

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0514-000675 / Case Ref No: 1213-09326**

<b>Appellant Landlord:</b>	Ian O'Leary
<b>Respondent Tenant:</b>	Pille Ruutli, Paulette O'Mahony
<b>Address of Rented Dwelling:</b>	5 Greenlodge, Maryborough Woods, Douglas , Cork
<b>Tribunal:</b>	Vincent P. Martin (Chairperson) Thomas Reilly, Aidan Brennan
<b>Venue:</b>	Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork
<b>Date &amp; time of Hearing:</b>	07 October 2014 at 11:00
<b>Attendees:</b>	For the Appellant Landlord: Marie Kelleher, Solutions Property Management (Agent for Appellant Landlord) For Respondent Tenant: Pille Ruutli (Respondent Tenant)
<b>In Attendance:</b>	Representative of Gwen Malone Stenographers

**1. Background:**

1. Background: On 06/12/2013 the Respondent Tenants herein (then Applicant Tenants) 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 19/03/2014. The Adjudicator determined that the Appellant Landlord herein (then Respondent Landlord) shall pay the total sum of €1175.00 to the Appellant Tenants within 21 days of the date of issue of the Determination Order, by the Board, being the return of the entire unjustifiably retained security deposit of €875.00, plus damages of €300.00 for failing to return the deposit, in respect of the tenancy of the dwelling at 5 Greenlodge, Maryborough Woods, Douglas, County Cork. Subsequently the following appeals were received: Landlord: received on 30/05/2014. The grounds of the appeal: Deposit retention. The application for an appeal hearing was approved by the Board on 20/06/2014.

The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, Thomas Reilly and Aidan Brennan 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 07/10/2014 the Tribunal

convened a hearing at Committee Room 1, Cork City Council, City Hall, Anglesea Street, Cork.

**2. Documents Submitted Prior to the Hearing Included:**

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 introduced the members of the Tribunal to the Parties. 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'.

He explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in a manner as informal as possible; that the person who appealed (the Appellant Landlord) would be invited to present his case first; that there would be an opportunity for a cross-examination by the Respondent Tenant; that the Respondent Tenants would then be invited to present their case and that an opportunity would then follow for cross-examination by the Appellant Landlord. He also said that at the end of the hearing, both the Appellant Landlord and the Respondent Tenants would be given the opportunity to summarise their evidence and/or make final submissions.

He said that members of the Tribunal might ask questions of both Parties from time to time. He also stated that the Parties must follow any instructions given by the Chairperson. He directed that neither Party should interrupt the other when oral testimony was being given. He stated that all evidence would be taken on oath or affirmation and he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable on conviction by a fine of up to €4,000 and/or up to 6 months imprisonment or both.

The Chairperson stated that the evidence of the Tribunal hearing would be recorded by an official stenographer present and that a transcript of the proceedings would be produced based on that audio recording. It was pointed out to the Parties herein that it was the policy of the PRTB to have an official stenographer present at all tribunal hearings and the said purpose of same was to furnish a transcript of the proceedings to the tribunal members in order to assist them in their deliberations as the transcript gave an accurate record of what was said by all persons during the course of the hearing. He informed the Parties that, if they wished, they could apply to the PRTB to be furnished with a copy of the said transcript for a fee to be agreed with the PRTB. He 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 Act].

The Chairperson said that he would be willing to clarify any queries in relation to the procedures then or at any stage during the course of the Tribunal. He asked the Parties if they had any queries about the procedure. There were none. The persons who indicated their intention to give evidence to the Tribunal were then sworn in.

## **5. Submissions of the Parties:**

The Appellant Landlord's Case:

Evidence of Marie Kelleher (Agent for the Appellant Landlord)

She stated that she suffered a very serious accident at the time when the security deposit was due to be returned which rendered her housebound. She stated that she was therefore indisposed at that time but in response to a question raised by the Tribunal accepted that the Appellant Landlord knew she was so indisposed. She stated that she could not physically get to the bank but submitted that she did try returning the deposit by transferring the monies electronically but this was not successful because she did not have all the necessary tenants' banking information.

