**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0514-000640 / Case Ref No: 1113-08828**

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| **Appellant Tenants:** | Fergal Slattery, John Cullinane |
| **Respondent Landlords:** | Glenn Atkinson, Cliodhna Atkinson |
| **Address of Rented Dwelling:** | 217 Block E, Castleforbes Square, IFSC , Dublin 1 |
| **Tribunal:** | Patricia Sheehy Skeffington (Chairperson)<br>Orla Coyne, Thomas Reilly |
| **Venue:** | Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2 |
| **Date & time of Hearing:** | 14 July 2014 at 10:30 |
| **Attendees:** | For the Appellant:<br>Fergal Slattery (First Named Appellant Tenant)<br>For the Respondent:<br>Glenn Atkinson (First Named Respondent Landlord)<br>Cliodhna Atkinson (Second Named Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

## 1. Background:

On 11 November 2013 the Tenant made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 78 of the Residential Tenancies Act 2004 ("the Act"). The matter was referred to a mediation which did not result in an agreement.

Subsequently the Tenants applied to refer the dispute to a Tribunal, which application was received on 20 May 2014 and approved by the Board on 6 June 2014. The case relates to whether a deposit was justifiably retained.

The PRTB constituted a Tenancy Tribunal and appointed Patricia Sheehy Skeffington, Orla Coyne and Thomas Reilly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Patricia Sheehy Skeffington 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 14 July 2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, 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:**

Two receipts for washer/drier repair and re-upholstery of chairs, submitted by the Respondent Landlords without objection from the Appellant Tenants.

**4. Procedure:**

The Chairperson asked the Parties 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".

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the person who appealed (the Appellant Tenants in this case) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Landlords; that the Respondent Landlords would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant Tenants. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. She clarified that albeit the Tribunal could have regard to the Adjudicator's report, it was not bound by it and that the Tribunal was a fresh re-hearing of the matter.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and she 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 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 only (pursuant to section 123(3) of the Residential Tenancies Act, 2004, hereafter referred to as the RTA).

The Chairperson also informed the parties that if it seemed that they might be able to resolve their dispute by agreement, the Tribunal would facilitate any such negotiations.

The Parties were then sworn in.

**5. Submissions of the Parties:**

The parties agreed that the only matter in issue was the amount of the deposit which had been retained by the Respondent Landlords. In the course of the hearing (which was characterised by goodwill and respect between the parties) a number of items were agreed, leaving the Tribunal to determine whether the following deductions from the deposit were justifiable:

(A) Apartment cleaning: €200

(B) Balcony plants: €15

(C) Washer/drier repair: €95 call-out charge plus €88 replacement circuit board;

(D) Bathroom heater repair €80

(E) Hall and door mats €60

(F) Couch, curtain and carpet cleaning €145

(G) Replacement shower rail soap holder €25

(H) Chair reupholstery €295

Appellant Tenants' Submissions

The First Named Appellant Tenant confirmed that his submissions were made on his behalf and that of the Second Named Appellant Tenant: he will be referred to hereafter as 'the Appellant Tenant'.

In respect of the cleaning costs, the Appellant Tenant disputed that the dwelling had been left requiring further cleaning. He said that the Appellant Tenants had spent time during the week prior to the termination of the tenancy in cleaning and he said that the dwelling was left in a reasonable condition. The Appellant Tenant pointed out that both tenants had asked the Respondent Landlords by email of 22 October 2013 whether any further items were outstanding to deal with in the dwelling and that no reply had been forthcoming. He said that he had a conversation with the First Named Respondent Landlord on that date and had been given the impression that the dwelling had been adequately cleaned. He commented that the sum for cleaning had been plucked out of the sky and questioned why no photographs of the dwelling's rooms at the end of the tenancy had been submitted by the Respondent Landlord if their claim for the amount of cleaning done was justified (he noted that all photographs were close-up of items without showing the wider room they were in). He disputed the letters attesting the cleaning done which had been submitted by the subsequent tenant and a person looking after the Respondent Landlords' child when they carried out the cleaning.

The Appellant Tenant was questioned on specific elements such as the toaster. He said that it had been cleaned as much as was possible but that crumbs would always remain, and was unaware that a detachable tray normally clipped onto the underside of toasters. He said that during the tenancy the cleaning was shared and he could not recall who cleaned each specific room. He apologised if he had overlooked some small items but said that these were small and did not warrant the retention of portion of the deposit.

