

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000671 / Case Ref No: 0214-10385

Appellant Tenant:	Modupe Oyewole-Rufai
Respondent Landlord:	David McConnell
Address of Rented Dwelling:	30 Carrigmore Terrace, Fortunestown Lane, Saggart , Dublin
Tribunal:	Thomas Reilly (Chairperson) Aidan Brennan, 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 2:30
Attendees:	David McConnell, Tribunal Respondent, Landlord, Modupe Oyewole-Rufai, Tribunal Appellant, Tenant, David Hugh McConnell, Witness. Benjamin Olafme, Witness
In Attendance:	Gwen Malone Stenographers.

1. Background:

On 12/02/2014 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 08/04/2014. The Adjudicator determined that:

1. The tenancy of the dwelling at 30 Carrigmore Terrace, Saggart, Dublin was terminated, by the agreement of the parties, on the 31st December 2013.
2. The Respondent Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling within 28 days of the date of issue of the Order by the Board;
3. The Respondent Tenant shall pay the total sum of €4,210.61 to the Applicant Landlord at the rate of €350.88 per calendar month, for 12 consecutive months, on the 28th day of each month, commencing the next month after the issue of the Order by the Board. This sum represents rent arrears of €2,710.61, damages of €500 for breach of obligation on the part of the Respondent Tenant in failing to pay the rent in full and on time, and damages of €1,000.00 for overholding, in respect of the tenancy of the aforesaid dwelling;
4. The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the number of monthly instalments of €350.88 made to the Applicant Landlord on each due date until the sum of €4,210.61 has been paid in full;

5. For the avoidance of doubt any default in the payment of the monthly instalments of €350.88 shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Applicant Landlord.

6. The Respondent Tenant shall also pay any further rent outstanding from 8th April 2014, at the rate of €950 per month, or €31.23 for each day or part thereof, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement, until such time as she vacates and gives up possession of the rented dwelling.

7. The Applicant Landlord shall refund the entire of the security deposit of €1,300.00 to the Respondent Tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act in respect of the tenancy of the dwelling as aforesaid.

Subsequently the following appeal was received:

Tenant : received on 30/05/2014. The grounds of the appeal: Standard and maintenance of dwelling ; Approved by the Board on 06/06/2014

The PRTB constituted a Tenancy Tribunal and appointed Thomas Reilly, Aidan Brennan, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Thomas Reilly 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. 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 while the Tribunal Hearing was a formal procedure the Tribunal would seek to be as informal as was possible; that the person who appealed (the Appellant Tenant) would be invited to present her case first including the evidence of any witnesses; that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord would then be invited to present his case, including the evidence of any witness,

and that there would be an opportunity for cross-examination by the Appellant Tenant. He said that members of the Tribunal might ask questions of both Parties from time to time.

The Chairperson explained that following this, the Appellant Tenant and the Respondent Landlord would be given an opportunity to make a final submission.

He stressed that all evidence would be taken on oath or affirmation and would be recorded by the official stenographer present, 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 by up to 6 months imprisonment or both. The Chairperson drew the Parties attention to Section 7 of the Tribunal Procedures. He asked the Parties if they had any queries about the procedure, there were no queries.

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 giving evidence were then sworn in.

5. Submissions of the Parties:

Appellant Tenants Case:

The Appellant Tenant grounded her appeal on the areas where she alleged the Respondent Landlord did not meet his obligations under the Act. Her primary areas of dissatisfaction were relating to parts of the dwelling where refurbishments were required. Specifically featured as being in need of attention were, the bed in the main bedroom which was damaged as was the ensuite which it was claimed had broken floor tiles. On being asked when these problems had arisen the Appellant Tenant advised that they occurred about three years after she took up residence in the dwelling, or about 2006. In or around the same time it is alleged that the electric light fitting in the ensuite was defective and in need of repair. The shower door was not functioning while a further complication alleged was that the water was not draining from the shower tray effectively due to some form of blockage in the drainage system. The Appellant Tenant also stated that the toilet cistern was also a concern for her due to a poor flow of water into, and out of it. As a result of this she had to resort to the use of a bucket to fill the cistern and then flush the toilet. In her attempts to make the bathroom systems work the Appellant Tenant used a plunger to assist in emptying the bath and shower. It was claimed that the Respondent Landlord was advised of those deficiencies however nothing was done to remedy them. This lack of facilities was a major issue as she resided in the dwelling with five children. The Appellant Tenant submitted that her requests for assistance were via text message or a phone call. It was confirmed by the Appellant Tenant that in 2006 a plumber did attend to check out the shower and toilet, however she claims he did nothing to improve the situation and she has not used those facilities since.

