

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000654 / Case Ref No: 0314-11036

Appellant Tenants: Florin Ciuciu, Elisabeth Imanandita, Stelian Ciuciu, Miriam Ciuciu, Bitia Vasilica, Stelian Ciuciu Junior, Lavina Ciuciu, Lorena Mira Ciuciu

Respondent Landlord: Mike Dixon

Address of Rented Dwelling: 5 Monastery Walk, Clondalkin , Dublin 22

Tribunal: Patricia Sheehy Skeffington (Chairperson)
Tim Ryan, John Tiernan

Venue: Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2

Date & time of Hearing: 07 July 2014 at 2:30

Attendees: For the Appellant:
Stelian Ciuciu (Appellant Tenant),
Stelian Ciuciu Junior, (Appellant Tenant)
Miriam Lorena Ciuciu (Appellant Tenant)
Jennifer Lavinia Ciuciu (Appellant Tenant,
Elisabeth Iamandita (Appellant Tenant),
Hurrem Roxelana Ciuciu, (Appellant Tenant a minor / baby),
For the Respondent:
Mike Dixon (Respondent Landlord)
Nicola Hennessy, Partners-At-Law (Respondent Landlord's solicitor).
Andrew Dixon, Appellant Landlord's Son

In Attendance: Gwen Malone Stenographers
PRTB Appointed Interpreter

1. Background:

On 18 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 1 May 2014. The Adjudicator determined that the Notices of Termination served on 22nd January 2014, by the Applicant Landlord on the Respondent Tenants were valid and that the Respondent Tenants and all persons residing in the above dwelling should vacate and give up possession of the above dwelling. He further determined that the Respondent Tenants were liable to the Landlord

in the sum of €6,918.61, representing rent arrears of €5,918.61 plus the sum of €500.00 damages for failing to vacate the dwelling on foot of a valid Notice of Termination plus €500.00 damages for failing to pay the agreed rent on the due dates. The Order further directed the ongoing payment of rent at €950 per month.

Subsequently, on 27 May 2014, the Tenant applied to appeal the Adjudicator's determination on the grounds that the Notice was invalid, for breach of landlord obligations and other matters. The application for the appeal was approved by the Board on 6 June 2014.

The PRTB constituted a Tenancy Tribunal and appointed Patricia Sheehy Skeffington, Tim Ryan and John Tiernan 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 7 July 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 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 Tenants in this case) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his 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. 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. She further clarified that the Appeal was of the adjudication of 5 May 2014, not of a previous adjudication of 25 October 2013 in which allegations of anti-social behaviour had not been upheld.

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 and which were within the jurisdiction of the Tribunal comprised:

1. Whether the Notices of Termination dated 22 January 2014 were valid;
2. Whether the Respondent Landlord has a bone fide intention to move into the dwelling;
3. Whether rent arrears had accrued and/or utilities bills were outstanding and if so, in what sum;
4. What the current rental rate is and its legal basis;
5. Whether any Notice of Termination impacted on the tenancy status of the youngest child of the tenants' family in circumstances in which she was not born when they were served;

The parties agreed that no issue of anti-social behaviour was in front of the Tribunal in circumstances whereby an initial Adjudication of 25 October 2013, which had held that no anti-social behaviour was attributable to the Appellant Tenants, had not been appealed.

1. Whether the Notices of Termination dated 22 January 2014 were valid

The Third Named Appellant Tenant, Stelian Ciuciu Senior (who spoke on behalf of all Appellant Tenants, and is hereafter referred to as the Appellant Tenant) agreed that the nine Notices had been served by the Respondent Landlord's solicitor on the 22 January 2014 but said that their stated reason for terminating the tenancy was a ruse (see below).

He further stated that a previous Adjudication and Determination Order of 25 October 2013 had found that his family was entitled to remain at the dwelling. He submitted that it was impermissible under European Law to hold a later Adjudication between the same parties to the same tenancy dealing with the same issues. He said that there was a principle whereby a person who was charged for one issue and found to be innocent of it had the entitlement to expect that he would not be tried for the same issue again.