In respect of the balcony plants, he said that he could not guarantee that a plant would remain alive for 13 months and did not understand why he was being charged for it.

He disputed that the damage to the washer/drier was attributable to the Appellant Tenants and said that no inordinate force had been used to operate it. He said that the pushed-in buttons did not impact on the machine’s functionality and had been used with the buttons like that during the course of the tenancy. He said that if other programmes were not available to select he did not know about this as the machine worked for his purposes, which was the reason it had not been reported to the Respondent Landlords.

The bathroom heater had been taken from the dwelling some months prior to the tenancy terminating, he said. He explained that a friend had pulled its cord believing it was the light switch and that it had come away in his hand. He said that the heater had been returned to the dwelling a week prior to the tenancy terminating and nothing had been

communicated in respect of the Appellant Tenants having any liability for it or it impacting on their deposit.

The Appellant Tenant rejected that the hall and door mats had suffered anything further than wear and tear. He said that the mats were used as people entered the dwelling to clean their feet on and that normal use for items could not be attributed to more than wear and tear. Similarly, he said that the seats were used for sitting on and any damage which had occurred to them were caused by using them. He said that the Appellant Tenants were entitled to use the items in the dwelling for the purpose they were there for. He thus also contested the cost of the chairs' reupholstery.

The Appellant Tenant said that the shower soap rail holder was intact when they vacated the dwelling.

Respondent Landlords' Submissions

The Respondent Landlords pointed out the good relationship during the tenancy and said that they had dealt with any repair issues promptly. However they disagreed that they had not raised cleanliness issues with the Appellant Tenants during the course of the tenancy. The Second Named Respondent Landlord stated that she had cause to effect a repair in the bathroom during the tenancy and had remarked on the lack of cleanliness of it, which concern she said the First Named Respondent Landlord had conveyed to the Appellant Tenants.

The Second Named Respondent Landlord said that on the week coming up to the termination of the tenancy, he had visited on the Monday evening and had told the Appellant Tenants that the cleaning was not up to scratch for the following day's visits by prospective tenants. He said that this was the context of the emails sent by the Appellant Tenants the following day, and that they had not been replied to as he had seen them that day and that efforts had been made to make the dwelling more presentable. He said that he had presumed more would be done prior to vacant possession being given but that this was not expressed.

The Respondent Landlords said that they had spent approximately 25 hours cleaning when they got the dwelling back. They said that they had not taken photographs because they needed to get stuck in to do the cleaning because they had a new tenant moving in that weekend, who they had to delay in order to deal with the cleaning. They described cleaning foodstuff off kitchen utensils, the grime on the bathroom screen, hoovering which needed to be done because the hoover bag was overflowing into the body of the machine, uncleaned worksurfaces, marks on a footstool, the patio door needing cleaning, a poster that needed to be removed from the back of a door and an odour permeating the dwelling. They referred to letters from their new tenant and the person who looked after their baby while they cleaned as backing up their view that the dwelling had not been left in an acceptable condition. They refuted that they had plucked a figure out of the air for cleaning, saying that the cost of an hour's cleaning was €12.50 and they had done much more than that. They said that they were not able to engage professional cleaners as they needed to allow a new tenant to move in that weekend so the time did not allow it, but referred to a print-out of cleaning fees that was supplied in the case file.

The Tribunal enquired why they had not inspected the dwelling on the Friday as the Appellant Tenants were leaving: the First Named Respondent Landlord said that he had intended to but he had work commitments.

In respect of the balcony plants, the Respondent Landlords highlighted a clause in the lease stating that the exterior terraces and gardens be kept neat and tended properly. They said that the plants' soil was bone dry and that leaves were scattered over the balcony.

The Respondent Landlords referred to a letter from a contractor which stated that the damage to the washer/drier was caused by too much force used, which rendered the clips holding the buttons on to snap. They said that the machine was seven years old. They agreed that its main functions were not impacted by the buttons being pushed in but that they needed to offer it with the full functionality and after the repair it worked again. Invoices for the work and call-out charge were submitted.