The Appellant Tenant stated that the chairs in the living room were in need of replacement as were the bunk beds for the children, in addition the blinds in their bedroom needed replacement. The beds were replaced by new ones and were supplied around 2006, however it was alleged that one of them was damaged on arrival and no action was taken to repair or replace the damaged item.

The Appellant Tenant stated that the carpet in the entrance hall was in need of replacement and this was remedied by having it replaced with a wooden floor in 2012. A number of requests were made to the Respondent Landlord and latterly to an agent he appointed to replace the kitchen units which were in need of upgrading or replacement. The first request was to the Landlord about 2006/7 and no action was taken. The follow up request to the agent bore no success either. The Appellant Tenant alleged that the response from the agent to her requests for assistance was for her to fix the items in the dwelling that required attention, a matter which she referred back to the Respondent Landlord.

The Appellant Tenant stated that the heating of the dwelling was by means of a gas boiler which operated on a meter system. It was stated that it was not serviced from the occupation of the dwelling in 2003 until 2013. The radiators did not heat up properly and she required the assistance of friends who she stated used common sense to keep the system operational in the absence of help from the Respondent Landlord or his agent. The Appellant Tenant stated that the radiators were bled by the tenant's friends and the boiler was eventually dealt with by the Landlords nominated plumber. During the period of occupancy no decoration or painting of the dwelling took place despite requests to the Respondent Landlord to repaint the dwelling. The Appellant Tenant also referenced defective lamp holders in bedrooms that required replacement.

Detail on dates when issues arose in the dwelling was vague and the dates provided were imprecise. The Appellant stated that many of the problems highlighted occurred in the early years of the tenancy notably 2006/7 and despite requesting action from the Respondent landlord, no evidence of a concerted effort to follow up by the Appellant Tenant concerning the repairs was evident.

Cross examination of the Appellant Tenant:

Questioned by the Respondent Landlord on the matter of the servicing of the gas boiler there was a significant conflict of evidence, the Respondent Landlord claiming it was serviced while the Appellant claimed that in her ten years in the dwelling it was never serviced. The Respondent Landlord asked if the Appellant Tenant agreed that he had supplied a queen sized mattress for her bed and her response was to refute this point stating that she retained the original mattress in her bed and the Appellant Tenant alleges that the mattress was for a bunk bed, no consensus was achieved. On being questioned by the Respondent Landlord about the use of the ensuite as a storage area for clothes, the Appellant Tenant agreed, however she gave as her reason the fact that it did not work and the floor tiles required replacement. In response to this the Respondent Landlord stated that he had never been requested to carry out any repairs to this ensuite.

Mr DH McConnell questioned the Appellant Tenant on her opening statement that some of the maintenance items the Respondent Landlord claimed he did were completed and some were not completed and to indicate what works were not attended to? The Appellant Tenants response was vague and unclear. On continuing his questioning he requested details on how the damage was caused to the side of the bath. The Appellant Tenant expressed the opinion that it was poor quality and had not sustained abuse.

Respondent Landlords Case:

The Respondent Landlord stated that he rented the dwelling to the Appellant Tenant in 2003 and over the years the relationship was a very good one with the Appellant being considered a good friend .The dwelling was visited infrequently and most communications

were via text or telephone. He always followed up on messages received and claimed he responded to requests for works to be carried out at the dwelling. In January 2012 he decided to acquire the assistance of an agent to manage his interests at 30 Carrigmore Terrace. On 26 January 2012 the agent visited the Appellant at the dwelling and reviewed the areas needing attention and advised the Respondent in writing of same. The areas requiring attention were listed as being consistent with those already featured in the direct evidence of the Appellant Tenant. However specific reference was made to the kitchen cupboards where the agent stated that in his view they needed replacement. The agent advised the Respondent Landlord that in his view much of the areas requiring attention were of a general maintenance nature while the matter of the replacement kitchen was the remit of the Respondent Landlord. The agent also noted the stated intention of the Appellant Tenant to seek a new four bedroom dwelling in the Lucan area for her family and if such were to be found she would be moving out of her current dwelling.