The Appellant Tenant stated that he came to Ireland in 2007. He said that he was in the process of a social welfare appeal and that he relied on support from the Roma community to purchase daily necessities. He said that if the Appellant Tenants were evicted, he and his family of ten people would be living on the streets and he beseeched that the Tribunal take this into account and that it might exert any influence it could over the social welfare appeal. He said that he had children in education and his son had a two-month-old daughter who would be seriously impacted if the family were rendered

homeless. He said that he himself suffered from ill health which would also be impacted. In their written submissions, the Appellant Tenants raised Article 8 of the European Convention of Human Rights in this regard, which affords protection to family life and the home.

However the Appellant Tenant acknowledged that the Tribunal had no power over the determination process of the Department of Social Protection or the Department of Justice. Upon questioning from the Respondent Landlord's representative, he said that the Roma community, for whom he worked in a voluntary capacity, had supplied the Audi car he drove but he denied that he owned any other car.

The Respondent Landlord's solicitor said that the notices were valid and were appropriately served. She referred to her written submissions, which set out that the Notices had been served on all persons named as tenants in the lease (Elisabeth Iamandita, Florin Ciuciu and Stelian Ciuciu), plus all persons known to be residing in the dwelling and the 'occupants' of the dwelling. These submissions noted that the Respondent Landlord had not agreed to any subletting nor had the names of further people been furnished to the Respondent Landlord as being resident in the dwelling and as such the Respondent Landlord's representative denied that the other people residing there were tenants.

She submitted that the Notices, which stated their date of service as being the 22 January 2014, had been found to be valid by the Adjudicator and submitted that this finding should be upheld. The Notices of Termination set the termination date as the 10 March 2014, gave the reason that the Respondent Landlord required the dwelling indefinitely for his own use, gave the Appellant Tenants the full twenty four hours of the termination date to vacate and informed them of the right to refer the Notices' validity to the PRTB. It further contained a statement to the effect that where the dwelling was vacated by the landlord within six months' of the termination of the tenants' tenancy, if the tenant provided a contact address within 28 days' of such termination of tenancy or dispute resolution in respect of the Notice's validity, the landlord was required to offer a new tenancy of the dwelling to the tenants.

2. Whether the Respondent Landlord has a bone fide intention to move into the dwelling

The Appellant Tenant referred to the Adjudication of 25 October 2013 and three letters sent by the Respondent Landlord in 2014, none of which had alluded in any way to the Respondent Landlord's purported wish to reside in the dwelling. He said that he had another address in Dublin and did not need the dwelling. He said that the wish to return to the dwelling had only transpired after the Respondent Landlord's lack of success in the previous adjudication (of October 2103) to terminate the tenancy and characterised the reason for terminating the tenancy expressed on the Notices as a ruse.

The Respondent Landlord gave evidence that he had previously lived in France but that due to health problems he wished to return to Ireland. He said that initially, when he was not aware of the legal position, he had tried to terminate the tenancy by another route but that this was not successful. He said that he had then sought assistance of his solicitor and told her why he wanted to move back and that she had put the current course of action in motion.

He said he had lived in the dwelling prior to residing in France and that he was now living between his ex-wife's house and daughter's house, neither of which constituted a permanent or ideal living situation. He said that he wanted to live in the dwelling

indefinitely. He described the dwelling as a two-bedroom dormer bungalow. In response to a question from the Tribunal, he said that he had last spent a week on France more than six months' previously. He said that there was a mortgage on the dwelling and the non-receipt of rent was creating financial problems for him.

The Respondent Landlord's representative stated that a tenant could not properly impugn the intention of a landlord to use a dwelling in a particular manner as intention by its very nature is unknowable to a third party. The Respondent Landlord stated that he was angered by the suggestion that he had no intention to move back to the dwelling as the suggestion was being made by a person who did not know him at all.

3. Whether rent arrears had accrued and/or utilities bills were outstanding and if so, in what sum

In respect of the rent arrears, both parties agreed that no rent had been paid to the Respondent Landlord since 26 October 2013. The Appellant Tenant queried the legal basis of the rent (see below). He further stated that he would pay all rent outstanding when an appeal from the social welfare office came through. He said that if this appeal failed he would appeal again but that it was his intention to pay all the monies outstanding.

