

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0514-000650 / Case Ref No: 1213-09519**

<b>Appellant Landlord:</b>	David Horgan
<b>Respondent Tenant:</b>	Grace Reilly
<b>Address of Rented Dwelling:</b>	9 Eastwood, Finglas , Dublin 11
<b>Tribunal:</b>	Patricia Sheehy Skeffington (Chairperson) Orla Coyne, Thomas Reilly
<b>Venue:</b>	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	14 July 2014 at 2:30
<b>Attendees:</b>	For the Appellant: Eddie Moran (Appellant Landlord's Agent) Alan FitzGerald (Appellant Landlord's Representative) For the Respondent: Grace Reilly (Respondent Tenant)
<b>In Attendance:</b>	Gwen Malone Stenographers

**1. Background:**

On 19 December 2013 the Tenant made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 78 of the Residential Tenancies Act ("the Act"). The matter was referred to an Adjudication which took place on 7 March 2014. The Adjudicator determined the market rent in respect of the tenancy of the dwelling at 9 Eastwood, Finglas, Dublin 11 in its current condition was €1,000 per month, that the Notice of Termination of tenancy served on the 24th January was invalid and that the Respondent Landlord should pay €500 to the Applicant Tenant, being €1,350 damages for breach of his obligations arising under sections 12(1)(a) and 12(1)(b) of the Act, having set off the sum of €850 in respect of rent arrears.

Subsequently the Landlord applied to appeal on 22 May 2014, which application was approved by the Board on 6 June 2014.

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:**

None.

**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 Landlord in this case) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant Landlord. 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 matters which were in issue comprised:

- (a) What the market rent of the property was;
- (b) Whether the Appellant Landlord has fulfilled his obligations in respect of the standard and maintenance of the dwelling; and

(c) Whether there were rent arrears and if so in what sum;

The Appellant Landlord's representative confirmed that it was accepted that the Notice of Termination served on behalf of the Appellant Landlord was invalid and that this was no longer in issue.

(a) The Market Rent of the Property

The Appellant Landlord's representative referred to a Notice of Rent Review on file which was dated 28 November 2013 and sought an increase of the rent to €1050 to become effective on 26 December 2013.

He drew attention to advertisements for houses which had been submitted by the Respondent Tenant and stated that they were not comparable. The Appellant Landlord's Agent stated that one was a poorly maintained property in receivership and the other was in a less desirable area. He said that the dwelling subject of the tenancy was semi-detached on a large plot. He said that it was in a good area and he pointed out that the rent had not been subject to a review since 2009 when it had been first set at €850.

The Appellant Landlord's Agent then referred to internet advertisements for property in the area which he had submitted. These properties ranged from a one-bed apartment for €750 per month; two-bed two-bath apartments for between €950 and €1050 per month; a three-bed four-bath apartment for €1,100 per month; one-bed apartments for between €800 and €950 per month; three-bed houses for between €1,000 and €1,150, and one three-bedroom, four bathroom house for €1,350. He characterised these advertisements as encapsulating a moment in time but said that rents generally had increased. He referred to a two-bedroom apartment on Prospect Hill which was asking for a monthly rent of €1000 per month. He said that in discussions with the Respondent Tenant this sum was what he had eventually offered as the monthly rent and stated that he managed a similar rental property on the same street for this price.

The Tribunal asked whether the Prospect Hill property was comparable in circumstances whereby it had two bathrooms whereas the dwelling subject of the tenancy only had one. He opined that a house was more desirable than an apartment was. He said that the dwelling was a spacious dwelling of approximately 750 square feet (although he advised that he had not been inside the dwelling and had not therefore had the opportunity to measure it). He said that it had a garden that was at the front and side of the house.

Upon questioning, the Appellant Landlord's Representative did not agree that a house offered for let which had been newly decorated and presented for rent created any appreciable difference in the market rent from the property in question, which had not been redecorated since the commencement of the tenancy in 2009. He said that rents in the general Dublin area had experienced inflation.

The Respondent Tenant said that in her view the market rent was more appropriately set at €950 per month, although this was still expensive as the dwelling was in a bad way. She said it was in poor decor and was small. She described it as having no back door nor back garden or any outdoor storage, as it was back-to-back with another house. She said the garden was not enclosed and could not be used for drying clothes or for her child to play in. She said that the carpet in particular, which had been old when she moved in, was of poor quality. The Respondent Tenant said that the properties presented by the Appellant Landlords' representatives were not particularly close to her dwelling. She said that when she moved in to the dwelling, beds, mattresses, tables, chairs, a sofa and

fridge were supplied but that she had had to supply items such as a kettle crockery, cutlery, pots and pans, iron, toaster and other common household items.