She stated that she was instructed to retain €50.00 of the deposit for cleaning purposes. She claimed that she did carry out an inspection of the dwelling in the presence of the First Named Respondent Tenant. She stated that she was given to understand that this dispute had been settled and that was the reason why the Appellant Landlord had no representation present at the adjudication hearing but accepted that she did not receive any formal confirmation that the case was ever settled. She accepted that neither herself nor the Appellant Landlord handled the situation properly conceding that there were shortcomings. However she stated that it was a misunderstanding and that the Appellant Landlord was a decent person and that it was never intended or envisaged that this dispute would go so far.

In a response to a question by the Tribunal, Marie Kelleher stated that Ian O' Leary and not Jane O' Hagan was, at all material times, the sole Landlord in this case. It was agreed by the parties that the written tenancy agreement dated 1/11/12 was entered into between the parties herein was signed by Ian O Leary (the Appellant Landlord) and Pille Ruutli and Paulette O Mahony (the Respondent Tenants herein).

The Respondent Tenants' Case:

Evidence of Pille Ruutli (First Named Respondent Tenant)

The Respondent Tenant stated that she rented the dwelling from the Appellant Landlord from 1 November 2012 to 24 October 2013. She stated that the rent was €875.00 per month and the deposit was €875.00. She left the dwelling three days ahead of the appointed termination date but was not making any claim in relation to same. She stated that at the termination of the tenancy the agent acting for the Appellant Landlord (Marie Kelleher) informed her that the Appellant Landlord was retaining €50.00 from the deposit as a result of necessary cleaning costs. She denied the assertion made by Marie Kelleher (the agent) that she carried out an inspection of the dwelling alleging that the agent did visit the dwelling briefly but merely entered one room in the dwelling before informing her that she had to leave complaining of having a 'tummy bug'. She disputed the right of the

Appellant Landlord to make this deduction at that time from the deposit which she submitted was unjustified. She submitted that the dwelling was clean at the termination of the tenancy and referred to photographic evidence in support of this assertion.

She stated that on 18 November 2013, the said agent informed her that the deposit had been electronically transferred but submitted that this transfer did not take place. She stated that the Respondent Tenants made numerous requests seeking the return of their deposit including leaving voicemails, text messages and sending letters and inter alia, referred to a letter that both tenants had written to the Appellant Landlord dated 22 November 2013. She stated that despite making the said numerous attempts, she could not manage to get speaking to the Appellant Landlord's agent until 8 December 2013 on which said occasion the agent suggested that she (the tenant) travel to her to collect a cheque. She submitted that this was not convenient for her as she did not have a motorcar at that time and it was for a lesser amount. She submitted that she was seeking the return of the full deposit together with damages for stress, loss and inconvenience and resulting hardship caused by the failure of the Appellant Landlord to return the deposit until the 20 March 2014. She stated that she suffered loss of earnings and inconvenience for having to attend the adjudication and appeal hearing noting that neither the Appellant Landlord nor his representative attended the adjudication hearing. She stated that she had suffered significant inconvenience, expense, loss and upset as a result and also had to travel to the said 2 hearing days taking time off her work. She submitted that the Appellant Landlord had no grounds whatsoever to decide to withhold and deprive the Respondent Tenants of use of their deposit since the termination of the tenancy on the 24 October 2013. She stated that she was relying and depending on receiving the said deposit because when she travelled home from Ireland to her family for Christmas she was forced to access the monies to pay for the airfare elsewhere but stated luckily she still managed to pay for the return trip to Estonia.

She stated that her fellow tenant and good friend (Paulette O Mahony) was at that time relocating from Ireland to Germany and submitted that the monies from the return of the deposit would have been very important for her. She concluded by saying both tenants were caused to suffer financial hardship as a result of the actions of the Appellant Landlord which are the subject matter of this dispute.

