

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000669 / Case Ref No: 0214-10682

Appellant Landlord:	Kevin McHugh
Respondent Tenant:	Distinguished Homes Ltd
Address of Rented Dwelling:	3 Castle Oaks, Kiltegan , Co. Wicklow
Tribunal:	Vincent P. Martin (Chairperson) Gene Feighery, John Tiernan
Venue:	Tribunal Room, PRTB, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	26 September 2014 at 2:30
Attendees:	Attendees: For the Appellant Landlord: No appearance For Respondent Tenant: No appearance
In Attendance:	Gwen Malone Stenographers

1. Background:

On 28/02/2014 the Appellant 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 15/04/2014. The Adjudicator determined that the said Landlord's application regarding breach of tenant obligations and rent arrears in respect of the tenancy of the dwelling at 3 Castle Oaks, Kiltegan, Co. Wicklow is not upheld. Subsequently an appeal from the Landlord was received on 29/05/2014 which said appeal being deemed valid was approved by the Board on 06/06/2014

The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, Gene Feighery, John Tiernan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Vincent P. Martin 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 26/09/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

N/A

4. Procedure:

After waiting in excess of an hour and with neither party nor their respective representatives present the Tribunal proceeded to open the appeal hearing pursuant to, inter alia, Sections 104(2), 104 (4)(e) and 104(4)(f) of the Act. The Tribunal decided to do so having considered the content of an email communication that the PRTB received from the Appellant Landlord on the 22nd September 2014 (which the PRTB emailed to the Respondent Tenant on the 23rd September 2014). In this said email the Appellant Landlord indicated that he would not be in the country at the time of the hearing and that neither he nor an agent would be able to attend the hearing but provided the Tribunal with a written submission and requested the Tribunal to consider same at the hearing.

Whilst a representative of the Respondent Tenant did attend the adjudication hearing which was held on 15 April 2014, the Respondent Tenant did not give the PRTB any prior notification concerning its non-attendance at this appeal hearing.

5. Submissions of the Parties:

6. SUBMISSION OF APPELLANT LANDLORD

The Appellant Landlord did not appear in person at the Tribunal Hearing and was not represented. The Appellant Landlord did provide the Tribunal with a written submission and requested the Tribunal to consider same at the hearing. He claimed that the Respondent Tenant Company breached its obligation in refusing to pay the final month's rent requesting instead that the deposit be used in lieu of other works alleged to have been done. He also stated that the Respondent Tenant had suggested that they would pay the last month's rent but would not refill the tank with oil.

In the papers submitted on the 14th April 2014, the Appellant Landlord included four photographs of the dwelling and made reference to a number of emails between the parties. It also included an unsigned copy of the tenancy agreement

With regard to rent arrears and sums due, the Appellant Landlord had included a summary of the sums he deemed to be due.

1. Outstanding rent due and owing: €585.00
2. Outstanding maintenance payments: €30.00
3. Sums due under clause 3.3. of the tenancy agreement in respect of an administrative charge for written demands relating to rent arrears: €670.00
4. Cleaning costs of the property: €250.00

Total due: €1535.00

Less deposit paid: €585.00

Balance: €950.00

The papers submitted by the Appellant Landlords included email correspondence between the Parties whereby the Appellant Landlord wrote that he had no issue with the

suggestion on the part of the Respondent Tenant in regard to payment of the deposit into an escrow account but that he requested the Respondent Tenant to pay any cost associated with making such an arrangement.

It was submitted that the tenancy commenced on 21st June 2013 and ended on the 20th March 2014, the rent was €585.00 per month, the deposit was €585.00 which was not refunded to the Respondent Tenant Company.

SUBMISSION OF RESPONDENT TENANT

The Respondent Tenant did not appear in person at the Tribunal Hearing and was not represented. The Respondent Tenant Company submitted that there was no letting agreement signed and that the agreement was to be flexible but that they had agreed to stay for 6 months initially and then for a further period of 3

months. In or around February 2014 an estate agent called to the property on two occasions to survey the property and take photographs.

There were then visits from a potential buyer (including calls to the place of work of the parties who were living in the dwelling) to collect the keys.

It was submitted that as a result of the visits of the estate agent and the prospective buyer, the persons living in the dwelling (who were the employees of the tenant) found the intrusions disruptive and were not willing to stay on in the dwelling any longer. It was submitted that the Appellant Landlord was notified that the Respondent Tenant would not be extending the lease beyond the 21st March 2014 and requested the return of the deposit.