(b) Whether the Appellant Landlord has fulfilled his obligations in respect of the standard and maintenance of the dwelling

The Appellant Landlord's representative stated that four matters had been raised in this regard: a washing machine, lino in the kitchen, the shower in the bathroom and a sofa.

In respect of the washing machine, he said that the repairs to this had been effected and that a discount in rent in the sum of 100 euros had been applied to the tenancy while the repair was ongoing. He pointed out that the lino had been replaced by the Respondent Tenant at a cost of €80.

In respect of the sofa, the Appellant Landlord's Agent stated that he had not heard of any issue arising in respect of it until the Adjudication hearing and the sofa had been replaced after this date. He refuted that he had been informed of this issue in April 2013. The Appellant Landlord's Agent said that he had no knowledge of the shower issue being raised at the start of the tenancy as he had not been engaged to manage the dwelling until November 2011. He said that had he been aware of any issue, it would have been fixed.

The Appellant Landlord's Agent said that he had not been inside the dwelling or inspected it at any time, since he had taken over the management of the dwelling which was in November 2011 but that he had not arranged any inspection either

The Respondent Tenant said that the washing machine had been fixed after six or seven weeks of asking for it but that she had accepted a €100 deduction in her rent to compensate for this inconvenience. She said that she had replaced the lino herself for approximately €80 because despite asking for a replacement from the Appellant Landlord's Agent's predecessor, nothing had happened and the lino was filthy so she decided to replace it.

The Respondent Tenant said that she had asked for an electric shower at the commencement of the tenancy but that despite the Appellant Landlord's then agent agreeing to its installation, no electric shower was ever fitted. She said that eventually she fitted a shower pipe to the taps which mixed the hot and cold water for herself and her child. She said that the water was heated from the cylinder boiler.

The Respondent Tenant agreed that a sofa had been delivered after the adjudication hearing but she said that she had originally asked for it in April.

(c) Whether there were rent arrears and if so in what sum

The Appellant Landlord's Representative said that the Respondent Tenant had signed a lease agreement stating that she would pay rent a month in advance. He referred to a schedule of rent payments which showed that at the start of the tenancy the sum of €425 had been paid to cover the period from the 11 November to the 26th November 2009 and then a further €850 fell due, but that the next payment was paid on 30 December 2009 in the sum of €850.

He said that this was evidence that contrary to the Respondent Tenant's contention, the Appellant Landlord had not accepted rent to be paid at the end of the month. He said that the apportionment of €425 at the end of November 2009 evidenced the Appellant Landlord's unwillingness to accept an arrangement of rent in arrears. The Appellant

Landlord's Representative said that the emails relied upon by the Respondent Tenant, in which she put it to the former agent of the Appellant Landlord that as a social welfare tenant she could only pay in arrears, did not at any point indicate acceptance of this arrangement.

The Appellant Landlord's Agent stated that he managed a portfolio of the Appellant Landlord's property and he knew that he did not accept rent in arrears. He was asked why a rent arrears issue of €850 arising in late 2009 had not been drawn to the Respondent Tenant's attention until early 2014. He said that as things had gone well in the tenancy it was decided at that point not to pursue it, but that the Appellant Landlord decided to activate this complaint when the trouble arose with the rent review. The Respondent Landlord's Representative submitted that the non-pursuance of a debt did not extinguish it.

An email interaction between the Respondent Tenant and the Appellant Landlord's former agent of May 2011, in which the Respondent Tenant alerted the agent to a missed rent payment and arranged to pay double the next month was put to the Appellant Landlord's Representative, and that this agent had not stated anything about any further rent arrears at this point in time. He said that he could not comment on this because it was at a time prior to him taking over management of the tenancy.

The Respondent Tenant refuted that she was in rent arrears. She had highlighted the emails at the commencement of the tenancy as stating the manner in which she could pay the rent and she said that this was accepted. In her written submissions, she noted that the Rent Arrears notice said that she was in arrears as of 27 March 2010 but that it was now claimed that the arrears arose at the beginning of the tenancy. In her written submissions she stated that she found it extremely strange that rent arrears were only raised in 2014 when they had supposedly accrued in 2009.

