

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0514-000676 / Case Ref No: 0114-09714

Appellant Landlord: Kevin Walsh

Respondent Tenant: Amanda O'Rourke

Address of Rented Dwelling: Flat - 3, 23 Cabra Park, Phibsborough , Dublin 7

Tribunal: Tim Ryan (Chairperson)
Gene Feighery, John Tiernan

Venue: Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2

Date & time of Hearing: 14 August 2014 at 10:30

Attendees: Kevin Walsh, Appellant Landlord
Nora Walsh, Witness for the Appellant Landlord
Amanda O'Rourke, Respondent Tenant
Bridget O'Rourke, Witness for the Respondent Tenant
Ronan Doherty, O'Reilly Doherty & Co., Solicitor for the Respondent Tenant

In Attendance: Gwen Malone Stenographers

1. Background:

On 09/01/2014 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 27/03/2014. The Adjudicator determined that in the matter of Amanda O'Rourke, Applicant Tenant, and Kevin Walsh, Respondent Landlord::

1. The Notice of Termination with a date of service of 9th January 2013, served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at Flat 3, 23 Cabra Park, Phibsboro, Dublin 7 is invalid.
2. The Notice of Termination with a date of service of 18th January 2014, served by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at Flat 3, 23 Cabra Park, Phibsboro, Dublin 7 is also invalid.
3. The Respondent Landlord shall pay the sum of €2,500.00 damages to the Applicant Tenant within 56 days of the date of issue of the Order by the Board, being damages for breach of the Respondent Landlord's obligations arising under section 12(1)(a) of the Act by reason of the service of two invalid Notices of Termination in respect of the tenancy of the above dwelling.

Subsequently an appeal was received from the Landlord on 30/05/2014. The grounds of the appeal were stated to be in respect of invalid notice of termination and the appeal was approved by the Board on 06/06/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Gene Feighery and John Tiernan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Tim Ryan 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 14/08/2014 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:

N/A

4. Procedure:

The Chairperson asked the parties 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 the Tribunal was a formal procedure but that it would be as informal as possible; that the person who appealed (in this case the Appellant Landlord) would be invited to present his case first, that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case and that there would be an opportunity for cross-examination by the Appellant Landlord.

He also said that members of the Tribunal might ask questions of both parties from time to time. The Chairperson explained that, following this, both parties would be given an opportunity to make a final submission.

He 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 and/or up to 6 months imprisonment or both.

The Chairperson noted that should the parties indicate that they would be able to resolve the dispute through negotiation, the Tribunal would facilitate any such settlement. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal and thus become enforceable through the Courts.

The Chairperson also reminded the parties that, as a result of the Hearing that they, the Board, would make a Determination Order which would be issued to the parties and would be posted on the PRTB website. It could be appealed to the High Court on a point

of law only in accordance with Section 123(3) of the Residential Tenancies Act 2004, hereafter referred to as the Act of 2004.

The Parties giving evidence were then sworn in and the hearing commenced.

5. Submissions of the Parties:

Appellant Landlord's Case

Evidence of Kevin Walsh:

At the outset, the Appellant Landlord confirmed that the only issue before the Tribunal was the validity or otherwise of a second Notice of Termination served on the Tenant on 18 January 2014.

He confirmed - and the Respondent Tenant agreed - that a periodic tenancy commenced on 12 September 2009, that no written tenancy agreement was signed and that the rent was €120 per week. On 9 October 2013 he said he served a Notice of Termination (NOT) on the Respondent Tenant. The termination date was stated as 29 January 2014. He said he did not give any reason for the termination as he understood this was a "Further Part 4 tenancy" which commenced on 13 September 2013 and that he considered that as the NOT was served within the first six months of that tenancy he was not obliged to give a reason under the terms of the RTA. He gave a notice period of 112 days and this, he said, he believed was in accordance with Sections 34 and 42 of the Act of 2004. Before issuing the NOT, the Appellant Landlord said he had contacted both the PRTB and Citizen's Advice Centre to confirm this was the correct legal procedure.

The Appellant Landlord said that on 17 October 2013 he received a letter from the solicitor for the Respondent Tenant requesting a copy of the lease agreement. He said he had spoken to the Respondent Tenant and she agreed there was no written lease. He said the tenancy was governed by a verbal agreement only. Approximately one month before the expiry of the 112 days notice period, he said the Appellant Landlord said he spoke to the Respondent Tenant and told her there was only one month left and she acknowledged this to him. On 10 January 2014, the Appellant Landlord said that he received a second letter from the solicitor for the Respondent Tenant claiming the NOT was invalid as it stated it was served on 9 January 2013 whereas it had, in fact, been served on 9 October 2013. He said he contacted the PRTB and it was confirmed to him that an objection had been made to this NOT. He was advised it would be up to the adjudicator to decide whether the NOT was valid or invalid.

