

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000663 / Case Ref No: 1013-08427

Appellant Landlord:	Sheila Finnerty, Shane Finnerty
Respondent Tenant:	Omolola Fasayo
Address of Rented Dwelling:	21 Cluain Ri, Ballymahon , Co. Longford
Tribunal:	John FitzGerald (Chairperson) Gene Feighery, John Tiernan
Venue:	Athlone Civic Centre, Church Street, Athlone, Co. Westmeath
Date & time of Hearing:	10 September 2014 at 11:00
Attendees:	Omolola Fasayo - Tribunal Respondent Tenant Sheila Finnerty - Tribunal Appellant Landlord John McGlynn - Witness for the Appellant Landlord
In Attendance:	Gwen Malone Stenographers.

1. Background:

On 18 October 2013 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 20 December 2013. The Adjudicator determined that in the matter of Omolola Fasayo (Applicant Tenant) and Sheila Finnerty (Respondent Landlord) and in accordance with S.97(4)(a) of the 2004 Residential Tenancies Act it is hereby determined that:

The Applicant Tenant's application, regarding the Respondent Landlord's unlawful termination of the tenancy of the dwelling at 21 Cluain Ri, Ballymahon, Co. Longford, is upheld.

The Respondent Landlord shall return all retained property of the Applicant Tenant to the Applicant Tenant, within 7 days of the date of issue of the Order.

The Respondent Landlord shall pay the sum of €2,000 to the Applicant Tenant with 28 days of the date of issue of the Order being damages in respect of the unlawful termination of tenancy of the dwelling at 21 Cluain Ri, Ballymahon, Co. Longford.

Subsequently the following appeal was received by the Board on 28 May 2014 from the Landlord. The grounds of the appeal were based upon deemed termination on the part of then Applicant Tenant, upon rent arrears and upon breach of tenant's obligations in regard to damage beyond the level of normal wear and tear. This appeal was approved by the Board at its meeting on 06 June 2014

The PRTB constituted a Tenancy Tribunal and appointed John FitzGerald, Gene Feighery and John Tiernan as Tribunal members pursuant to Section 102 and 103 of the

Act and appointed John FitzGerald 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 10 September 2014 the Tribunal convened a hearing at Ante Chamber, Athlone Civic Centre, Church Street, Athlone, Co. Westmeath.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

1. Lease agreement dated 7 November 2012.
2. Notice of Termination dated 16 May 2013.
3. Four notices of arrears seeking payments dated 12 December 2012, 15 January 2013, 21 February 2013 and 11 March 2013.
4. Gas account bill dated 6 February 2013.
5. Invoice from Thomas Kenny Carpentry dated 19 June 2013.

4. Procedure:

The Chairperson asked the Parties present 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) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson also advised that any member of the Tribunal could and would ask questions during the hearing. He explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson 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 up to €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 [reference section 123(3) of the 2004 Act].

The parties intending to give evidence were sworn in.

5. Submissions of the Parties:

Prior to the submission of evidence it was confirmed to the Tribunal that the Appellant Landlord in attendance was acting on behalf of both named Appellant Landlords.

Appellant Landlords' Case:

Evidence of John McGlynn (Landlord's Representative)

The Appellant Landlords' Representative stated that the tenancy, which commenced on 7th November 2012 was problematic from the start. He gave evidence that on 12th December 2012 the Appellant Landlords had to write to the tenant stating that there were arrears in her monthly rent which was due on the 7th day of each month. He said that she eventually paid the rent, which had been due on 7th December on 17th December 2012. He gave evidence that again in January 2013 a notice of rent arrears was sent to the Respondent Tenant and that she eventually made her rental payment on 23rd January 2013. He said that no rent was received by the Appellant Landlords for the months of February 2013 and March 2013 and that the Respondent Tenant failed to respond to a notice of rent arrears issued on 11th March 2013. He stated that the Respondent Tenant was uncontactable, either by phone or by calling to the Dwelling. He said that he contacted Longford County Council and that he was informed by the Community Welfare Officer that they could not make contact with the Respondent Tenant. He gave evidence that on 16th May 2014 the Appellant Landlords issued a 28 day notice of termination with a vacating day of 12 June 2013. He said that the notice was both posted and hand delivered.

