

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000658 / Case Ref No: 0314-10803

Appellant Landlord:	Paul Keegan
Respondent Tenant:	Macko Kupa
Address of Rented Dwelling:	10 Riverwood Park, Castleknock , Dublin 15
Tribunal:	Tim Ryan (Chairperson) Orla Coyne, John FitzGerald
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	02 July 2014 at 10:30
Attendees:	Paul Keegan, Appellant Landlord Macko Kupa, Respondent Tenant
In Attendance:	Gwen Malone, Stenographers

1. Background:

On 05/03/2014 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 13/05/2014. The Adjudicator determined that:

1. The Notice of Termination served on the 15th March 2014 by the Respondent/Applicant Landlord on the Applicant/Respondent Tenant, in respect of the tenancy of the dwelling at 10 Riverwood Park, Castleknock, Dublin 15 was invalid.
2. The Respondent/Applicant Landlord's application regarding overholding and rent arrears, in respect of the tenancy of the dwelling at 10 Riverwood Park, Castleknock, Dublin 15 was not upheld.

Subsequently an appeal was received from the Landlord on 26/05/2014. The grounds of the appeal were rent arrears and overholding. The appeal was approved by the Board on 06/06/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Orla Coyne, John FitzGerald 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 02/07/2014 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:

The Appellant Landlord submitted a copy of an email from the Respondent Tenant's sister which thanked him for being a good landlord. There was no objection from the Respondent Tenant.

The Respondent Tenant submitted a copy of an email from the Appellant Landlord to his sister confirming that he would allow him to find alternative accommodation. There was no objection from the Appellant Landlord.

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 Tenant; that the Respondent Tenant would then be invited to present his 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 any such agreement can 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 could be appealed to the High Court on a point of law only in accordance with Section 123(3) of the Residential Tenancies Act (RTA) 2004.

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

5. Submissions of the Parties:

Appellant Landlord's case:

The Appellant Landlord stated that the Respondent Tenant had rented the dwelling along with his sister up to April 2010 from which time he rented it on his own for €1,000 per month.

In October 2013 he rang the Appellant Tenant to say he was increasing the rent to €1,150 per month and he gave a letter to him confirming this which was to be forwarded to the Department of Social Protection to secure an increased rent allowance. The Appellant Landlord said he had given the Respondent Tenant, who at this time was living in the dwelling on his own with periodic visits from his two young children, the option of subletting a room as it was a three-bedroomed dwelling but the Respondent Tenant said he liked his privacy. He said he had co-operated with the Respondent Tenant at all times and there was a great deal of communication between them.

The Appellant Landlord said that he decided not to implement the increased rent until January 2014 to allow time for the Department of Social Protection to process the tenant's application as the Respondent Tenant had sent papers to the wrong office. The Landlord also stated that he had assisted the Respondent Tenant with the application. He supplied the Respondent Tenant with a four month tenancy agreement which he backdated to October 2013. As he was in a hurry on the day he signed it, he incorrectly filled in a rent figure of €900 per month and this should have been €1,000 per month from 1 October 2013.

The Appellant Landlord said he had to increase the rent as he is the joint-owner of the house and he has a mortgage on the dwelling. He said he was unable to reach agreement on the increase with the Respondent Tenant in January and relations deteriorated after that. However, he said the Respondent Tenant had accepted that he had the right to increase the rent as it had not been increased for four years and he considered a 15 per cent increase moderate. He also stated that the Respondent Tenant could obtain more rent if there were more people living there as it was a three-bedroomed dwelling. On 25 February, 2014 he said he arrived at the dwelling with a maintenance man to carry out some repairs to include a sewerage leakage in the rear garden of the dwelling but the Respondent Tenant refused him access. He also had the locks changed as the Respondent Tenant's sister had not handed up her keys when she vacated. He immediately gave a new key to the Respondent Tenant when the locks were changed.

On 12 February 2014, the Appellant Landlord said he wrote to the Respondent Tenant informing him that the rent was increasing by €150 per month from 1 February 2014. He provided an agreement form for the Respondent to sign and return to him.

However, the Respondent Tenant had replied in writing saying he understood 28 days notice was necessary and he was asking for a period of eight weeks to give him time to find alternative accommodation. On 1 March 2014 he sent a 14 day Warning Notice to the Respondent Tenant followed by a 28 day Notice of Termination on 15 March 2014. This Notice was due to expire on 13 April 2014. He said the Respondent Tenant continued to pay rent at the rate of €1,000 per month. As of the first of July 2014, he said there were arrears of rent due of €900 calculated on the basis of €150 per month from 1 February 2014 to 1 July 2014.