The Respondent Landlord said that the amount of rent outstanding was for each month between November 2013 and July 2014 inclusive. This sum amounted to €8,550. In response to a question from the Appellant Tenant, he said that he was not agreeable to waiting for the rent or to renew any lease pending the result of the social welfare appeal as no rent had been paid and he wanted to resume residence at the dwelling.

In respect of the gas bill, the Appellant Tenant said that he agreed that if there was gas used while his family was resident that he was liable for those sums. He said that when he had been requested to change the bill into his name he had done so and that at no time had he made any request to change the bill's account into the Respondent Landlord's name. He said that he has not been told about any credit which had been applied to his subsequent bill which was rightfully the credit of the Respondent Landlord but that he did not contest that this was the case. He said he fully intended to pay the bill.

The Respondent Landlord said that after the tenancy commenced, the account had been changed into his name without his consent. He said that he did not know who had done this but that it was his understanding that when a tenancy ended it did not simply revert into the Respondent Landlord's name. He said that prior to the Appellant Tenant changing the bill into his name, gas to the value of €1223.45 had accrued. He referred to bills on the case file. He further said that a credit of €196.83 was due to him because he had paid a previous bill to which this credit was attributable.

4. What the current rental rate is and its legal basis

The Appellant Tenant said that his lease with the Respondent Landlord had been signed on 30 November 2012 and was for nine months and thus did not cover the period over which rent was claimed. In his written submissions he criticised the Adjudicator for both relying on a lease which had expired and for relying on a previous adjudication stating that the rent was ongoing in circumstances in which the Adjudicator had expressly declined to consider or link the subject matter of the two adjudications.

The Tribunal drew the Appellant Tenant's attention to a clause in the lease of 30 November 2012 which stated that upon the expiry of that tenancy agreement, the parties

would either enter a new lease, the tenant would claim a Part IV tenancy under the Residential Tenancies Act, or “in the absence of any formal agreement to continue after the term, the tenancy will continue as a periodic month-to-month under the original terms and conditions of the Agreement”. The Appellant Tenant thanked the Tribunal for drawing this clause to his attention and stated that he was in the hands of the Tribunal's expertise in this regard.

5. Whether any Notice of Termination impacted on the tenancy status of the youngest child of the tenants' family in circumstances in which she was not born when they were served

The Appellant Tenant stated that the Notices of Termination served on 22 January 2014 could not impact on the youngest member of the family as she was not born when the Notices were served. He referred to her birth certificate which was on the file and which recorded her date of birth as 27 March 2014. In his written submissions, he stated that as the child was not born at the time the Notices were served, she was deprived of her right to appeal or benefit from any recourse to the PRTB and on this basis he argued that the Notices could not be valid in respect of her. The Appellant Tenant emphasised the serious impact an eviction and subsequent homelessness would have on an infant child.

The Respondent Landlord's solicitor submitted that as the Notices of Termination were served on 22 January 2014 and terminated the tenancy on 10 March 2014, the tenancy was not in being and the Appellant Tenant's family were overholding when its youngest member was born. In her written submissions she stated that there were only three named individuals on the lease agreement and that these were the tenants for the purposes of the tenancy.

6. Matters Agreed Between the Parties

- (a) The monthly rent was initially set at €950;
- (b) A deposit of €950 was paid and is retained by the Respondent Landlord;
- (c) The tenancy commenced on 30 November 2012;
- (d) Nine notices of Termination were served by the Respondent Landlord's legal representative on 22 January 2014;
- (e) Rent has not been paid since 26 October 2013
- (f) An initial lease agreement was signed at the commencement of the tenancy but no further lease was signed after it expired.

7. Findings and Reasons:

Finding One:

The Respondent Landlord has a bona fide intention to move into the dwelling

Reasons

1. The Tribunal accepted on the balance of probabilities that the Respondent Landlord required the dwelling for his own use given his current living conditions and his sworn testimony to this effect.