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

- (a) The tenancy commenced on 16 November 2009
- (b) The current, pre-review rent is €850 and it is paid monthly;
- (c) A deposit of €850 was paid by the Respondent Tenant to the Appellant Landlord.

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

Finding One:

No rent arrears have accrued in respect of the tenancy.

Reasons:

1. The Tribunal accepts that despite a lease agreement seeking rent in advance, that the Appellant Landlord through a former agent agreed to accept rent in arrears and that course of dealing affirmed acceptance of this arrangement. It is persuaded in this view on the basis of the sworn testimony of the Respondent Tenant and the contemporaneous email correspondence between her and the original agent at the outset of the tenancy. It further regards it as improbable that in circumstances whereby the Respondent Tenant dealt with a month's arrears in May 2011 expeditiously and at her own instigation that, had rent further rent arrears been in existence, they would not have been raised with her.

2. In the circumstances the Tribunal does not deem the Appellant Landlord to have discharged the burden of proof on the balance of probabilities as his Agent and Representative were relying on a third party's files and a standard form contract and were unable to detail the circumstances around the operation of its clauses in the first two years of the tenancy. Further the established course of dealings between the parties went unchallenged until early 2014.

#### Finding Two

The Appellant Landlord is in continuing breach of his obligations in respect of the standard and maintenance of the dwelling and awards the Respondent Tenant €1000 damages in compensation for the consequences of this breach.

#### Reasons:

1. The Tribunal accepts that at the commencement of the tenancy, the Respondent Tenant asked for and was given a commitment that an electric shower would be provided. Over four years of the tenancy have elapsed and no electric shower has been provided, rendering it necessary for her and her child to use a much less comfortable and more inconvenient hose-shower attachment for daily personal hygiene.
2. The Tribunal accepts that the Respondent Tenant replaced lino in the dwelling after repeated requests to the Appellant Landlord's former agent to attend to the repair went unheeded, and that she expended her own monies in effecting the repair.
3. While the Tribunal accepts that the current agent of the Appellant Landlord has responded to requests for repairs more expeditiously, the Tribunal notes that this does not remove the inconveniences of the above-mentioned shortcomings in the dwelling having occurred.

#### Finding Three

Upon installation of an electric shower to the bathroom of the dwelling, its market rent is determined to be €950 per month.

#### Reasons:

1. Under section 24 of the Act, 'market rent' is what a willing tenant not already in occupation would be willing to pay a willing landlord of a dwelling, based on vacant possession and taking into account the other terms of the tenancy and the letting values of a similar size, type and character of the dwelling situated in a comparable area.
2. The dwelling in question here is a small house with two bedrooms, one bathroom with rudimentary sanitary ware, is poorly equipped and albeit it has a garden it is not private and does not add based on the evidence put forward by the Tenant to the amenity of the dwelling. The Dwelling it was also noted has very little storage space neither does it have a shed which necessitated the Tenant having to store her child's bike inside the dwelling
3. The Tribunal notes that comparator two-bed apartments with two bathrooms which were submitted in evidence asked for rent within the region of €950 to €1050 and that the only comparator three-bedroom houses asked for between €950 and €1,350, although this latter bathroom had four bathrooms.

4. The Tribunal determines that a small two-bedroom house of this type in the area in question would achieve €950 per month in market rent, subject to improvement of the bathroom by the installation of an electric shower.

#### **8. Determination:**

**Tribunal Reference TR0514-000650**

**In the matter of David Horgan (Landlord) and Grace Reilly (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Respondent Landlord shall pay the Appellant Tenant €1,000 within 28 days of the issue of this Order in damages for breach of his obligations under the tenancy agreement to install an electric shower and under section 12(1) of the Act in respect of the standard and maintenance of the dwelling at 9 Eastwood, Finglas South, Dublin 11.
2. The Appellant Landlord shall install an electric shower in the bathroom of the dwelling within 84 days of the issue of this Order.
3. The market rent in respect of the dwelling is €950 which market rent shall take effect and fall due at the end of the first full calendar month in which an electric shower has been installed into the bathroom of the dwelling.

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

**Signed:**



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**Patricia Sheehy Skeffington Chairperson**

For and on behalf of the Tribunal.