

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000644 / Case Ref No: 1013-08265

Appellant Tenant:	Patrice Boleguin, Ciara Foskin
Respondent Landlord:	Siobhan Cosgrove
Address of Rented Dwelling:	93 The Paddocks, Hybreasal, Kilmainham , Dublin 8
Tribunal:	Orla Coyne (Chairperson) Thomas Reilly, Vincent P. Martin
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	29 September 2014 at 10:30
Attendees:	Patrice Boleguin, Appellant Tenant Ciara Foskin, Appellant Tenant Siobhan Cosgrove, Respondent Landlord Tom Tierney, Respondent Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 09/10/2013 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 07/04/2014. The Adjudicator determined that;

The rent review dated the 11 September 2013 is valid.

The rent of €1250 represents market value in respect of the dwelling.

The new rate applies from the 11th October 2013 subject to the right of the respondent to have this matter determined by appeal.

Subsequently the following appeal was received:

An appeal was received from the Tenant received on 24/05/2014 and was approved by the Board on 06/06/2014.

The PRTB constituted a Tenancy Tribunal and appointed Orla Coyne, Thomas Reilly, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Orla Coyne 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 29/09/2014 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:

PRTB File

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

1. The Chairperson asked the parties to identify themselves and to identify in what capacity they were attending the Tribunal. She confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received and understood 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 possible; that the parties must follow the instructions given by the Chair, that evidence would be given under oath or affirmation and would be recorded by the stenographer present and based on that a recording transcript could be made available to the Tribunal, if necessary to assist in preparing its Report on the dispute. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for any person giving evidence to refuse to take the oath or affirmation, to refuse to produce any document in their control required by the Tribunal, to refuse to answer any question put by the Tribunal or to knowingly provide false or misleading statements or information to the Tribunal. The Chairperson pointed out that an offence may be prosecuted by the PRTB through the Courts and a successful conviction could result in a fine of up to €4,000.00 and/or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenants would be invited first to present their case; this would be followed by an opportunity for cross-examination by the Respondent Landlord; the Respondent Landlord would then be invited to present her case with her witness followed by an opportunity for cross-examination by the Appellant Tenants. She also said that members of the Tribunal might ask questions of both parties from time to time. She also directed that neither party should interrupt the other when direct evidence was being given.

The Chairperson explained that, following this, both parties would be given an opportunity to make a final submission should they so wish.

The Chairperson also reminded the parties that, as a result of the Hearing that they, 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.

The Parties giving evidence were then sworn in.

5. Submissions of the Parties:

The Tenants' Evidence.

The Tenant said that there was a difficulty with the maintenance and standard of the dwelling together with the timing of repairs of certain items. They also did not accept the rent increase that was requested by the Landlord by notice dated the 11th September 2013 and served on the 13th September 2013 increasing the rent from 1,050.00 euros to 1,250.00 euros, as they believed that the range of the dwellings as comparators as submitted by the Landlord was too narrow.

When the first increase was suggested by the Landlord at €1,100 also in September 2013 they tried to compare the dwelling with other similar property and they believed that in September 2013 €1,100 was an acceptable increase to them. However, they were not willing to pay the increase sought of €50 euros because they believed that maintenance issues had been ignored by the Landlord. It was maintained that there were problems with the bath panel and that there was a leak from the bathroom. They did write to the Landlord to advise of the leak but this was communicated via email to the Landlord, when the increase in rent was being sought in September 2013.

Over the years there were a number of maintenance issues to be dealt within the dwelling, while they were repaired they were not happy the way they were repaired, for instance there was a problem with the bathroom, and the attempt that was made to repair it. They also mentioned a difficulty with the front door where it was stated there was sellotape on the window pane in the door, the bath panel was cracked and very shabby. The tenant said he emailed the Landlord before he went on holidays to have the hall, bathroom and kitchen to be painted. This email was sent in June 2013. The painting was carried out by the Landlord while they were on their holidays and the Landlord had attempted to repair the bath panel but what was done was that adhesive was stuck to the panel and it looked terrible.

The tenant alleged that there was still a hole in the wall in the bathroom where the plumber had pulled out the shower to fix it, as a water stain had developed they said because the grout had worn down around the tiles and the shower water had leaked through to the ceiling below. The tenant admitted that the hole did not cause them difficulty but that it was unsightly. Eventually they said that the bath panel was replaced before Christmas 2013.