In her application to the PRTB for dispute resolution, the First Named Tenant (Pille Ruutli) stated that she was bringing the claim on behalf of both herself and Paulette O Mahony (who was now abroad) and that she had Paulette O Mahony's expressed authorisation to do so and when asked by the Tribunal to clarify and confirm the position, she stated that she was bringing the claim on behalf of both herself and Paulette O Mahony.

The Chairperson thanked all present for attending the hearing and advised them that following the hearing the Tribunal will make its Determination in relation to the dispute and will notify the PRTB of that Determination.

## **6. Matters Agreed Between the Parties**

1. The tenancy started on 1 November 2012 and ended on 24 October 2013.
2. At the start of the tenancy, the Respondent Tenant paid to the Appellant Landlord a security deposit of €875.00

3. The Appellant Landlord returned the entire of the security deposit to the Respondent Tenants on 20 March 2014.

## **7. Findings and Reasons:**

Having considered all the evidence including the documentary evidence and the oral testimony of each of the Parties herein, the Tribunal's findings and reasons therefor are set out hereunder:

1. The letting was a Part 4 tenancy under the Act as the Respondent Tenants were in continuous occupation of the dwelling in excess of the requisite six-month period.

2. The Tribunal finds that the photographic evidence relied upon by the First Named Respondent Tenant (which she stated that she took herself on the last day of the tenancy) in support of their claim to be persuasive and compelling, as numerous photographic evidence supported assertion made by the First Named Respondent Tenant that the dwelling was in very good condition at the time it was vacated. The Tribunal also finds the documentary evidence including letters written by the Respondent Tenants to the Appellant Landlord requesting the return of their deposit to be unambiguous and persuasive.

3. The Tribunal finds that the Appellant Landlord's explanation for delaying the return of the entire security deposit in the sum of €875.00 to be unconvincing and the reason given for doing same was unjustified. The Tribunal finds that the Appellant Landlord unjustifiably retained the said security deposit for a relatively long period of time failing to return it until 20 March 2014. The Tribunal finds that the Appellant Landlord was in flagrant breach of his obligation under the Act in failing to return promptly the security deposit. Under Section 12(1)(d) of the Act a Landlord is required to return or repay promptly to the Tenant any deposit paid by the Tenant. At the time that the Respondent Tenants vacated the dwelling, the Tribunal finds the Respondent Tenants did not in any way damage the dwelling nor did they cause deterioration in the condition of the dwelling. The Tribunal finds the failure on the part of the Appellant Landlord and/or the Agent acting on behalf of the Appellant Landlord to refund the full deposit promptly to be a breach of his statutory obligation under the Act and merits appropriate damages to be awarded to the Respondent Tenants in the sum of €600.00. In this respect the Tribunal took into consideration the clear inconvenience suffered by the Respondent Tenants which was caused as a consequence of the Appellant Landlord's said breach of the Act. The Tribunal finds that the sum of €600.00 in damages represents reasonable, appropriate and proportionate compensation, taking into consideration that the Tribunal finds the said withholding of the entire of the security deposit until 20 March 2014 caused the Respondent Tenants to suffer severe inconvenience, expense and loss.

4. Having considered all the oral and documentary evidence, the Tribunal is satisfied that all material times Ian O Leary was the Landlord (the Appellant Landlord herein) and that Pille Ruutli and Paulette O'Mahony were the Tenants (the Respondent Tenants herein).

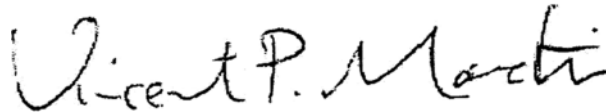
**8. Determination:**

**Tribunal Reference TR0514-000675**

**In the matter of Ian O'Leary, Jane O'Hagan (Landlord) and pille ruutli (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 €600.00 in damages to the Respondent Tenants within 14 days of the date of issue of the Order by the Board, for unjustifiably delaying the repayment of the security deposit in the sum of €875.00 to the Respondent Tenants, which said delay breached the Appellant Landlord's statutory obligations under Section 12.1(d) of the Act, in respect of the tenancy of the dwelling 5 Greenlodge, Maryborough Woods, Douglas, County Cork.

**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.