

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000673 / Case Ref No: 1013-08284

Appellant Landlord:	John Quirke
Respondent Tenant:	Tomasz Kosarga, Aneta Wawrzyniak
Address of Rented Dwelling:	19 The Gallops, Ramsgate Village, Gorey , Wexford
Tribunal:	Gareth Robinson (Chairperson) Gene Feighery, Aidan Brennan
Venue:	Conference Room, Department of the Environment, Newtown Road, Wexford.
Date & time of Hearing:	08 July 2014 at 2:30
Attendees:	John Quirke, Tribunal Appellant, Landlord Tomasz Kosarga, Tribunal Respondent, Tenant Aneta Wawrzyniak, Tribunal Respondent, Tenant
In Attendance:	Gwen Malone - Stenographer Joe Sullivan - Landlord's Agent

1. Background:

On 10/10/2013 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 25/03/2014. The Adjudicator determined that In the matter of Tomasz Kosarga & Aneta Wawrzyniak (Applicant Tenants) and John Quirke (Respondent Landlord) the Adjudicator, in accordance with section 97(4) of the Act, determines that:

The Respondent Landlord shall pay the total sum of €2,166.16 to the Applicant Tenants within 28 days of the date of issue of a Determination Order by the Board, being damages of €2,500.00 for the unlawful termination of the tenancy and the unjustifiably retained portion of the security deposit of €600.00, having deducted the sum of €433.84 being arrears of rent and the sum of €500.00 for breach of tenant obligations to pay the rent as it falls due, in respect of the tenancy of the dwelling at 19 The Gallops, Ramsgate Village, Gorey, Co. Wexford.

Subsequently the following appeal was received:

Landlord : received on 28/05/2014. The grounds of the appeal: Deposit retention, Standard and maintenance of dwelling ; Approved by the Board on 06/06/2014

The PRTB constituted a Tenancy Tribunal and appointed Gareth Robinson, Gene Feighery, Aidan Brennan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Gareth Robinson to be the chairperson of the Tribunal ("the Chairperson").

On 23/06/2014 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 08/07/2014 the Tribunal convened a hearing at Conference Room, Department of the Environment, Newtown Road, Wexford, County Wexford.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

N/A

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 Landlord) would be invited to present his case first including the evidence of any witnesses; that there would be an opportunity for cross-examination by the Respondent Tenants; that the Respondent Tenants would then be invited to present their case, and that there would be an opportunity for cross-examination by the appellant landlord. 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 Landlord and the Respondent Tenants 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 €4,000.00 or by 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 giving evidence were then sworn in.

5. Submissions of the Parties:

The Appellant Landlords evidence;-

The Landlord Mr. John Quirke and his Agent Mr. Joe Sullivan gave evidence before the Tribunal. The Landlord stated that his Agent Mr. Sullivan had brought him into contact with these Tenants originally. As far as the Landlord was concerned the dwelling was in perfect condition for the Tenants to move into originally.

The Landlord stated that the tenant's viewed the dwelling and they requested if they could paint it to their choice and he provided them with paint. He said on taking up occupation the tenant's raised a number of issues, which included inter alia, a higher boundary fence than the existing. He said that initially he was amenable to deal with these issues, and he felt that their request was quite reasonable given the fact that the Tenants had small children. As a result of this he agreed to provide a raised garden fence, and the installation of a new back gate.

The Landlord gave evidence that the Tenants requested the installation of a garden shed and he agreed that one would be supplied. He posted the plans through the letterbox as the tenants were away in Poland on vacation. He said that he could not gain access to the dwelling and that rent was unpaid during this period. He said that the Tenants were aware of the fact that there was no garden shed when they took up occupancy but he agreed that he would attempt to provide one as soon as feasible.

The Appellant Landlord felt that he dealt with all issues as they arose on behalf of the Tenants. However, as the tenancy progressed the Landlord became concerned that the Tenants appeared to raise issues each time rent was due for payment, and he alleged that they were using these issues as an excuse not to pay the rent in full or on time. For example, the tenant's complained that there was a smell coming from under the floor in the dwelling. He arranged to have the floor lifted but the source of the smell was not identified. The Tenant's then alleged that the smell was coming from the suite of furniture and the Landlord had it professionally cleaned. The Tenants were still not satisfied and they withheld rent and sought a reduction in rental payments. The Respondent Tenants requested new freezer drawers and refused to pay rent again until they were supplied. They requested dishwasher trays which they had identified on the internet and again refused to pay rent. The Landlord said he was a pensioner who relied on timely payment to pay his mortgage. He said that tenant's adopted an aggressive attitude towards him which he found very stressful and as a result he instructed his Agent to terminate the tenancy.

The Landlord gave evidence that his Agent dealt with most matters on his behalf with regard to the Tenancy. He was of the view that issues could not have been dealt with in any more professional capacity. He said that each time rental payments were sought the Tenants raised an issue or threatened to move out.

The Landlord alleged that the grass at the front of the dwelling which was damaged because the Respondent Tenant parked a number of motor vehicles on the grass and as a result of this the grass withered and died. Photographic evidence of the alleged damage was adduced in evidence to the Tribunal in support of this claim.

