

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000651 / Case Ref No: 0114-09744

Appellant Landlord:	Eugene Smyth
Respondent Tenant:	Joseph Kelly, Mary Geraghty
Address of Rented Dwelling:	36 The Links, Seapoint , Louth
Tribunal:	Tim Ryan (Chairperson) Gene Feighery, Gareth Robinson
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	01 September 2014 at 10:30
Attendees:	Eugene Smyth, Appellant Landlord Joseph Kelly, Respondent Tenant Mary Geraghty, Respondent Tenant
In Attendance:	Gwen Malone Stenographers

1. Background:

On 13/01/2014 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 01/04/2014. The Adjudicator determined that:

1. The Applicant Tenants acquired a Part 4 tenancy on the 4th of July 2013 in respect of the tenancy of the dwelling at 36 The Links, Seapoint, Termonfeckin, County Louth;
2. The market rent for the tenancy of the above dwelling is €900 per month;
3. The Applicant Tenants shall pay rent in the sum of €900 per month commencing on the next rent payment date after the date of issue of the Determination Order;
4. The Respondent Landlord shall pay the total sum of €1,200 to the Applicant Tenants within 42 days of the date of issue of the Determination Order, being damages for breach of landlord obligations in failing to properly maintain the dwelling in respect of the above tenancy.

Subsequently an appeal was received from the Landlord on 27/05/2014. The grounds of the appeal were standard and maintenance of dwelling and rent more than the market rate. The appeal was approved by the Board on 06/06/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Gene Feighery, Gareth Robinson as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Tim Ryan 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 01/09/2014 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:

1. PRTB File

3. Documents Submitted at the Hearing Included:

N/A

4. Procedure:

The Chairperson asked the parties to identify themselves and to identify in what capacity they were attending the Tribunal. He 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 as informal as possible; that the person who appealed (in this case the Appellant Landlord) would be invited to present his case first, that there would be an opportunity for cross-examination by the Respondent Tenants; that the Respondent Tenants would then be invited to present their case and that there would be an opportunity for cross-examination by the Appellant Landlord.

He also said that members of the Tribunal might ask questions of both parties from time to time.

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

He stressed 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 and/or up to 6 months imprisonment or both.

The Chairperson noted that should the parties indicate that they would be able to resolve the dispute through negotiation, the Tribunal would facilitate any such settlement. The terms of such an agreement would be incorporated into a Determination Order of the Tribunal and thus become enforceable through the Courts.

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 posted on the PRTB website. The Determination Order could be appealed to the High Court on a point of law only under Section 123(3) of the Residential Tenancies Act 2004, hereafter referred to as the Act of 2004.

The Parties giving evidence were then sworn in and the hearing commenced.

5. Submissions of the Parties:

Landlord's case:

Evidence of Eugene Smyth.

The Appellant Landlord confirmed that he was appealing the decision of the Adjudicator on two grounds, namely the level of damages awarded for breach of obligations in regard to standards of maintenance (€1,200.00) and the market rent (€900.00).

The Appellant Landlord said he had never met the Respondent Tenants before as he lived in Belgium and had no axe to grind with them. He said he felt the decision of the adjudicator was unfair, unreasonable and very one-sided. He said that during the tenancy he believed the Respondent Tenants made unreasonable and an unusually high number of requests. One request for example, he said was for a lock to be fitted on an oil tank as oil had been stolen. He said he believed as the oil was the property of the tenants, the onus was on them to purchase the lock.

In regard to maintaining the dwelling, the Appellant Landlord said that on one occasion a man had called four times before he was given access. He said the Respondent Tenants wanted the repairs done instantly, but were often not available to give access. In relation to complains about mice, he said the dwelling was in the country by the sea and mice would come in from time to time and it was up to the Respondent Tenants to deal with the problem themselves. As another example, he said the Respondent Tenants had complained about the state of the fridge. If the fridge was dirty, he said he felt they should have cleaned it or if it was in a bad state, it should have been thrown out. If he were in the place of the tenants, he would simply have gone and cleaned it himself. He said that when he had last seen the dwelling before it was let, it was in a good condition and his local maintenance man and his daughter, had cleaned and painted it.

