

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0514-000645 / Case Ref No: 1113-08693**

<b>Appellant Tenants:</b>	Mark Richardson, Catherine Grant
<b>Respondent Landlords:</b>	Jean Higgins, Paul McDunphy
<b>Address of Rented Dwelling:</b>	104 Maryfield Crescent, Artane, Dublin 5
<b>Tribunal:</b>	Vincent P. Martin (Chairperson) Orla Coyne, Thomas Reilly
<b>Venue:</b>	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	09 July 2014 at 2:30
<b>Attendees:</b>	For the Appellant Tenants: Mark Richardson (First Named Appellant Tenant) Catherine Grant (Second Named Appellant Tenant) For the Respondent Landlords: Paul McDunphy (Second Named Respondent Landlord)
<b>In Attendance:</b>	Representative of Gwen Malone Stenography

**1. Background:**

On 04/11/2013 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 an Adjudication which took place on 19/02/2014. The Adjudicator determined:

1. The Landlords have not failed to comply with their obligations in respect of the tenancy of the dwelling at 104 Maryfield Crescent, Artane, Dublin 5.
2. The Landlords have not breached their obligations in respect of the standard and maintenance in respect of the tenancy of the dwelling at 104 Maryfield Crescent, Artane, Dublin 5.
3. The Landlords have complied with their obligations contained in the Residential Tenancies Act, 2004 in respect of rent review, specifically section 19, 20, 22 of the Act.
4. The rent review sought by the Respondent Landlord represents "market rent" as defined in Section 24 of the Residential Tenancies Act, 2004. The notification of 29th October 2013, regarding a rent increase to €1,200 effective from 7th December 2013, is valid.

Subsequently the following appeal was received:

Appellant Tenants: received on 26/05/2014. The grounds of applying for the appeal: Rent more than market rate which was approved by the Board. The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, Orla Coyne, 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"). Both Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing. On 09/07/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, 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:**

None

## **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 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 Tenants) would be invited to present their case first and that there would be an opportunity for cross-examination by the Second Named Respondent Landlord. 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.

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 on a point of law only [reference section 123(3) of the 2004 Act].

The Parties giving evidence were then sworn in.

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

The Appellant Tenants' case:

Evidence of Mark Richardson (First Named Appellant Tenant) The First Named Appellant Tenant stated that 2 main issues were the subject matter of this dispute:

- (a) Dispute re: upkeep and maintenance of the dwelling (3 issues)
- (b) Dispute re: the market value of the rent of the dwelling

The Appellant Tenant submitted that in his opinion the decision of the Respondent Landlord to increase the monthly rent from €1000.00 to €1200.00 is excessive and he supported his viewpoint by referring the Tribunal to a rent index document for properties in the €1200.00 price category which indicated that €1031.45 would be an appropriate rent. He stated that the monthly rent being sought was not justified and was inappropriate. He submitted that his supporting documentation which included rents for 3 quite similar type properties supported his viewpoint that rent of €1200.00 per month was excessive. He stated that they were willing to pay €1100.00 but not €1200.00 which would represent a 20% rental increase and in his documentary submissions cited a number of examples of which he contended were relevant comparators.

He stated that they had three main problems relating to the landlord's upkeep of the dwelling:

- 1. Mould in one bedroom
- 2. Condition of fabric sofa in sitting room
- 3. Back garden

1. Mould: He stated that he first noticed mould on a bedroom ceiling in February 2014 and that it was in or around that time when he first contacted the landlord about the said problem. He stated that the mould was situated on the ceiling which was part of a built in press unit/wardrobe. He stated that the area of mould was as large as his fist and it appeared to be getting larger. He stated that they ceased using this bedroom out of concern and fear that it would be bad for one's health to sleep in the said bedroom. He denied that he kept the wardrobe door closed and stated that he often kept it open in order to air the area.

2. Condition and maintenance of fabric sofa in sitting room: He stated that it was the responsibility of the Respondent Landlords to clean the couch which was unsightly and the source of a foul odour. He stated that the tenants were unable to clean it because the zip of the couch covers was broken. He submitted that it required professional cleaning. Under cross examination he accepted that it was only during the course of this said hearing that the landlords learned for the first time about a broken zip.