The Tenant claimed that while their relationship was cordial with the Landlord, however over the summer of 2013 he believed it became difficult because a table which was on their balcony had broken because of the weather. This table had been there on the balcony with a couple of chairs and they used and enjoyed it. However, when they returned from their holidays the table had been replaced. The new table they said was not suitable, it was a third of the size of the former table and was much higher than the chairs. While they wanted to remain cordial with the Landlord, he did advise the Landlord by email that the new table was not suitable. He contacted Threshold who advised them that it should have been replaced with something similar. The Tenant stated that the matter of the replacement of the table should have been discussed with them but they were never given the opportunity by the Landlord to do so.

Another issue they raised was in respect of the attic door which opened suddenly twice and nearly hit one of the tenants, they believed it was a health & safety issue. When

questioned the tenant accepted that she had opened the trap door, she wanted to see what was inside it, what insulation was in the attic

They believed that they had made the dwelling their home but they did not believe that the standard of repairs was great. The washing machine broke after 3 years and was in the dwelling before they were there. They believed that the Landlord was of the opinion that they had broken it, which they denied. They did not believe that they were over demanding and that they were not given a chance.

The tenant stated that the Landlord had claimed that they had received the dwelling at a reduced rent, they did not accept this. At the time when they took up occupancy of the dwelling they believed there were not many people looking to rent the dwelling at that time.

They received an email in September 2013 from the Landlord requesting that they not contact him directly as they were now appointing a property agent to deal with the dwelling. This resulted they claimed in the Letting Agent sending a rent increase notice requesting €200 extra for the dwelling which was within 6 days of the requested increase by the Landlords of €50.

The Tenant stated that they had looked up Daft and the snapshot of rents nationwide. As part of their evidence they had produced the 2014 Q3 printout of the Daft.ie Snapshot of Rents Nationwide which they claimed showed rent for one month as €1,160 for a similar dwelling not €1,250 as the Landlord was looking for.

The Tenant also advised the Tribunal that they were leaving the dwelling the following day namely the 30th September 2014 to live with Ms Foskin's parents. The Tenants accepted that there were a lot of people moving out of Dublin because of high rents. They stated that the 20% increase in rent being requested by the Landlord was too much.

The Tenants were also aggrieved that the Landlord was looking for a rent increase for two years in a row not least because they were very unhappy with the table on the balcony and they were not allowed to negotiate with the landlord the rent increase as the Landlord had an agent now dealing with them.

LANDLORD'S EVIDENCE

The Landlord stated that he set out to request a fair market rent from the Tenants. In 2004 they were receiving €1,200 and as high as €1,250 rent for the dwelling. However in 2010 it was a difficult time and they accepted €1,000 as rent for the dwelling, he believed that this was the market rent in any event in 2010. Two years later in 2012 they decided that they had to increase the rent, the increase of €50 was accepted by the Tenants. He did not check the market rate at the time and he admits that this was a mistake. When he went to increase the rent again the following year in 2013 by another €50 the Tenant would not agree to it. It was then at that time he decided to engage an agent. He together with the agent decided to increase the rent. He believes that the rent of €1,250 is very fair. As when he contacted other letting agents they advised him that he could obtain in excess of 1250.00 euros

The Landlord stated that the relationship between himself and the Tenants was very cordial and before they went on holidays in June 2013 he had on the 10th June emailed them that he was going to decorate the dwelling, repair the bath panel and replace the table. After the Tenants came back from their holidays he emailed them on the 30th June to ask were they satisfied. They replied on the 1st July that they were happy with the

painting. But the table subsequently became a major issue when it was placed in the dwelling a few days later.

When asked why they replaced the table with a smaller table the Landlord replied because the balcony attached to the dwelling is a small one and that the larger table which had been there was a fold down one and when it was opened up it would take up most of the balcony. It was not a suitable table for the balcony, it also had not been maintained for the three years so they replaced it with a table that would not need so much maintenance. The Landlord accepted that it was quite old and never had a difficulty with replacing it. He said the replacement in fact was much more suitable for the balcony as it was a full dining table that four people can sit at. However, when the table was dropped over he got a text from the tenants stating that the table was too small. The Landlord also stated that they had spoken to Threshold who told them that they did not need to replace garden furniture as it was a furnished house that was being rented.

In relation to the bathroom he said there was a small crack in the panel that runs outside along the bath, a decorative panel. He believed that he patched it up and he referred to the email of the 1st July 2013 from the Tenant advising him that the dwelling looked much better after the painting. He said that over the Autumn of 2013 the bathroom was re-tiled and the bath panel was replaced. He did accept that there was a small gap about 2cm wide which if he was aware of it he would have put some pollyfill into but they were not aware of it before now.

