

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000665 / Case Ref No: 0214-10515

Appellant Tenant:	Thomas Donohue, Ludmilla Lidakova
Respondent Landlord:	Paul Owens, Lisa Furey
Address of Rented Dwelling:	293 Nutgrove Avenue, Churchtown , Dublin 14
Tribunal:	Aidan Brennan (Chairperson) Thomas Reilly, Vincent P. Martin
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	31 July 2014 at 10:30
Attendees:	Paul Owens, Tribunal Respondent, Landlord Thomas Donohue, Tribunal Appellant, Tenant
In Attendance:	Gwen Malone stenographers

1. Background:

On 19/02/2014 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 03/04/2014. The Adjudicator determined that:

The Notice of Termination served on 20th December 2013, by the Applicant Landlords on the Respondent Tenants, in respect of the tenancy of the dwelling at 293 Nutgrove Avenue, Churchtown, Dublin 14 is valid.

The Respondent Tenants, and any other persons residing in the above dwelling, shall vacate and give up possession of the dwelling within 28 days of the date of issue of the Order.

The Respondent Tenants shall pay the total sum of €5,068 to the Applicant Landlords, being rent arrears in respect of the tenancy of the above dwelling. This amount shall be paid in four instalments of €1,267 each, to be paid by the Respondent Tenants on the 28th day of each of the four consecutive months immediately following the issue of the Order.

The Respondent Tenants shall also pay any further rent outstanding from the date of adjudication hearing, at the rate of €1,400 per month, 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 the above dwelling.

The Applicant Landlords shall refund the entire of the security deposit of €1,400 to the Respondent Tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received:

Tenant: received on 28/05/2014. The grounds of the appeal: Rent arrears; Approved by the Board on 06/06/2014

The PRTB constituted a Tenancy Tribunal and appointed Aidan Brennan, Thomas Reilly, and Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act, and appointed Aidan Brennan to be the chairperson of the Tribunal ("the Chairperson").

On 9/07/2014 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 31/07/2014 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:

none

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 their case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson 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 €4,000 or up to 6 months imprisonment or both. (Parties giving evidence were sworn in.)

The Chairperson 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].

5. Submissions of the Parties:

Appellant Tenants case:

Evidence of Mr Thomas Donohue.

The single ground of this appeal is “rent arrears”. Mr. Donohue gave evidence that he is still in arrears with the rent. He outlined the background to the rent arrears which was loss of employment and related financial difficulties compounded by his reluctance to seek assistance from the department of Social Protection. The Tribunal noted that in his appeal application dated 26 May 2014 Mr Donohue had said that he was now in a position to pay all moneys due to date and continue as a paying tenant until alternative accommodation is sought. He also said that he was now in receipt of an income. The Tribunal enquired of Mr Donohue what his expectations were and what it was that he sought from the Tribunal. He said that he wanted to be allowed stay on as a tenant at the dwelling.

The Tribunal asked the respondent landlord whether there was any common ground for resolving the dispute particularly if the arrears were to be paid up. The landlord was not agreeable to the tenant staying on as he believed that the arrears position would not improve and he would be faced with similar problems in the future.

The Tribunal asked the appellant tenant whether he could give any further reasons as to why he should succeed in his appeal as the Tribunal was bound to apply the Act and he had not mounted any defence to the arrears position; on the contrary his evidence was that he was still in arrears. Mr Donohue had nothing significant to add other than in his closing statement wherein he apologised to the landlord for having caused pressure and stress but that he was under stress himself and it was not in his nature to owe. In response to a question from the respondent landlord he said that he would abide by the decision of the Tribunal.

Respondent Landlords’ case:

Evidence of Mr. Paul Owens

At the outset Mr Owens said that he wanted the tenant out of the dwelling, so that he could get a reliable paying tenant. He outlined the history of the tenancy to the effect that everything went well for the first eleven months but that difficulties arose thereafter in the payment of the rent. He gave evidence of telephone calls and texts and thirteen visits to the rented property. He gave evidence concerning his attempts to bring the tenancy to an end and gain vacant possession of the dwelling. In addition he gave evidence of the fourteen day warning letter and the notice of termination. (The Tribunal noted that there was neither a referral of a dispute nor an appeal by the tenant concerning the notice of termination.) He gave evidence to show that the rent arrears at 26 July 2013 were in the sum of €2328. This was not disputed.

6. Matters Agreed Between the Parties

The parties were in agreement as to when the tenancy commenced, 26 August 2012; the amount of the monthly rent €1400, due on the 26th of each month one month in advance; the amount of the deposit in the landlords possession €1400; that there are rent arrears; that a notice of termination had been served and that the appellants are in occupation of the dwelling at the date of the Tribunal hearing.

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 and reasons are set out hereunder.

Finding 7(1) .The notice of termination served on the 20th December 2013 is valid as it complies with the relevant provisions of the Residential Tenancies Act. The notice terminated the tenancy on the 17th January 2014 and the tenants must quit the dwelling on foot of that notice.

Reason

The respondent landlords had raised the issue of the appellant tenants rent arrears and the danger it posed to their tenancy in advance of the service of the 14-day warning letter of rent arrears, dated the 5th December 2013. The warning letter which complies with section 67(3) of the Act states that there were arrears of €4,200. The arrears were not cleared before the service of a notice of termination on the 20th December 2013. As the notice of termination is valid, the tenancy was terminated on the 17th January 2014. It is appropriate, therefore, that the Order provides that the appellant tenants, who are overholding and have been in rent arrears for some time, quit the dwelling in line with the relief sought by the landlord under section 115(2) e of the Act. In addition section 87 of the Act provides that any remedial action taken by the tenant subsequent to the receipt of the notice of termination shall not be taken into account by the Tribunal and in that regard the arrears, the subject of this appeal, must be viewed as €4,200 and not the lesser figure due at the date of the Hearing.

Finding 7(2) The appellant tenants are in breach of their obligations under section 16(a) i of the Act for failure to pay rent on the date it fell due and are in arrears of rent in the sum of €2558 at the date of the Tribunal hearing. This figure is calculated as being undisputed rent due to the 26 July 2014 of €2328 plus five days rent (at €46 per day) of €230 up to the 31 July 2014.

Reason

These figures are not disputed by Mr. Donohue whose evidence was that he was in a position to discharge all the arrears at the 26 May 2014. Accordingly payment should be made in one instalment.

8. Determination:

Tribunal Reference TR0514-000665

In the matter of Thomas Donohue, Ludmilla Lidakova (Tenant) and Paul Owens, Lisa Furey (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on 20th December 2013, by the Respondent Landlords on the Appellant Tenants, in respect of the tenancy of the dwelling at 293 Nutgrove Avenue, Churchtown, Dublin 14 is valid.
2. The Appellant Tenants, and any other persons residing in the above dwelling, shall vacate and give up possession of the dwelling within 28 days of the date of issue of this Order.

3. The Appellant Tenants shall pay the total sum of €2,558 to the Respondent Landlords, within 28 days of the date of issue of this Order, being rent arrears, calculated to 31 July 2014, in respect of the Tenants' breach of their obligations under the Act.

4. The Appellant Tenants shall also pay any further rent outstanding from the 31 July 2014 at the rate of €1,400 per month 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 the above dwelling.

5. The Respondent Landlords shall refund the entire of the security deposit of €1,400 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 14/08/2014.

Signed:

A handwritten signature in black ink, appearing to read 'Aidan Brennan', written over a horizontal line.

Aidan Brennan Chairperson

For and on behalf of the Tribunal.