2. The Tribunal accepted the contention put to it by the Respondent Landlord's representative that a party cannot know or impugn intention in respect of another party's future actions. The Tribunal notes that the Act has set up a complete framework to deal with this uncertainty, allowing tenants to apply for damages for unjust deprivation of a tenancy should a stated reason for the termination of a tenancy based on a future event not transpire: (section 56).

Finding Two:

The Notices of Termination dated 22 January 2014 were valid and binding on all occupants of the dwelling. The Appellant Tenants have been overholding since 11 March 2014.

Reasons

1. A valid Notice of termination must be in writing; be signed by the landlord or his agent; specify its date of service; state the reason for the termination of the tenancy if the tenancy had endured for more than six months; state the termination date; state that the tenant has the full twenty-four hours of this date to vacate; and inform the tenant of the right to refer the validity of the Notice or the right to serve it to the PRTB: section 62 of the Act. The Notices in question fulfilled all these criteria.

2. Where a tenancy is terminated by reason of the landlord requiring it for his own use for that of a member of his family, the Notice must also state the identity of the person taking up residence and the duration of the residence: (section 34 of the Act, Table, paragraph 5). It must also contain a statement pursuant to section 35 of the Act that where the tenant provided contact details within 28 days' of the termination of the tenancy or dispute resolution in respect of it, if the person residing in the dwelling pursuant to the Notice of Termination left, a new tenancy would be offered to the tenant. Such a statement is found on the face of the Notices of Termination.

3. Where a tenancy is terminated by a landlord other than for breach of a tenant's obligations, if the tenancy has lasted between one and two years the tenant must be given at least 42 days' notice: (section 66). In this case the tenancy was of approximately 14 months' duration on 22 January 2014 and 47 days' notice was afforded to the tenants, which is a valid notice period.

4. The Notices of Termination were served on all named tenants of the lease agreement. The Evidence of the Respondent Landlord's Legal Representative clearly demonstrates that service of the Notices was carried out in accordance with appropriate procedure. No person other than the persons named on the lease agreement were tenants pursuant to the Act, as tenants are defined in section 5 as persons entitled to occupation of a dwelling under a tenancy, and a tenancy is defined as including a periodic tenancy and a tenancy whether oral or implied, and includes a sub-tenancy. In this case no sub-tenancy was created in respect of the further occupants.

5. The occupants residing in the dwelling who were not tenants were lawfully residing there as licensees of the tenants, as set out in section 49(1)(a) of the Act. Whereas a licensee may request of the landlord to become a tenant and the landlord may not unreasonably withhold consent (section 50(7) and (8)) no such request was made in this case. All persons residing in the dwelling other than the named tenants were occupying as the tenants' licensees.

6. Where a tenant's right to occupy a dwelling lawfully ceases, any rights they may have conferred on their licensees also cease. Thus any rights of Stelian Ciuciu Junior, Miriam Lorena Ciuciu, Jennifer Lavinia Ciuciu, Hurrem Roxelana Ciuciu and any other person residing in the dwelling on the basis of the tenancy of Elisabeth Iamandita, Florin Ciuciu and Stelian Ciuciu Senior came to an end on 10 March 2014 when the period set out in the Notice of Termination elapsed.

7. It follows that it is immaterial that Hurrem Roxelana Ciuciu was not born when the Notices were served and expired as no rights to reside in the dwelling could be conferred on her by the tenants at that time.

8. While the Tribunal must carry out its functions in accordance with the European Convention on Human Rights "ECHR" (pursuant to section 3 of the European Convention on Human Rights Act, 2003), in this case the Tribunal has jurisdiction only to determine the rights of private individuals, a context wherein Article 8 of the Convention provides extremely limited assistance to the Appellant Tenants. This is because Article 8 prevents a public body interfering with private and family life, save as in accordance with law and as is necessary in a democratic society to protect, among other things, the rights of others. It is noteworthy that Article 1 of Protocol 1 of the ECHR expressly recognises the right of persons to their possessions. Thus in adjudicating on the rights of private persons to the tenancy of a dwelling by following a clearly laid out statutory framework aimed at balancing the rights of the tenant to the dwelling as against the property rights of the landlord, the Tribunal is satisfied that it is acting within the scope of Article 8 of the ECHR.