The First Named Respondent Landlord said that upon being reported by the Appellant Tenants the bathroom heater had been taken away for repair. He said that the problem arose because the pull string had been grasped with too much force and as such the watertight unit needed to be replaced. He regretted that when he had returned the heater to the dwelling that he had not communicated this to the Appellant Tenants.

The Respondent Landlords said that the degree of dirt on the mats was such that feet stuck to them when they were walked on. They said that ketchup was on the couch and that the curtains had a build up of black dirt on the lining that could be mildew and this needed to be cleaned. Receipts were provided for this cleaning.

They compared the photos of one of the chairs with a leather-type cover on it with one that was damaged: it had stretched marks on it where the seat padding had become visible. They questioned why one chair was perfect and the others had been damaged if they were only sat on. They said that they had left cleaning materials to ensure the leather bonded material retained its flexibility, and that the chairs were approximately five years old.

The Respondent Landlords said that the soap dish attached to the shower rail was broken as illustrated by the photos of it. A receipt was provided for its replacement in the sum of €25.

**6. Matters Agreed Between the Parties**

(a) The tenancy commenced on 25 September 2012 and terminated on 25 October 2013.

(b) A deposit of €1325 was paid by the Appellant Tenants to the Respondent landlords;

(c) The monthly rent was €1325;

(d) A total of €530, being €265 to each tenant, has been returned from the deposit;

(e) Prior to and during the course of the hearing, the parties agreed to certain items totalling €178 constituted fair deductions from the deposit. These items comprised €40 for replacement light bulbs, €8 for a replacement extension cable; €18 for a mattress protector, €43 for an additional day's rent and €69 for kitchen equipment.

**7. Findings and Reasons:**

Finding One:

The Respondent Landlords were entitled to deduct €463 from the deposit of €1325, from which they returned €530 and must return a further €332 to the Appellant Tenants.

Reasons:

1. It was common ground, and it reflects section 12(4) of the Act, that one reason justifying deposit retention is damage in excess of normal wear and tear.

2. While the Tribunal accepts that further cleaning was required for the dwelling after they vacated it, it allows €100 for this cleaning in circumstances in which the Appellant Tenants were not given the opportunity to undertake the cleaning themselves either during the week prior to vacating or on the last evening of the tenancy, when an inspection could have (but did not) take place.

3. The Tribunal does not accept that the Appellant Tenants have responsibility for the balcony plants, and hold that any cleaning of the balcony is absorbed by the above cleaning cost.

4. The Tribunal accepts that some damage was done to the washer/drier for which the Appellant Tenants have responsibility. However the total cost of €183 is not allowed in circumstances in which the machine is old, has decreased in value and would have been more susceptible to damage. In the circumstances it allows €90 for this item.

5. The Tribunal does not allow the cost of the heater repair in circumstances in which this cost was not discussed with the Appellant Tenants while the repair was being effected nor was it highlighted to them as impacting on their deposit when it was returned, a week prior the termination of tenancy when it was returned to the dwelling.

6. It is accepted that extra cleaning was required for the carpets and couch, however as this default was not communicated to the Appellant Tenants so that they could remediate it themselves, €70 of the €145 claimed by the Respondent Landlords is allowed.

7. The Tribunal finds that on the balance of probabilities the shower rail's soap dish was damaged while the Appellant Tenants were in possession of the dwelling and thus awarded the receipted sum of €25 for this item.

8. The Tribunal does not accept that the Appellant Tenants are responsible for the damage to the chairs which required reupholstery on account of their age and the natural wear of the leather-type fabric on them which commonly cracks in the way seen on the photographs over time.

9. The Tribunal notes that the parties agreed to further items/sums totalling €178 to be deducted from the deposit.

## 8. Determination:

**Tribunal Reference TR0514-000640**

**In the matter of Fergal Slattery, John Cullinane (Tenant) and Glenn Atkinson, Cliodhna Atkinson (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Respondent Landlords shall pay the Appellant Tenants the total sum of €332 within 14 days of the issue of this Order being the unjustifiably retained portion of the deposit of €1,325 in respect of the tenancy of the dwelling at 217 Block E, Castleforbes Square, IFSC, Dublin 1.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 22/07/2014.

**Signed:** 

**Patricia Sheehy Skeffington Chairperson**
For and on behalf of the Tribunal.