3. Back garden: He stated that the back garden of the dwelling was overrun with weeds and high overhanging foliage. He stated that the poor upkeep of the garden by the landlords deprived the tenants and their 5-year-old son of using and enjoying the garden area properly. He also stated that the high growing overhanging trees in the garden were

the subject of a complaint that they received from a neighbour. He stated that he did keep the grass cut but that the said overhanging trees and some weeds, which also encroached on their clothesline, caused the problem. He accepted that the landlords had supplied the tenants with a lawn mower, and other gardening tools but that this problem required professional intervention using appropriate industrial type cutting machinery. He accepted that photographic evidence would have helped support his case. He also accepted that in the 3 written tenancy agreements which were entered into with the landlords before 2012, there was an expressed obligation on the tenants to maintain the garden but submitted that there had been no written tenancy agreement since 2012.

He stated that he wrote to the Second Named Respondent Landlord on several occasions concerning these issues but to no avail.

He stated that the landlords did not provide them with outside gardening assistance in the past 2 years.

Respondent Landlords' case:

Evidence of Paul McDunphy (Second Named Respondent Landlord)

He stated that he disagreed with the evidence given by the Appellant Tenant and submitted that the rent increase sought in the rent review which is the main subject matter of this dispute was fair and justified and that the review was carried out in a procedurally correct manner. He stated that the claims made by the Appellant Tenants were not supported by relevant and appropriate evidence submitting that the 3 examples (comparators) which formed part of the Tenants' submissions were inaccurate and listed their alleged shortcomings to the Tribunal including submitting that the examples were either in different postal code areas and/or were of a smaller size, had a different number of rooms and/or were not semi-detached dwellings.

He referred to their first written communication that they sent to the Tenants dated 29th October 2013 which stated their intention to increase the monthly rent to €1200 per month indicating that it was the first rent review during the tenancy. He stated that the dwelling was a 3-bed semi-detached house built around 1961. He submitted that the documentary evidence that he was relying upon was much more accurate and compelling. In support of his claim, he referred, inter alia, to an extract from the daft property website (quarterly rental report) although he did concede that same represented asking prices and not necessarily the actual rental price achieved. He also referred to an expert valuation report from Forbes & Boyle Sales and Letting Agents dated 29 January 2014 which opined that a similar type property in this area would achieve €1250.00-€1350.00 and submitted that his evidence fully supported his contention that €1200.00 sought in the rent review was, in the circumstances, fair and appropriate.

In response to the allegations made by the First Named Appellant Tenant that the landlords failed in their statutory duty to deal with the mould which appeared on a ceiling in one bedroom of the dwelling, he stated that it was relatively small and that he had already tried to treat the mould problem and now that it has reappeared he was willing to investigate and tackle the mould problem again. He further stated that it could be as a result of a problem with an outside drain.

In relation to the allegation made by the Tenants concerning the sofa, he stated that it was perfect at outset of tenancy. He stated that he only learned for the first time about a

broken zip in the couch being put forward by the Tenants as an obstacle which prevented them from cleaning it at this hearing.

He denied that he owed the tenants a duty to cut any overhanging foliage in the back garden but accepted that the absence of photographic evidence was unfortunate. He said that he had no knowledge of any complaint made by a neighbour about the garden as same was never brought to his attention. He also stated that the tenants agreed in the most recent written renewal of the tenancy agreement (2012) to maintain the garden and in respect of same were supplied with gardening equipment.

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 the report's Determination and that the Tribunal will notify the PRTB of that Determination.

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

- It was agreed that the tenancy first commenced on the 25th of June 2010 and that the Appellant Tenants are still in occupation.
- It was also agreed that current rent is €1,000.00 per month. The proposed new rent amount is €1,200.00 per month.