The Respondent Landlord on questioning by the Tribunal agreed that there may have been occasions when communications were poor due to the use of text messages and changing phone numbers. However he emphasised that on receiving a request for assistance he responded promptly as demonstrated by the visits of his plumber and electrician to the dwelling. Tasks that were addressed at the request of the Appellant were, the bathroom tiles and a broken bath panel were replaced in 2012 and again in 2013 the floor tiles in the kitchen were replaced. In 2011 pendant lights were replaced and at the same time a review of the electrical installations in the dwelling was carried out. In March 2014 the dwelling was visited by a plumber to check the radiators for venting and balancing the heat output. The gas boiler was serviced in November 2013. With respect to painting the dwelling, this was delayed due to the expressed wish of the Appellant Tenant to seek alternative accommodation in the vicinity of Lucan but also having regard to the amount of household effects that would require moving in order to allow the project proceed. The Respondent Landlord stated the further lease agreement signed by both parties on 1 November 2012 clearly outlined at clause G that the fixtures and fittings including the gas boiler were "in good order and condition" and demonstrated his duty of care to his tenants.

The Respondent Landlord stated that the economic climate had caused him distress due to rents dropping. He stated that the initial rent was reduced a number of times to reflect market conditions and as this occurred he himself fell into arrears and was under pressure to liquidate some assets to meet his creditors. As this was taking place he noted that the Appellant Tenant had her DSW allowance dropped to €594.70 per month while his rent charge to his tenant was €950 per month. In such circumstance the balance was due for payment by the Appellant Tenant. This payment was not forthcoming on a regular basis and the tenancy fell into arrears. The Respondent Landlord claimed that the Appellant Tenant was in arrears of €5631.81 as of 31 July 2014. No summary of the arrears was presented to the Tribunal by the Respondent Landlord and equally the Appellant was singularly unhelpful in casting light on the amount of arrears outstanding or the sums of rent paid at different times. Due the shortfall in income and growing arrears of rent the Respondent Landlord was confronted with the decision to sell the property to meet his commitments to the Bank. The agent of the Landlord was requested to issue a Termination Notice to the Tenant and the first such notice was furnished on 9 March 2012 and was followed by a further Notice dated 9 May 2013. This latter Notice was unsigned and a further Notice dated 18 May 2013 was issued to the Appellant Tenant who accepted its authenticity and a termination date of 8 September 2013

Shortly after the service of the Notice of Termination the Respondent Landlord stated that he met the Appellant Tenant who advised that she was having difficulty in sourcing a new dwelling and out of compassion for her the Respondent Landlord agreed to extend the period of notice to 31 December 2013 under the understanding that arrears in the sum of €1500.00 would be paid. In the event an initial sum of €1000.00 was paid in September 2013 followed by a further sum of €250.00 in October 2013

The Tribunal noted the lack of financial documentation available to it on the part of both parties and the absence of definitive verbal detail on payments made by the Appellant Tenant to the Respondent Landlord.

Lack of compliance with rent book regulations was brought to the attention of the parties.

6. Matters Agreed Between the Parties

The Tenancy commenced on the 4 April 2003.

The Appellant Tenant is currently in occupation of the dwelling.

Rent is €950.00 per month.

A deposit of €1,300.00 was paid.

7. Findings and Reasons:

Having considered all the documentation before it, and having considered the evidence presented by the Parties, the Tribunals findings and reasons therefor are set out hereunder.

7.1 FINDING: The Notice of Termination dated the 18 May 2013 served by the Respondent Landlord on the Appellant Tenant is valid and in compliance with the provisions of S 62 of the Act.

