

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000656 / Case Ref No: 0114-09757

Appellant Tenant: Sinead Holton

Respondent Landlord: Francis Sherlock

Address of Rented Dwelling: 13 The Oaks, Granary Court, Edenderry, Co. Offaly.

Tribunal: Tim Ryan (Chairperson)
Gene Feighery, Orla Coyne

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

Date & time of Hearing: 30 July 2014 at 10:30

Attendees: Francis Sherlock, Respondent Landlord
Brenda Fitzpatrick, Witness for the Respondent
Landlord

In Attendance: Gwen Malone Stenographers

1. Background:

On 13/01/2014 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 24/03/2014. The Adjudicator determined that in the matter of Francis Sherlock (Applicant Landlord) and Sinead Holton (Respondent Tenant) the Adjudicator, in accordance with section 97(4) of the Act, determines that:

1. The Respondent Tenant shall pay the total sum of €3,073.11 to the Applicant Landlord in five consecutive payments of €600.00 on the 28th day of each month, followed immediately by one payment of €73.11, commencing the next month after the issue of a Determination Order by the Board. This sum represents rent arrears of €3,673.11, plus €500 for breach of tenant obligations to pay the rent as it falls due, less €500.00 for breach of landlord obligations by the unlawful termination of the tenancy, having deducted the entire of the justifiably retained security deposit of €600.00, in respect of the tenancy of the dwelling at 13 The Oaks, Granary Court, Edenderry, Co Offaly;
2. The enforcement of the Order for such payment of €3,073.11 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalment(s) made by the Respondent Tenant to the Applicant Landlord at the date of default until such time as the total sum of €3,073.11 has been paid in full;
3. For the avoidance of doubt any default in the payment of a monthly instalment shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Applicant Landlord.

Subsequently an appeal was received from the tenant on 27/05/2014. The grounds of the appeal were: deposit retention, standard and maintenance of dwelling, rent arrears, invalid notice of termination, rent more than market rate, breach of landlord obligations and anti-social behaviour. The appeal was approved by the Board on 06/06/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Orla Coyne, Gene Feighery 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 30/07/2014 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:

At 23.41pm on the night before the Tribunal, the PRTB received an email from the Appellant Tenant stating she would not be attending the Tribunal. The Chairperson asked the Party present to identify themselves and to identify in what capacity they were attending the Tribunal. He confirmed with the Party 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 Party present was sworn in and the hearing commenced.

The Chairperson explained the procedure which would be followed which was, as the Appellant Tenant was not present, the Tribunal would proceed to affirm the Determination of the Adjudicator in this matter.

The Chairperson reminded the Party that, as a result of the Hearing that the Tribunal would prepare a report and issue it to the PRTB Board for approval. A legally enforceable Determination Order would then be issued to the parties and could be appealed to the High Court on a point of law only under Section 123(3) of the Residential Tenancies Act, hereafter referred to as the 'RTA'.

5. Submissions of the Parties:

N/A

6. Matters Agreed Between the Parties

N/A

7. Findings and Reasons:

Finding:

The Tribunal determined to affirm the Determination Order of the Adjudication which took place on 24/03/2014.

Reason:

The Appellant Tenant who had brought the appeal subsequently advised the PRTB that was not attending on the date of the Tribunal hearing.

8. Determination:

Tribunal Reference TR0514-000656

In the matter of Sinead Holton (Tenant) and Francis Sherlock (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, affirms the Determination of the Adjudicator in that:

1. The Appellant Tenant shall pay the total sum of €3,073.11 to the Respondent Landlord in five consecutive payments of €600 on the 28th day of each month, followed immediately by one payment of €73.11, commencing on the next month after the issue of a Determination Order by the Board. This sum represents rent arrears of €3,673.11 plus €500 for breach of tenant obligations to pay the rent as it falls due, less €500.00 for breach of landlord obligations by the unlawful termination of the tenancy, having deducted the entire of the justifiably retained security deposit of €600.00 in respect of the tenancy of the dwelling at 13 The Oaks, Granary Court, Edenderry, Co. Offaly.
2. The enforcement of the Order of such payment of €3,073.11 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Appellant Tenant to the Respondent Landlord at the date of default until such time as the total sum of €3,073.11 has been paid in full.
3. For the avoidance of doubt any default in the payment of a monthly instalment shall act to cancel any further deferral and the balance due at the date of default or any such monthly payment shall immediately become due and owing to the Respondent Landlord.

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

Signed:



Tim Ryan, Chairperson

For and on behalf of the Tribunal.