The Landlord's Agent stated that at all times he attempted to be reasonable with the Tenant's, but that getting rent from the Tenants was very always difficult. The Tribunal asked the Agent to comment on the content of the text message sent to the Tenants from his mobile phone dated 14 May. The text message, was to the effect that their cars could be towed away and that locks to the dwelling could be changed. The Agent accepted that same came from him. The Landlord stated that he took the view that he had a mortgage to pay and that the Tenants should pay the rent on time as he had to make his payments on time to his lending institution.

The Landlord stated that the issue of the Notice to Quit was a matter for his Agent.

The Respondent Tenants' evidence;-

The Tenants gave evidence that the Landlord was in breach of his obligations in not providing a garden shed. The tenancy agreement includes in the third schedule an inventory of the contents including a garden shed.

The Tenant acknowledged that the shed was not present in the garden of the dwelling when he signed the tenancy agreement. The Tenants gave evidence that the shed was to be provided and would be necessary for the storage of his tools, and this was one of his stipulations at the beginning of the agreement.

The Tenants gave evidence that it was not their understanding of the Agreement, as said at the hearing, that the Landlord would install the shed when he was in a position to do so. The Tenants pointed out that the issue of the shed was contained in the schedule of the lease. The shed had not been erected by the end of May, and the Tenants maintained that it was June when the shed was erected. The Tenants consider that the Landlord was in breach of his obligations by not providing the shed. As regards the standard and maintenance of the dwelling, the Tenants referred to problems with a leak which it was agreed was fixed. They stated that their concerns with a smell from a sofa were not adequately addressed by the Landlords Agent. The Tenant stated that she was very distressed by this and the fact that she considered that the Landlord's attitude had changed towards them and was aggressive.

The Tenants stated that they vacated the dwelling on 28 August 2013 on foot a Notice to Quit served on them by the Appellant Landlord's Agent dated 13 August 2013. This Notice gave the Tenants 7 days to vacate the dwelling and stated that the reason for the termination was the failure of the Tenants to pay the full rent without any deduction. In the context of the termination of the tenancy, the Tenants produced a text message on their phone from the Landlord's Agent dated 14 May 2013.

This message read as follows: "Please make contact with me the locks can be changed and the cars towed". This text related to the rent that was due on 7 May while the Tenants were abroad on holiday and the Tenants were unhappy with this text from the Landlord's Agent. The Landlords Agent acknowledged sending this text, and also admitted that the Notice of Termination was wrong and he apologised to the tenants. Once the Tenants had vacated the dwelling, they sought repayment of the balance of their deposit of €178.00 plus a sum of €10.00 due from the Landlord. This was the balance of the deposit after allowing the Landlord to deduct the rent due on 7th August and which had not been paid when the notice to quit was served on 13 August. The Agent responded on 10 September stating that Tenants had breached the terms of a fixed term contract.

6. Matters Agreed Between the Parties

1. Address of Dwelling: 19 The Gallops, Ramsgate Village, Gorey, Co. Wexford
2. The tenancy commenced on 7 March 2013 and the Tenants vacated the dwelling on 28 August 2013.
3. Rent payable was €600.00 per month
4. A Security Deposit of €600.00 was paid.

7. Findings and Reasons:

1. Finding

The Tribunal is satisfied that the Notice to Quit served on the 13th of August, 2013 is invalid.

Reason

Termination of a tenancy must be effected by means of a valid notice of termination that complies Section 58(2) of Part 5 of the Act. Section 62 sets out the requirements for a valid notice of termination. The notice of termination served by the Landlord's Agent is not valid as it does not comply with the provisions of section 62 of the Act. It is not in the correct format and fails to acknowledge the Tenants right to bring the matter to the PRTB. The landlord's agent admitted that the Notice of Termination was "wrong"

2. Finding

The Respondent Tenants were in breach of their obligations under Section 16 (a) of the Act by reason of their failure to pay the rent as it became due to the Landlord.

Reason

A tenant is not permitted to unilaterally adjust rental payments to the Landlord nor is it permitted that a tenant shall use the deposit for the payment of the last month's rent.

The Tribunal is satisfied on the basis of the evidence given by the Appellant Landlords and his Agent that the Respondent Tenants failed to pay rent as it fell due, and used the security deposit as the last month's rent in breach of the provisions of the Residential Tenancies Act, 2004

3. Finding:

The Tenants left the dwelling on foot of the invalid Notice of Termination.

Reason:

The Tribunal is satisfied that the Tenants left the dwelling on foot of the invalid Notice of Termination.

8. Determination:

Tribunal Reference TR0514-000673

In the matter of John Quirke (Landlord) and Tomasz Kosarga, Aneta Wawrzyniak (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the total sum of €2,166.16 to the Respondent Tenants within 28 days of the date of issue of this Determination Order, being damages of €2,500.00 for the unlawful termination of the tenancy plus the unjustifiably retained portion of the security deposit of €600.00, having deducted the sum of €433.84 being arrears of rent, and the sum of €500.00 for breach of tenants obligations to pay the rent as it fell due, in respect of the tenancy of the dwelling at 19 The Gallops, Ramsgate Village, Gorey, Co. Wexford.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 11/09/2014.

A handwritten signature in blue ink, appearing to read 'Gareth Robinson', is positioned above a horizontal line.

Signed:

Gareth Robinson Chairperson

For and on behalf of the Tribunal.