REASON: For a Notice of Termination to be valid it must meet the requirements of Section 62 of the Act. The Tribunal is satisfied that the notice in question meets those requirements

7.2 FINDING : The Appellant Tenant is overholding with effect from 1 January 2014

REASON: The signed Notice of Termination dated 18 May 2013 and accepted by the Appellant Tenant provided for a termination date of 8 September 2013, however the Respondent Landlord in consideration of the Appellants difficulty in securing an alternative dwelling offered an extension of the Termination date to 31 December 2013. At the date of hearing the Appellant Tenant is in occupation of the dwelling and is therefore overholding within the meaning of Section 78 (1) (j) of the Act.

7.3 FINDING : The Appellant Tenant owes the Respondent Landlord arrears of rent in the sum of €5,068.48

REASON: The Appellant Tenant and Respondent Landlord accept that outstanding arrears as of 31 May 2013 stood at €2144.28. For the 14 month period to the date of the Tribunal hearing the following summarises the position. The agreed monthly rent due over the period was €950.00 per month or for 14 months. €13,300.00

14 months DSW Contribution to Respondent Landlord @ 594 70 per month	=€8325.80.
Payment from Tenant September 2013	€1000.00.
Payment from Tenant October 2013	€ 250.00.
Payment from Tenant November 2013	€ 200.00.
Payment from Tenant December 2013	€ 200.00.
Payment from Tenant January 2014	€ 200.00.
Payment from Tenant March 2014	€ 200.00.
Total rental income received	€10,375.80
rental income due for the 14 month period	€13,300.00
arrears brought forward from May 2013	€ 2,144.28
Total due to Landlord	€15,444.28
Outstanding arrears due	€5,068.48

7.4 FINDING : The Tribunal finds that the Respondent Landlord was in breach of his obligations in relation to the maintenance and upkeep of the dwelling

REASON: The evidence presented featured an unacceptable level of delay in the responsiveness by the Respondent Landlord to issues that were raised by the Appellant Tenant; however the Tribunal acknowledges that they were of a minor nature and considers that an award of €100.00 in favour of the Appellant Tenant is proportionate and adequate.

7.5 FINDING: The Tribunal finds that the Appellant Tenant was not in breach of her obligations under the RTA 2004 as amended other than in the matter of the payment of rent

REASON : The direct evidence of the Appellant Tenant demonstrated the careful manner she had managed over a period of 11 years the maintenance of the dwelling and the fixtures and fittings therein and demonstrated her compliance with section 16 (d) (e) of the Act.

8. Determination:

Tribunal Reference TR0514-000671

In the matter of Modupe Oyewole-Rufai (Tenant) and David McConnell (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on the Appellant Tenant by the Respondent Landlord on 18 May 2013 in respect of the dwelling at 30 Carrigmore Terrace, Saggart, Co Dublin, is valid.
2. The Appellant Tenant and all others residing in the dwelling shall vacate and give up possession of the above dwelling within 28 days of the date of issue of the Order by the Board.
3. The Appellant Tenant shall pay the total sum of €4,968.48 to the Respondent Landlord being rental arrears of € 5,068.48 less €100 for breach of Landlords obligations under section 12 (1)(b)(11) of the Act. Payment to be made at

the rate of €414.04 per calendar month for twelve consecutive months, on the 28th day of each month, commencing the next month after the issue of the order by the Board.

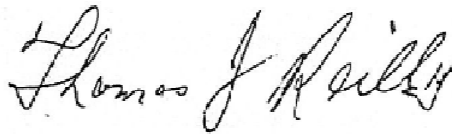
4. The enforcement of the order for such payment will be deferred and the total sum owing will be reduced by the number of monthly payments of €414.04 made to the Respondent Landlord on each due date until the sum of €4,968.48 has been paid in full.

5. For the avoidance of doubt any default in the payment of the monthly instalments of €414.04 shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Respondent Landlord in respect of the dwelling at 30 Carrigmore Terrace, Saggart, Co Dublin.

6. The Appellant Tenant shall also pay any further rent outstanding from 31 July 2014 at the rate of €950.00 per month or proportional part thereof at the rate of €31.23 per day , unless lawfully varied, and any other charges as set out in the terms of the Tenancy agreement until such time as she vacates the dwelling.

7. The Respondent Landlord shall refund the security deposit of €1,300.00 to the Appellant Tenant, 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 29/08/2014.



Signed:

Thomas Reilly Chairperson

For and on behalf of the Tribunal.