In relation to the attic trap door he said the trap door was there since the house was built. He accepted that it may have fallen down and when this happened he fixed it immediately. He said that the tenant accepted that she had opened the trap door, as she wanted to see what insulation was in the attic as he had never opened the trap door while the Tenant was in the dwelling. There is now a bolt on it which has secured it. He said the washing machine when it was not working was replaced. The fault apparently was to do with the spin cycle which broke because the filter was not cleared.

In relation to the front door the Landlord said there are decorative panels on the front door and there was a crack in one of the panels, approximately 3cm in length. He said that the crack was there when the Tenants viewed the property and when he repaired it with transparent adhesive cover, the agent's professional handyman stated that having looked at it that a suitable job had been done to it and it had no impact on the door, as to its security.

He believed the relationship between them had always been tense and although he tried to keep the relationship professional between them because of the table and the exchanges over the rent increase they felt they were out of their depth and that this is why they engaged the professional services of Dublin Lettings.

In relation to the rent arrears notice that was sent out by his agent the arrears were in relation to the non-payment of the increased rent, and he accepted that there were no rent arrears.

The Landlord stated that he was always seeking the market rent and when an increase of €50 euros to €1,100 was rejected by the Tenants it was then they decided to engage an agent. The agent advised him that he could achieve €1,250 in rent. He referred to the comparators that he had included in his documentary evidence which was before the Tribunal. To support his claim for the rent increase. He said that the new tenants who would be moving in after the current tenants leave have agreed to pay €1,450.

6. Matters Agreed Between the Parties

The Tenancy commenced on the 30th September 2010. A deposit of €1,000 was paid and the rent is currently at €1,050. The deposit of €1,000 is still retained by the Landlord.

The last written tenancy agreement between the parties was dated 30th September 2012 for a term of 12 months

7. Findings and Reasons:

Findings of Fact and Reasons for the Determination:

Having considered all the documentation before the Tribunal and having considered the evidence presented to it by the parties the Tribunal's findings and reasons therefore are set out hereunder.

1. Finding

The Tribunal finds that the Respondent Landlord was not in breach of her obligations under Section 12 (1)(b) of the 2004 to carry out such repairs and replacement of fittings as were necessary from time to time.

Consequently the Tribunal does not award damages under this claim.

Reason

The Tribunal accepts the evidence of the Landlord in respect of repairing any items that were brought to their attention. In particular the Tribunal refers to the email of the Tenant of the 1st July 2013 thanking the Landlord for the painting which had been carried out to dwelling while they had been on their holidays and there was no further mention of any other matters outstanding.

2. Finding

The notice seeking a rent review dated the 11th September 2013 is valid and the Tribunal finds that the rent for the period from 11th October 2013 in the sum of €1,160 to be the appropriate rent for the dwelling at that time. This rent increase is to commence in 28 days after the notice period having been determined by the PRTB, accordingly the rent of €1,160 per month is to commence from the 11th October 2013. Accordingly the sum of €1,934.66 increased rent is due up to and including the 29th September 2014 from the tenants to the Landlord. Made up of 11 months at €110 = €1210.00 up to 10th September 2014 and a further 19 days at €38.14 per day equals €724.66 up to and including the 29th September 2014.

Reason

Under Section 24 of the Act, Market Rent is defined as rent which a willing tenant not already in occupation would give and a willing Landlord would take for the dwelling, in each case on the basis of vacant possession having regard to (a) the other terms of the tenancy and (b) the letting values of dwellings of similar size, type of character to the dwelling as situated in a comparable area to that which it is situated. Having looked at the comparators submitted by the Landlord and the Daft.ie Snapshots of Rents Nationwide as submitted by the Tenant, the Tribunal deems the rent of €1,160 to be a market rent that a willing Landlord would accept from a willing tenant and the rent review was conducted in September 2013.

8. Determination:

Tribunal Reference TR0514-000644

In the matter of Patrice Boleguin, Ciara Foskin (Tenant) and Siobhan Cosgrove (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Tenants shall pay the sum of €1,160 increased rent per month due and owing to the Respondent Landlord from 11th October 2013 and the Appellant Tenants shall pay the sum of €1,934.66 being rent arrears for the period from the 11th October 2013 to the 29th September 2014 (inclusive) in respect of the dwelling at 93 The Paddocks, Kilmainham, Dublin 8.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 30/10/2014.

A handwritten signature in black ink, appearing to read 'Orla Coyne', written over a horizontal line.

Signed:

Orla Coyne Chairperson

For and on behalf of the Tribunal.