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

Having considered all the evidence, the Tribunal's findings and reasons therefor are set out hereunder:

1. Rent and rent review is dealt with under Part 3 of the Act. Under Section 24 of the Act, 'market rent' is defined as rent which a willing tenant would pay and a willing landlord would accept for a dwelling on the basis of vacant possession and having regard to the other terms of the tenancy plus letting values of dwelling of a similar size, type and character to the dwelling and situated in a comparable area. In this case the evidence presented and offered by the Respondent Landlord is much more compelling than the evidence relied upon by the Appellant Tenants which was weak, unspecific and unconvincing. Having considered all the evidence, the Tribunal finds that the rent increase sought is in line with the said definition of market rent and in all the circumstances of this case is appropriate.
2. The Tribunal finds that the Respondent Landlords have complied with their statutory obligations in respect of the proposed rent review as they have complied with their obligations contained in the Act in respect of rent review including Section 19, 20, 22 of the Act. The Tribunal deems that the rent review sought by the Respondent Landlords represents "market rent" as defined in Section 24 of the Residential Tenancies Act, 2004. The Tribunal finds that the notification of 29th October 2013, regarding a rent increase to €1,200 effective from 7th December 2013 is valid.
3. In relation to the 3 claims made by the Appellant Tenants against the Respondent Landlords alleging that the landlords failed to do essential repair and maintenance works in the dwelling and the garden (namely, the issue of mould in one bedroom, the maintenance of fabric sofa in the sitting room and the upkeep of the back garden), the Tribunal finds, on the balance of probabilities, that the evidence offered by the Appellant

Landlords to be more persuasive and convincing. Therefore the Tribunal finds that the Respondent Landlords have complied with their obligations and have not breached their obligations in respect of the standard and maintenance of the dwelling.

(a) In relation to the appearance of mould in the ceiling of a bedroom wardrobe, the Second Named Respondent Landlord treated it but as a result of the mould reappearing, the Tribunal notes that the Second Named Respondent Landlord has informed the Appellant Tenants that he will investigate the matter further and tackle the problem again. In the given circumstances the Tribunal finds his response to be prompt and reasonable. The Tribunal also notes that the mould problem first arose (February 2013) approx. 3 years into the tenancy agreement and that it might have assisted the Tribunal if the Appellant Tenants had any supporting expert evidence. Photographic evidence might also have been of assistance.

(b) In relation to the sofa, the Appellant Tenants accept that the sofa was in fine condition at the commencement of the tenancy and it was only during the course of this hearing that the Second Named Respondent Landlord was informed for the first time that a zip part of the couch which obstructed the Tenant cleaning the couch required repair.

(c) Re: the claim that the Respondent Landlords have failed to maintain and upkeep the garden, the Tribunal notes that in the most recent written tenancy agreements entered into between the parties herein in 2012, clause 3.17 expressly places a duty on the Appellant Tenants to maintain the garden, inter alia, the garden, lawns, hedges, landscaping etc. Whilst no written tenancy agreement has been signed since 2012, it is implied that unless there is some evidence of a departure or demurral, the said tenants' responsibility re: the upkeep of the garden remains in place. On the balance of probabilities if the Appellant Tenants had to keep the garden under standard and regular control, the existing problem of overhanging foliage would not have arisen and there would be no necessity for professional outside intervention.

## **8. Determination:**

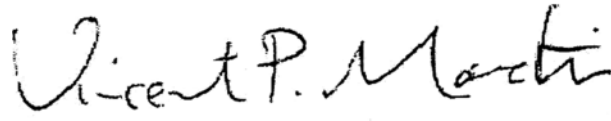
**Tribunal Reference TR0514-000645**

**In the matter of Mark Richardson, Catherine Grant (Tenant) and Jean Higgins, Paul McDunphy (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The rent review sought by the Respondent Landlords represents "market rent" as defined in Section 24 of the Residential Tenancies Act, 2004. The notification to the Appellant Tenants of 29th October 2013 regarding a rent increase to €1,200 effective from 7th December 2013 is valid in respect of the tenancy of the dwelling at 104 Maryfield Crescent, Artane, Dublin 5.

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

Signed:

A handwritten signature in black ink that reads "Vincent P. Martin". The signature is written in a cursive style with a large, stylized 'V' and 'M'.

---

**Vincent P. Martin Chairperson**

For and on behalf of the Tribunal.