The Respondent Tenant Company submitted that it became concerned that the Appellant Landlord may not return its deposit and that he did not appear to have the deposit and it was for this reason that it requested the deposit be held in escrow by an independent party. The Respondent Tenant Company submitted that it indicated to the Appellant Landlord that if that were done it would then be happy to pay the final month's rent. It was submitted that when the Appellant Landlord was not agreeable to this, the Respondent Tenant Company then suggested the other three possible solutions:

1. Either the Respondent Tenant Company would not pay the last month's rent and not receive back their deposit or
2. The Respondent Tenant Company would pay the last month's rent but would not refill the oil tank. However it was submitted that the Appellant Landlord would not agree to either of these said two proposed solutions.
3. To split the rent for the final month between the parties, i.e. that the Respondent Tenant would be liable to pay just two weeks rent in the month.

Ultimately the Respondent Tenant Company did not pay the last months rent but refilled the oil tank, had the property professionally cleaned, and vacated the dwelling on 21st March 2014. The Respondent Tenant Company submitted that neither party owed the other any money. With regard to the maintenance costs in the Appellant Landlord's submission, the Respondent Tenant Company submitted that it believed these were off set by the costs of the electrician which the Respondent Tenant Company had employed and whose bill, in the amount of €200.00 the Respondent Tenant Company had discharged. The Respondent Tenant Company claimed to have also suffered loss as a result of the electricity going off on 2 occasions when frozen food in the freezer was lost

and it was because of this incurred loss that the Company did not pay the €30 maintenance charges for December, January and February.

With regard to the amount claimed under a clause in the tenancy agreement as penalties for late payment of rent, the Respondent Tenant Company submitted that it had never signed the tenancy agreement and was therefore not bound to pay these amounts. It submitted that at the time of vacating the dwelling, it had been fully cleaned and left in a good condition. In relation to the oil, the tank had been partly filled at the time of the commencement of the tenancy and it was refilled above this level before the termination of the tenancy.

6. Matters Agreed Between the Parties

N/A

7. Findings and Reasons:

Having considered the full PRTB file, on the balance of probabilities, the Tribunal's findings and reasons therefor are set out hereunder:

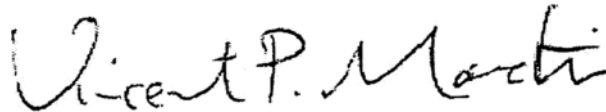
1. The tenancy commenced on 21st June 2013.
2. The tenancy ended on the 20th March 2014.
3. The rent was €585.00 per month.
4. The deposit was €585.00.
5. The Appellant Landlord did not refund the deposit at the termination of the tenancy.
6. The Respondent Tenant Company did not pay to the Appellant Landlord the final month's rent of the tenancy due on the 21st February 2014 and the said one months rent in the sum of €585.00 is due and owing to the Appellant Landlord. The Tribunal finds that the Respondent Tenant Company breached its statutory obligation under the Act to pay rent on the date it falls due for payment pursuant to Section 16(a)(i).
7. The Appellant Landlord has justifiably retained the full said security deposit in lieu of rent arrears comprising unpaid rent in the sum of €585.00 (rent due and owing for the final month of the tenancy) as in such circumstances no amount of the deposit shall be returned or repaid pursuant to Sections 12(4) (a) and 12 (4) (a) (1) of the Act.
8. The Appellant Landlord's claim in respect of damage to the dwelling beyond normal wear and tear is not upheld and the Tribunal finds that the photographic evidence submitted does not support such a claim. There was no damage in excess of normal wear and tear and, accordingly, there was no breach of the Respondent Tenant's statutory obligation under the Act.

8. Determination:

In the matter of Kevin McHugh, the Appellant Landlord and Distinguished Homes Limited, the Respondent Tenant, the Tribunal in accordance with Section 108(1) of the Act determines that:

1. The Respondent Tenant is in breach of its obligations under Section 16 of the Act 2004 to pay rent to the Appellant Landlord on the date it falls due.
2. The Appellant Landlord has justifiably retained the entire security deposit in the sum of €585.00 in lieu of rent arrears comprising unpaid rent in the sum of €585.00 (rent due and owing for the final month of the tenancy) in respect of the tenancy of the dwelling at 3 Castle Oaks, Kiltegan, County Wicklow
3. The Appellant Landlord's claim in respect of the Respondent Tenant causing damage to the dwelling beyond normal wear and tear is not upheld.

Signed:

A handwritten signature in black ink, reading "Vincent P. Martin". The signature is written in a cursive style with a horizontal line underneath the name.

Vincent P. Martin Chairperson

For and on behalf of the Tribunal.