

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000643 / Case Ref No: 0314-10974

Appellant Landlord:	Ken Duffy
Respondent Tenant:	Yetunde Adewale
Address of Rented Dwelling:	28 Brookhaven Grove, Blanchardstown , Dublin 15
Tribunal:	John FitzGerald (Chairperson) Orla Coyne, Tim Ryan
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	02 July 2014 at 2:30
Attendees:	Ken Duffy, Tribunal Appellant, Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 14 March 2014 the Landlord 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 22 April 2014. The Adjudicator determined that:

- 1 The Notice of Termination served on 2nd August 2013, by the Applicant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at 28 Brookhaven Grove, Blanchardstown, Dublin 15 was invalid.
- 2 The Respondent Tenant shall pay the sum of €900 to the Applicant Landlord within 56 days of the date of issue of the Order being rent arrears in respect of the tenancy of the dwelling at 28 Brookhaven Grove, Blanchardstown, Dublin 15.

The Landlord subsequently lodged an appeal which was received by the PRTB on 23 May 2014. The grounds of the appeal were rent arrears and overholding. The Board approved at their meeting on 06 June 2014 the appeal.

The PRTB constituted a Tenancy Tribunal and appointed John FitzGerald, Orla Coyne, Tim Ryan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John FitzGerald 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 02 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:

Bank details which had been supplied to the Respondent Tenant by the Appellant Landlord for rent payments.

4. Procedure:

The Chairperson asked the Party present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Party 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) would be invited to present their case and answer questions from each member of the Tribunal and then to sum up their case. There was no appearance by the Respondent Tenant and the Tribunal waited until 2.45pm prior to opening proceedings. It was clear that the Respondent Tenant was not going to be in attendance and the Chairman invited the Appellant Landlord to outline his case.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the Party 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 Appellant Landlord 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 [reference section 123(3) of the 2004 Act].

5. Submissions of the Parties:

Appellant Landlord's Case:

The Appellant Landlord stated that he was seeking rent arrears and the Tenant was overholding. He confirmed that he had served a signed notice of termination on the Respondent Tenant in accordance with the requirements under the Act. He stated that he had signed and served the 14 day notice dated 10 July 2013 and then he had served the Notice of Termination dated 2 August 2013 both in accordance with the Act. The Appellant Landlord went on to state that the Respondent Tenant is in rent arrears and outstanding rent is due for three months, April, May and June 2014 in the sum of €2,700. He outlined that following the adjudication the Respondent Tenant had paid €900 cash towards rent arrears due at that time together with a post-dated cheque for €900. The cheque was subsequently returned to the Respondent Tenant by the Appellant Landlord as the Respondent Tenant had advised him that there was insufficient funds to meet the cheque in her bank account. The Appellant Landlord explained to the Tribunal that he

had allowed the Respondent Tenant to return to the dwelling following a fire in 2013 having refurbished it, although the Respondent Tenant, had obtained alternative accommodation after the fire. The Respondent Tenant had moved back into the Appellant Landlord's dwelling on 5 April 2013 but stated that he regretted he had agreed to this.

The Appellant Landlord outlined that there is little or no interaction between him and the Respondent Tenant and that the Respondent Tenant refuses to answer calls or deal with mail. He had registered some correspondence to the Respondent Tenant but he believed that she had ignored same. There was no reason why the rent could not be paid by the Tenant as he had furnished his bank account details where rent could be paid directly into his bank account to her - but she had not paid the rent into it.

He summed up by stating that the dwelling was required by one of his own family members and that he had recently received complaints from neighbours regarding the state of the back garden. He also confirmed that he was holding a security deposit of €1,100 and that the rent has been reduced overtime to €900 which is the current rent per month

6. Matters Agreed Between the Parties

None as the Respondent Tenant did not appear at the Tribunal hearing.

7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence presented to it by the Appellant Landlord, the Tribunal's findings and reasons thereof, are set out hereunder.

7.1 Finding: The Tribunal finds that the Notice of Termination dated 2 August 2013 was in accordance with the statutory requirements and therefore valid. The Respondent Tenant is overholding at the dwelling.

Reasons:

The Tribunal accepts the Appellant Landlord's evidence that the notice dated and served on 2 August 2013 was served in compliance with Section 62(1) of the Act in that it was in writing, specified the date of service, specified the Termination date, that is to say the day, the month and the year in which it falls and on which the Tenancy will terminate and on or before which the Tenant must vacate possession of the dwelling concerned, and indicating that the Tenant has the whole of 24 hours of the Termination date to vacate possession, and state that any issue as to the validity of the notice or the right of the Landlord to serve it must be referred to the Board under Part 6 within 28 days from the receipt of it. The Notice period of 28 days was in compliance with the provisions of the Act, and that the Respondent Tenant is still residing at the dwelling despite a valid 28 day notice of termination having been served on her on 2 August 2013.

7.2 Finding: The Tribunal finds that the Respondent Tenant is in breach of section 16(a)1 of the Act by failing to pay rent from April 2014.

Reasons:

The Tribunal accepts the Appellant Landlord evidence that the rent arrears now stand at €2,759.18 being the rent arrears from April to June 2014 at a monthly rate of €900 plus 2 days rent at a daily rate of €29.59 to 2 July 2014.

8. Determination:

Tribunal Reference TR0514-000643

In the matter of Ken Duffy (Landlord) and Yetunde Adewale (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on 2 August 2013 by the Appellant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at 28 Brookhaven Grove, Blanchardstown, Dublin 15, is valid.
2. The Respondent Tenant and all persons residing in the above dwelling shall vacate and give up possession of the dwelling within 14 days of the date of the issue of the order from the Board.
3. The Respondent Tenant shall pay the total sum of €2,759.18 to the Appellant Landlord being rent arrears within 60 days of the date of the issue of the order from the Board.
4. The Respondent Tenant shall also pay any further rent outstanding from 3 July 2014 at a rate of €900 per month or proportional part thereof at a rate of €29.59 per day unless lawfully varied and any other such charges as set out in the terms of the tenancy agreement for each month or part thereof until such time as she vacates and gives up possession of the above dwelling.
5. The Appellant Landlord shall refund the entire of the security deposit of €1,100 to the Respondent Tenant on gaining possession of the above dwelling less any amounts properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 16/07/2014.

A handwritten signature in blue ink, which appears to read 'John FitzGerald', is written over a horizontal line.

Signed:

John FitzGerald Chairperson

For and on behalf of the Tribunal.