Evidence of Sheila Finnerty

Appellant Landlord

The Appellant Landlord gave evidence that rent arrears in respect of the tenancy amounted to €850 and that she had retained the Respondent Tenant's security deposit in the sum of €425. She stated that she believed that the Respondent Tenant had vacated the dwelling in accordance the notice of termination on 12th June 2014. She said she and her Agent called to the dwelling on 13th June 2013. She outlined that they looked in the windows and noticed filth and rubbish and had seen flies, mice, and evidence of rats, children's nappies and all kinds of waste cast around the dwelling. She stated that she formed the opinion that the Respondent Tenant had vacated the tenancy and she entered the dwelling with her spare key. She said that she revisited the dwelling on 14th and 15th June 2013 with two workmen and a trailer and started a major clean up. She stated that they removed all the waste material and placed some personal belongings of the Respondent Tenant into black bags and took them away also. She said that she was convinced that the Respondent Tenant had moved away. She said that on Saturday 22nd June 2013 she changed the locks on the dwelling. When questioned by the Tribunal in regard to the frequency she had attended at the Dwelling prior to 13th June 2013 the Appellant Landlord said that she had visited the dwelling on 4th and 9th March 2013 but did not find the Respondent Tenant at home. She gave evidence that she had been unable to contact the Respondent Tenant by phone despite numerous attempts. She said that she did not make an inventory of items that she packed and removed from the Dwelling. She stated that she arranged with her Letting Agent to store the Respondent Tenant's belongings in a storage facility operated by him.

The Appellant Landlord alleged that there was damage to the Dwelling in excess of normal wear and tear, together with an unpaid gas utility bill. She summed up by outlining costs in respect of repaired hinges on wardrobes amounting to €550 and an unpaid gas bill for €54.62. In response to a query from the Tribunal she said that one of the reasons the repair of the wardrobe hinges was so costly was that the tradesman whom she had engaged for the work had to travel a long distance from County Galway where he is based to carry out the work. She also had to pay workmen for the removal of rubbish but did not outline a cost in respect of this. She said that she relied on the Notice of Termination dated 16th May 2013.

Evidence of James O Meara

Appellant Landlord's Letting Agent

The Appellant Landlords' Agent stated that he had never seen a dwelling left in such bad condition as this following a tenancy. He said that he had rented the dwelling to the Respondent Tenant but was unable to make contact with her during the period of the tenancy. He said that he had accompanied the Appellant Landlord to the Dwelling following the termination of the tenancy for inspection purposes. He said that he had assisted the Appellant Landlord by allowing her to store personal possessions belonging to the Respondent Tenant in a facility attached to his business premises. He accepted that no inventory of the items was made. He stated that he made every effort to contact the Respondent Tenant and even tried to make contact through her fellow Nigerian Church members but without success. He said that in March 2014, months later, the Appellant Tenant had contacted him and asked him for her belongings. He said she arrived at his storage premises on foot and he took pity on her and he assisted her by loading that portion of her belongings that she chose into a trailer and driving her and her belongings to her new address. He gave evidence that she had also left some items behind in his storage facility for which he sought payment. He said the storage facility was in a loft that was 99% secure with limited access and that he had stored furniture there for years and nothing has ever gone missing.

Respondent Tenant's Case:

Evidence of Omolola Fasayo

The Respondent Tenant accepted that she delayed and missed rental payments. She stated that work was scarce in the area and she attempted to support her family's income by selling holy communion dresses and accessories for children and braiding hair. She denied that the dwelling had been left in bad condition. In relation to disposal of domestic rubbish she described how she placed tags on rubbish bags which she then left out for collection by a local waste operator company. In response to a query from the Tribunal in regard to the details regarding the place of purchase and cost of the tags she said that some were purchased in a shop in Athlone. She stated that she had received no notices of arrears, nor did she receive a notice of termination from the Appellant Landlord.