The Appellant Landlord said it was his policy always to accede to reasonable requests and he simply wished to have happy tenants in the dwelling. He told the Tribunal that the Respondent Tenants had gone and made complaints to the PRTB and Louth County Council without informing his agent. In the end he said he felt things "had got out of control" between the Respondent Tenants and his agent. The Appellant Landlord said his local maintenance man had done his best but could not satisfy the Respondent Tenants. In the end he had given up and left the problem for his agent to deal with.

In relation to the issue of seeking to set the rent above the market rent, the Appellant Landlord said that when the first named Respondent Tenant presented his case at the adjudication hearing, he had misrepresented the dwelling as a four-bedroom house when it was in fact a five bedroom house. He said rents can vary, but his agent had taken comparable rents from the area and from the property portal Daft.ie. These figures indicated rents of about €1,100.00 but he was quite happy to accept €950.00 which was an increase of €100 on the rent in the first lease. He said that in the past he had secured rent of €1,100.00 per month for the dwelling.

The Appellant Landlord said he wondered say, if the Respondent Tenants were so unhappy in the dwelling, why they wished to remain on there. He said that he suspected they had some motivation for staying there, possibly because they knew they were being "subsidised". He said they had declined an offer to sign a second lease as they knew they had the protection of the Act of 2004 in so doing.

Cross-examined by the first named Respondent Tenant, the Appellant Landlord said he had a number of offers from potential tenants at the time of the letting. He said he was unaware about an electrician being called out to do three separate jobs when they could all have been done together. He offered belated apologies over the length of time it took to fix a gate in the fence but believed anyone wishing to gain entry could simply jump over it in any case.

Respondent Tenant's case:

Evidence of Joseph Kelly:

The first named Respondent Tenant told the Tribunal that he and his wife had planned to move abroad and had sold their own house. However, due to his mother-in-law's illness, they opted to remain living in the area and rented the dwelling which had been advertised by three different agents, with asking rent of €1,000.00 per month by one agent and €900.00 per month by two other agents. They finally rented the dwelling from Nest Estate Agents & Property Management at a rent of €850.00 per month. On 12 December 2013, the agents, in a letter incorrectly dated 12 December 2014, sought an increase in the rent to €950.00 from the end of the fixed tenancy period in a new lease.

From the beginning, the first named Respondent Tenant said they had encountered a number of issues with the dwelling, details of which were outlined in the case files. He said the alarm did not function properly as there was no battery pack available. He said the fencing around the house was not adequate but was eventually addressed. He said the front door could not be locked for a number of weeks. He said they did not wish to install a lock on the oil tanks as to do so would be to imply that they were responsible for any theft or criminal damage that might occur thereafter. He said they were left without heating for two weeks and they found the agent most unhelpful in sorting the problem. He said the oil tank could not be emptied properly as it was lying too close to the ground. He said they had eventually had it raised themselves as they got no response from their complaint to the agent.

The first named Respondent Tenant said that the existing power shower in the dwelling required a supply of hot as well as cold water to function. He said it took 18 weeks to have a replacement electric shower installed. He said no BER rating was provided which he believed was obligatory. He said no inventory was ever provided by the agent as part of the tenancy contract and they had to provide their own clothes drier. He said the washing machine developed a burning smell. He said the curtains in the dwelling were very dirty and they got two cleaned. They sent in an invoice to the agent but, after waiting for a period of five months, they deducted the sum of €190.00 from the rent.

The first named Respondent Tenant said there was no lighting in the hallway of the dwelling but this was subsequently fixed. He said the landing lights also failed to function on two occasions. He said the outside sensory lights were faulty and flashed on and off continuously causing disturbance to them and their neighbours and that this took the Agent for the Landlord six weeks to address. All these matters could have been fixed by one visit by an electrician but instead, he said it took three visits. When he requested a certificate of compliance from the Agent he was told that any information requests by Tenants from the Agent would incur a charge of €350.00 plus VAT in advance. He said the ensuite shower was leaking into the living room and the heating had not worked over the Christmas 2013 period. In relation to the mice issue he said he had dealt with

problem himself and had trapped five mice. He said he also fixed and painted some of the fencing himself.