Respondent Tenant's case:

In his evidence the Respondent Tenant said that for the first few months of the tenancy he had rented just one room in the dwelling while he awaited the outcome of a custody case in regard to his children. In October 2013 his sister got married and moved to the

United States. He said he approached the Appellant Landlord who agreed to rent the entire dwelling to him for €1,000 per month. He received a rent subsidy of €770 per month and made up the balance himself. Questioned by the Tribunal, he confirmed that the Appellant Landlord was entitled to charge rent of €1,150 per month but he could not afford to pay it.

The Respondent Tenant said he had met the Appellant Landlord in January 2014 and told him he could not afford the new rent. He said they had agreed to continue on the rent at €1,000 per month in an oral agreement but there was no written agreement.

Subsequently he said the Appellant Landlord had handed over the management of the dwelling to an agency and the agent had told him the Appellant Landlord had somebody else ready to move in.

On 25 February the Respondent Tenant said the Appellant Landlord arrived at the dwelling with a man and wanted to change the locks. He said the Landlord agreed to give him 112 days to find new accommodation and said he would put this in writing. However, he subsequently received a 14 Day Warning Notice followed by a Notice of Termination. He said he was still willing to vacate the dwelling but required a written notice of 112 days.

6. Matters Agreed Between the Parties

The tenancy commenced on 1 February 2010 on the basis of a room rental of €300 per month.

A tenancy of the entire property commenced on 27 April 2010 at €1,000 per month.

A deposit of €1,000 was paid and is retained by the landlord.

On 1 March 2014 a 14 day Warning Notice was served on the tenant.

On 15 March 2014 a Notice of Termination was served on the tenant.

The tenant continues in occupation.

7. Findings and Reasons:

Finding:

1. The Notice of Termination dated 13 April 2014 is invalid.

Reasons:

Section 62 of the Residential Tenancies Act (RTA) 2004 sets down the requirements for a valid Notice of Termination. Section 62(g) requires that the notice must state that any issue as to the validity of the notice, or the right of the landlord or tenant to serve it, must be referred to the PRTB Board within 28 days of receipt of the Notice. The Notice of Termination dated 13 April 2014 did not include this requirement and is therefore found to be invalid.

Finding:

2. The Respondent Tenant is in breach of his obligation to pay rent.

Reasons:

Section 16(a) of the RTA requires a tenant to pay rent to the landlord on the date it falls due for payment. Contradictory evidence was given by both parties as to what agreement and when, was made in regard to the rent. Section 20(a) of the RTA allows a landlord to review the rent not more than once in any year. The Appellant Landlord submitted evidence that he had not reviewed the rent for four years previously. The Appellant Landlord also submitted written evidence, dating back to 15 November 2013, that he was increasing the rent by €150 per month from January 2014. He subsequently wrote to the Respondent Tenant on 12 February 2014 confirming that he had deferred the increase to 1 February 2014. The Respondent Tenant in his evidence accepted the Landlord had the perfect right to increase the rent to €1,150. However, there was contradictory evidence given by both the Respondent Tenant and the Appellant Landlord that an oral agreement had been reached with the Appellant Landlord in January 2014 that the rent would remain at €1,000 per month. No evidence was submitted in support of this claim which was rejected by the Appellant Landlord. The Tribunal finds the evidence of the Appellant Landlord more credible in this regard and affirms that the rent from 1 February 2014 is €1,150 per month. Accordingly, the Tribunal finds that the Respondent Tenant was in arrears of rent in the sum of €900 on 1 July 2014.

8. Determination:

Tribunal Reference TR0514-000658

In the matter of Paul Keegan (Landlord) and Macko Kupa (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on 15 March 2014 by the Appellant Landlord on the Respondent Tenant is invalid.
2. The Respondent Tenant shall pay the sum of €900 to the Appellant Landlord in six consecutive monthly payments of €150 per month commencing on the 28th day of the month after the date of the issue of this Order by the Board. The sum represents rent arrears for the period 1 February 2014 to 1 July 2014 in respect of the tenancy at 10 Riverwood Park, Castleknock, Dublin 15.
3. The enforcement of the Order for such payment will be deferred and the total sum will be reduced by the number of monthly instalments made to the Appellant Landlord on each due date until the sum of €900 has been paid in full.
4. For the avoidance of doubt any default in payment of the monthly instalment shall act to cancel any further referral and the balance due at the date of default shall immediately become due and owing to the Appellant Landlord in full.
5. The Respondent Tenant shall continue to pay rent at the revised rate of €1,150 per month in respect of the tenancy of the above dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08/07/2014.

A handwritten signature in black ink, appearing to read "Tim Ryan". The signature is fluid and cursive, with the first name "Tim" and last name "Ryan" clearly distinguishable.

Signed:

Tim Ryan Chairperson

For and on behalf of the Tribunal.