She stated that she had not vacated the dwelling on 13th June 2013 as stated by the Appellant Landlord, but instead was in Dublin at the time seeking employment. She stated that on her return to the Dwelling some time in June (she could not be specific) she discovered that the locks were changed.

She said that she had nowhere to go and that she returned to Dublin where she stayed with friends for a short while and then she and her children were moved from one

temporary accommodation facility to another between the months of June 2013 and January 2014. She said that she contacted the Appellant Landlord who advised her that there was a lot of money owing in back rent and that her belongings would not be returned to her unless the rent arrears were paid up to date. She said she begged the Appellant Landlord for her belongings. She gave evidence that these included passports and identification documents, a marriage certificate, birth certificates, a wedding ring, an engagement ring, dresses, shoes, a desktop monitor and Dell computer, a microwave oven, two bicycles, family photographs, school uniforms, school bags, valuable accountancy books that had been part of her studies at Athlone IT, a Cannon camera, hair braiding accessories and a number of holy communion dresses which she needed so that she could earn some money to feed her children. In particular she wanted to have her passport and marriage certificate returned to her.

She said that an arrangement was made between the parties to meet in a hotel in Ballymahon on 14th January 2014 for the exchange of rental payment for her possessions.

The Respondent Tenant stated that the Appellant Landlord told her that she should bring €400 with her to the hotel and this amount, together with the security deposit of €425 would suffice to retrieve her belongings. She said that when she arrived at the hotel, the Appellant Landlord only had a single bag containing her passports and other documents with her. The rest of her belongings were elsewhere and still in the control of the Appellant Landlord. She said that the Appellant Landlord told her to sign a document stating that she would waive any option to pursue the Appellant Landlord further in full and final settlement of all matters between them on receipt of the bag containing the passports and other documents. She said that she had refused to sign this, as much of her belongings were still not returned to her. She said a dispute ensued and the Gardai had to be called to the hotel. She said that the passports were returned to her at the hotel.

The Respondent Tenant said she later made an arrangement to collect her remaining belongings from the storage facility owned by Appellant Landlord's Agent. She said that many of the items as stored were useless to her, for example there was only one shoe from a pair, and other such unspecified anomalies. She said that all the belongings had been randomly and carelessly packed and she could only take items that were useful to her. However she said that a number of items were missing from the belongings including an engagement and wedding ring, valuable accountancy books, clothing, a microwave, two childrens bicycles and an iron.

6. Matters Agreed Between the Parties

6. Matters agreed between the Parties

The following matters were agreed between the Parties:

1. The Tenancy commenced 7 November 2012.
2. The rent was €425 per month.
3. The security deposit was €425.
4. The Landlord holds the deposit of €425.

7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence presented to it by the Parties, the Tribunal's findings based upon the balance of probabilities and reasons therefor, are set out hereunder.

7.1 Finding: The Tribunal finds that the tenancy was a Part 4 tenancy under the Act of 2004 and that the Appellant Landlord incorrectly relied on an invalid Notice of Termination dated 16th May 2013 to terminate the tenancy under dispute and in so doing carried out an unlawful termination, together with an illegal eviction wherein the locks to the Dwelling were changed and the Tenant's belongings removed.

Reasons:

In order to validly terminate a tenancy, the provisions of the Act must be strictly adhered to, in particular Sections 34, 62, and 67.

Where a landlord seeks to terminate a Part 4 tenancy (a tenancy of duration longer than 6 months) on the grounds that the tenant has failed to pay rent, the following three-step procedure must be followed:

- 1) Give the tenant Notice that he/she has breached his/her obligation to pay rent.
- 2) Serve a 14-day Warning Notice for failure to pay rent;
- 3) Serve a 28-day Notice of Termination of the Tenancy.

In regard to 1) above the Notice of breach of obligation the landlord must notify the tenant that:

the tenant is in arrears of rent;

the tenant is allowed a reasonable time to remedy that breach of obligation;

the landlord is entitled to terminate the tenancy if the tenant fails to remedy that breach of obligation within the period specified.

This first notification does not need to be in writing. A landlord can give a tenant verbal notice of the rent arrears but must ensure that the tenant is aware that failure to pay the rent arrears within a reasonable time will result in the landlord terminating the tenancy.

