order are to be issued in writing.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 31/07/2014.

Signed:

A handwritten signature in black ink, reading "Vincent P. Martin". The signature is written in a cursive, flowing style. The first name "Vincent" is written in a larger, more prominent script, followed by "P." and "Martin". The signature is positioned above a horizontal line.

Vincent P. Martin Chairperson

For and on behalf of the Tribunal.