9. The Tribunal heard evidence from the Appellant Tenants that they risked homelessness if the Notice of Termination were found valid. However their situation of homelessness is one which they and/or the State must address: it does not fall at the door of a private landlord. Mindful of its obligations to act in a manner consistent with Article 8 of the ECHR, the Tribunal has endeavoured in its Determination Order to strike a balance between the time requirement for an application to any State body involved and/or seek alternative accommodation through other means while balancing the Respondent Landlord's right to vacant possession of the dwelling without undue delay.

10. The Tribunal rejects that the tenancy was protected or insulated in any way by a previous adjudication of 25 October 2013. Whereas that adjudication and its binding determination set out the rights and obligations of the parties as of 25 October 2013, this did not insulate the tenancy from its termination in accordance with Part V of the Act at a future point in time. The Tribunal does not agree with the argument put forward by the Appellant Tenants that the same matters have been adjudicated upon and determined by the previous Adjudication. The Determination of 25 October 2013 concerned matters distinct from those currently under dispute. It did not concern the termination of the tenancy for reasons of the landlord requiring it for his own use or any rental obligations from 26 October 2013 onwards

Finding Three

The monthly rent applicable to the tenancy of the dwelling is €950.

Reasons

1. Under section 5 of the Act, a tenancy includes an implied periodic tenancy.

2. The lease signed by the parties for a fixed term between 30 November 2012 and 30 August 2013 provided that if a Part IV tenancy was not claimed nor a further fixed term tenancy entered into by the parties, the agreement would roll on as a periodic tenancy from month to month on the same terms. These terms included a monthly rent reserved at €950.

3. While the Appellant Tenants are overholding, the Respondent Landlord is entitled to the same value for the use of the house as he had under the tenancy agreement, being €950 per month.

Finding Four:

The Appellant Tenants owe €8,550 in rent arrears (to the end of July 2014) plus €1,420.28 in charges for gas comprising a total amount due of €9,970.28.

Reasons:

1. The Appellant Tenants did not dispute that they had not paid rent since 26 October 2013. Rent between November 2013 and July 2014, comprising nine months' rent at €950 per month, equates to arrears of €8,550.

2. The Appellant Tenants did not dispute that they owed gas charges and the return of a gas credit totalling €1,420.28.

8. Determination:

Tribunal Reference TR0514-000654

In the matter of Florin Ciuciu, Elisabeth Imanandita, Stelian Ciuciu Senior (Appellant Tenants) Miriam Ciuciu, Bita Vasilica, Stelian Ciuciu Junior, Lavina Ciuciu, Lorena Mira Ciuciu, Hurrem Roxelana Ciuciu (Appellant Tenants' licensees) and Mike Dixon (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notices of Termination served on the Appellant Tenants on 22 January 2014 in respect of the tenancy of the dwelling at 5 Monastery Walk, Clondalkin, Dublin 22 are valid.

2. The Appellant Tenants, their licensees and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling within 56 days of the date of issue of the Order of the Board.

3. The Appellant Tenants shall pay the total sum of €9,970.28 to the Respondent Landlord in 9 equal payments at the rate of €1,000 per calendar month, on the 28th day of each month, followed by one final payment of €970.28 in the immediately succeeding month commencing the next month after the issue of the Order of the Board. This sum represents rent arrears in the sum of €8,550 plus liability for utilities bills in the sum €1,420.28 in respect of the tenancy of the above dwelling;

4. The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the quantum of payments made to the Respondent Landlord on each due date until the sum of €9,970.28 has been paid in full;

5. For the avoidance of doubt any default in the payment of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Respondent Landlord;

6. The Appellant Tenants shall also pay any further rent outstanding from 1 August 2014 (the date to which rent arrears have been calculated for the purposes of this Order), at the rate of €950 per month or part of the month at the rate of €31.23 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as they vacate and give up possession the above dwelling;

7. The Respondent Landlord shall refund the entire of the security deposit of €950 to the Appellant Tenants, on gaining vacant 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 15/07/2014.

Signed:



Patricia Sheehy Skeffington Chairperson

For and on behalf of the Tribunal.