In regard to 2) above under Section 67(3) where a tenant falls into rent arrears, the landlord must serve a written notice on the tenant informing him or her of the amount of rent that is due. The landlord must then give the tenant 14 days to pay those rent arrears.

In regard to 3) above under Section 34 of the Act if the tenant fails to pay the rent due within 14 days of receipt of the written notice at point 2, the landlord may proceed to terminate the tenancy by serving a 28 day notice of termination.

Section 62 of the Act then sets out what a valid Notice of Termination under Part 5 must contain.

- (a) be in writing,
- (b) be signed by the landlord or his or her authorised agent or, as appropriate, the tenant,
- (c) specify the date of service of it, (d) be in such form (if any) as may be prescribed,

(e) if the duration of the tenancy is a period of more than 6 months, state (where the termination is by the landlord) the reason for the termination,

(f) specify the termination date, that is to say, the day (stating the month and year in which it falls)

(i) on which the tenancy will terminate, and

(ii) on or before which (in the case of a termination by the landlord) the tenant must vacate possession of the dwelling concerned, (and indicating that the tenant has the whole of the 24 hours of the termination date to vacate possession), and

(g) state that any issue as to the validity of the notice or the right of the landlord or tenant, as appropriate, to serve it must be referred to the Board under Part 6 within 28 days from the date of receipt of it."

The Tribunal is satisfied that the appropriate steps to validly terminate a tenancy were not taken in accordance with the provisions of the Act and awards damages of €2,000 in respect of the consequences of the unlawful termination of the tenancy and illegal eviction. The Tribunal accepts the evidence of the Respondent Tenant in regard to the consequences of the Appellant Landlords' actions which caused distress, hardship and inconvenience for herself and her family.

The Tribunal further considers that the Appellant Landlords could not have reasonably formed the opinion that there was a deemed termination of the tenancy as provided for in certain circumstances under the provisions of Section 37 of the Act of 2004 having regard to the extent of goods and belongings that were in the Dwelling on the date they gained entry.

7.2 Finding: The Tribunal finds that it does not have jurisdiction under the Act of 2004 to make findings or to award damages in regard to the withholding of the Respondent Tenant's belongings for the purposes of using them as a bargaining tool to extract rent arrears from the Respondent Tenant.

Reason:

The Tribunal considers that adjudication on matters arising between landlords and tenants under the Act of 2004 falls within the jurisdiction of Contract Law and that adjudication on matters between two parties arising from impoundment of goods in an action to extract payment for an alleged debt owed falls outside of that jurisdiction. The Tribunal notes that there was no evidence presented to it that any provisions existed within the tenancy agreement relating to forfeiture or otherwise of the tenant's goods. Furthermore given the nature of the belongings involved which included passports the Tribunal considers that there could not have been a reasonable conclusion that the goods were abandoned.

7.3 Finding: The Tribunal finds that the Respondent Tenant is in breach of her obligations under section 16(a) of the Act by reason of her failure to make her rental payments as they fell due to the Appellant Landlord and in respect of outstanding arrears. The Respondent Tenant shall pay the sum of €25 to the Appellant Landlord in respect of these arrears.

Section 16 (a) states that a Tenant shall:

pay to the landlord or his or her authorised agent (or any other person where required to do so by any enactment)—

(i) the rent provided for under the tenancy concerned on the date it falls due for payment, and

(ii) where the lease or tenancy agreement provides that any charges or taxes are payable by the tenant, pay those charges or taxes in accordance with the lease or tenancy agreement (unless provision to that effect in the lease or tenancy agreement is unlawful or contravenes any other enactment).

The Appellant Landlord has retained the Respondent Tenant's security deposit in the sum of €425 in discharge of arrears as allowed for in Section 12(d) of the Act.