In relation to the market rent, the first named Respondent Tenant said that the PRTB/ESRI index was by far the most authoritative indicator as it gave the figure for actual rents paid rather than rents asked. He said he believed they had paid the market rent at the time for the dwelling. In the letter incorrectly dated 12 December 2014, the Agent had sought an increase of 11.8 per cent, way in excess of the figures shown on the Daft.ie website.

The first named Respondent tenant said he and his wife had accepted the Adjudicator's report and believed the appeal by the Appellant Landlord was trivial and vexatious. He said there was no legal obligation on them to sign a second lease. He said he felt they had been very badly treated by the Appellant Landlord's agent and all they wished to do was to vindicate their good name. He said they were not interested in any financial reward.

6. Matters Agreed Between the Parties

A fixed term tenancy commenced on 4 January 2013 until 31 January 2014.

Thereafter it reverted to a periodic tenancy.

A deposit of €850.00 was paid and the rent was €850.00 per month.

A letter seeking an increase to €950.00 per month in the rent was sent to the tenants on 12 December 2013.

7. Findings and Reasons:

Finding:

The Appellant Landlord was in breach of their obligation to maintain the dwelling.

Reasons:

Section 12 of the RTA obliges a landlord to maintain the interior of a dwelling and to carry out repairs as they become necessary from time to time. While the Appellant Landlord lives abroad and appointed an Agent to look after his property, he is still ultimately responsible for the maintenance of the dwelling. While he, along with his local maintenance man did carry out some refurbishment work on the dwelling prior to its letting, he clearly did not carry out sufficient investigation of all the utilities there so as to ensure everything was in good working order.

While the Tribunal was restricted in its ability to explore in detail all the circumstances in regard to the various issues raised by the Respondent Tenants due principally to the non-attendance of the Agent, the need for 38 separate visits during the course of the tenancy was excessive. It is clear to the Tribunal that relations between the Respondent Tenants and the Agent clearly deteriorated during the course of the tenancy and this led to a number of delays. Many of the issues raised by the Respondent Tenants were dealt with albeit after very long and inordinate delays.

However, apart from one lengthy email, the Respondent Tenants did not, or were unable to, contact the Appellant Landlord who was unaware of many of the problems that arose.

Consequently the Tribunal sees fit to confirm the Adjudicator's award of damages in the sum of €1200 for breach of landlord obligations.

Finding:

The Market rent for the tenancy of the dwelling is €900 per month.

Reasons:

Various comparisons of rent were put forward by the Appellant Landlord and Respondent Tenants in regard to comparable rents for similar dwellings in the area. The Appellant Landlord said his Agent, who had many years experience of renting property in the Drogheda area, had advised in his letter to the Respondent Tenants in December 2013 that the market rent for properties in the region was in the region of €1,000 to €1,100 per month. On the other hand, the Respondent Tenants argued that the only reliable and truly authoritative comparable evidence is the PRTB/ESRI rent index which measures rents actually achieved. On this basis, he argues the increase sought by the agent was excessive. Having reviewed the evidence, the Tribunal confirms the decision of the adjudicator that the market rent for the dwelling is €900 per month.

8. Determination:

Tribunal Reference TR0514-000651

In the matter of Eugene Smyth (Landlord) and Joseph Kelly, Mary Geraghty (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The market rent in respect of the tenancy of the dwelling at 36 The Links, Seapoint, Termonfeckin, County Louth is €900.00 per month.
2. The Appellant Landlord shall pay the total sum of €1,200.00 to the Respondent Tenants within 14 days of the date of issue of the Determination Order by the Board, being damages for breach of landlord obligation in failing to properly maintain the dwelling in the respect of the above tenancy.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 16/09/2014.

Signed:



Tim Ryan Chairperson

For and on behalf of the Tribunal.