Section 12 (d) states that a Landlord shall return or repay promptly any deposit paid by the tenant to the landlord on entering into the agreement for the tenancy or lease. However Section 12 (4)(a) states that no amount of the deposit concerned shall be required to be returned or repaid if, at the date of the request for return or repayment, there is a default in

(i) the payment of rent and the amount of rent that is in arrears is equal to or greater than the amount of the deposit,

or compliance with section 16 (f) and the amount of the costs that would be incurred by the landlord, were he or she to take them, in taking such steps as are reasonable for the purposes of restoring the dwelling to the condition mentioned in section 16 (f) is equal to or greater than the amount of the deposit.

Reasons:

There was no conflict of evidence in respect of rent arrears between the parties and the Respondent Tenant fully accepted that she was in arrears of rent for the months of February and March 2013 totalling €850 together with a gas bill in the sum of €54.62. However the Respondent Tenant returned €400 to the Appellant Landlord in exchange for her belongings, and the Appellant Landlord has retained the Respondent Tenant's security deposit in the sum of €425 leaving an outstanding amount of arrears in the sum of €25.

Finding 7.4. The Tribunal finds that the Respondent Tenant was in breach of her obligations under Section 16(f) of the Act of 2004 by allowing an accumulation of rubbish within the Dwelling. The Tribunal awards the sum of €200 in damages to the Appellant Landlord in respect of costs incurred as a result of this breach.

Reason:

Section 16 (f) of the Act of 2004 states that a tenant shall not do any act that would cause a deterioration in the condition the dwelling was in at the commencement of the tenancy. Having regard to the nature of the alleged damage in relation to rubbish accumulation within the Dwelling and at that stage the potential further deterioration if the matter was not remedied the Tribunal considers that the steps taken by the Appellant Landlord to remove the said rubbish was reasonable in the circumstances.

The Tribunal has also had regard to the uncertainty and inconsistency in the Respondent Tenant's evidence in regard to rubbish bin tags which she said were purchased in Athlone which is in another County administrative district.

The Tribunal is satisfied on the evidence submitted that an accumulation of domestic rubbish existed within the dwelling. The Tribunal awards damages to the Appellant Landlord in the sum of €200 in respect of domestic rubbish disposal from the Dwelling.

Finding 7.5: The Tribunal finds that no award damages is due to the Appellant Landlord in respect of any alleged breach of Respondent Tenant's obligations arising from damage above the level of normal wear and tear to walls and/or wardrobes in the dwelling.

Reason:

Section 16 (f) of the Act of 2004 states that a tenant shall not do any act that would cause a deterioration in the condition the dwelling was in at the commencement of the tenancy. Notwithstanding that the Appellant Landlord gave evidence that when she entered the Dwelling pursuant to the invalid Notice of Termination there were marks on walls and wardrobe doors were off their hinges Section 16(g) of the Act of 2004 states that if Section 16(f) is not complied with the tenant must take such steps as the landlord may reasonably require to be taken for the purpose of restoring the dwelling or defray any costs incurred by the landlord in taking reasonable steps to rectify the matters. In the circumstance of the illegal eviction and the Tribunal's finding in regard to the unreasonable action of the Appellant Landlord in continuing with her action reliant upon the provisions of Section 37 of the Act of 2004 where the Respondent Tenant's belongings were still in the Dwelling the Tribunal considers that the award of damages to the Appellant Landlord in such circumstances would not be consistent with fair procedure. The unreasonable action of the Appellant Landlord deprived the Respondent Tenant of the opportunity to rectify any such alleged damage.

8. Determination:

Tribunal Reference TR0514-000663

In the matter of Sheila Finnerty, Shane Finnerty (Landlord) and Omolola Fasayo (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the sum of €1,720.38 to the Respondent Tenant within 28 days of the date of issue of the Order by the Board being damages of €2,000 in respect of distress, hardship and inconvenience as a consequence of the unlawful termination of the tenancy of the dwelling, having deducted the sum of €200 in damages awarded to the Appellant Landlord for breach of Respondent Tenant's obligations in respect of rubbish removal from the Dwelling as well as €54.62 owed in unpaid utility expenses and having deducted the further sum of €25 owed in rent arrears, in respect of the tenancy of the Dwelling at 21 Newcastle Court, Cluain Ri, Ballymahon, Co Longford.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on .



Signed:

John FitzGerald Chairperson

For and on behalf of the Tribunal.