The Appellant Landlord said that he took some more advice and, as he felt the adjudication might go against him, he decided to issue a second NOT on 18 January 2014 which also gave a 112 day notice period, terminating on 11 May 2014. He said he believed this NOT was in full compliance with the requirements of the Act of 2004. However, in this second NOT, he said he gave a reason for the termination which was that the dwelling was not in compliance with the Articles requiring compliance under the Housing (Standards for Rented Houses) Regulations S.I. 534,2008 that had recently been introduced. In particular, he said the Tenant did not have a self-contained bathroom. He said that she had to leave her apartment and descend some steps in order to access it. He gave evidence that two officials from Dublin City Council had called to the dwelling in June 2012 and had advised him that he would have to comply with Article 6 of the Housing Regulations but they had not given him any specific timeframe.

The Appellant Landlord told the Tribunal he had also advised the Respondent Tenant that he was worried about the ceiling, part of which had previously fallen on her and which resulted in the Tenant bringing a successful case to the Personal Injuries Assessment Board (PIAB).

Cross-examined by the Tribunal, the Appellant Landlord said that he had not offered to give the Respondent Tenant a new tenancy once the refurbishment works were completed as this was not required when a NOT is issued during the first six months of a Further Part 4 tenancy. He also confirmed to the Tribunal that he served the NOT of 18 January 2014 by leaving it on the counter at the Dwelling.

Respondent Tenant's evidence:

The solicitor for the Respondent Tenant said he believed the first NOT was invalid as it gave an incorrect date of service and that he believed the reason given in the second NOT was not true. However, when questioned by the Tribunal, he confirmed that he could not prove this. He said at least one other unit in the dwelling at issue had no self-contained bathroom but he understood no NOT had been issued in that instance.

The Respondent Tenant told the Tribunal that she had never fought or argued with the Appellant Landlord during her tenancy. She said she had been told by the Appellant Landlord at the adjudication hearing that she would not be going back to the Dwelling. She said she believed the NOT had been issued because she had brought a personal injuries claim against the Appellant Landlord. She said she was left "speechless" when she received the second NOT and her health had deteriorated as a result. She said that she was in and out of hospital, her asthma worsened and she had to have increased medication. She stated that she was still distraught as she had nowhere to go to but that she had been searching for alternative accommodation.

The Witness for the Respondent Tenant also told the Tribunal none of this had arisen until the Respondent Tenant lodged a claim for her injuries resulting from the ceiling collapse.

6. Matters Agreed Between the Parties

A periodic tenancy commenced on 12 September 2009.

There was no written tenancy agreement.

The rent was €120 per week.

A Notice of Termination was served on the Tenant on 9 October 2013.

A second Notice of Termination was served on the Tenant on 18 January 2014.

The Tenant is still in occupation.

7. Findings and Reasons:

Finding:

The Second Notice of Termination issued on 18 January 2014 is valid.

Reasons:

The methods by which a Part 4 tenancy may be terminated by a landlord are outlined in Sections 34 and 42 of the Act of 2004. The accompanying Table in Section 34 outlines six valid reasons which may be given for terminating a Part 4 tenancy. One of the reasons given (Section 34.5) is that the landlord “intends to substantially refurbish or renovate the dwelling...in a way which reassures the dwelling to be vacated”. The landlord is also obliged to re-offer the tenancy if the dwelling becomes available for re-letting within a period of six months.

In addition, Section 41 of the Act of 2004 outlines how, after a period of four years from the date of commencement and where no Notice of Termination is served, a new tenancy, known as a “Further Part 4 tenancy” comes into effect. The commencement date of the new tenancy is the expiry of the first four year period. In this instance, the date of commencement is 13 September 2013.

Section 42 of the Act of 2004 states that “not later than six months from its commencement, the landlord may serve a notice of termination in respect of a Further Part 4 tenancy. The notice period must not be less than 112 days. This method of termination is “in addition to” those outlined in Section 34.

The Tribunal finds that the second Notice of Termination served by the Appellant Landlord to the Respondent on 18 January 2014 is valid as it fully complies with Section 42 of the Act of 2004. While a reason for the termination was given, no such reason is required by the Act. Accordingly the Tribunal does not see fit to award damages. The said NOT also complies in every respect with the prescribed format as set out in Section 62(1) of Act of 2004.

The Tribunal find that notwithstanding the argument advanced on behalf of the Respondent Tenant that the Notice of Termination dated 18 January 2014 is invalid because it did not include a statement of offer to the Respondent Tenant of a new tenancy when the works are completed as required in the circumstances of a NOT being served under Section 34 of the Act of 2004, the Appellant Landlord provided a reason within the NOT but having regard to Section 42 of the Act of 2004, he was not obliged to include such a statement of offer.

8. Determination:

Tribunal Reference TR0514-000676

In the matter of Kevin Walsh (Landlord) and Amanda O'Rourke (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served on the Respondent Tenant on 18 January 2014 is valid in respect of the tenancy of the dwelling at Flat 3, 23 Cabra Park, Phibsboro, Dublin 7.
2. The Respondent Tenant and all persons residing in the above dwelling shall give up possession of and vacate the dwelling, in which she is in unlawful occupation and over-holding within 7 days of the date of issue of this order by the Board.
3. The Respondent Tenant shall pay any further rent outstanding from 14 August (date of hearing) at the rate of €120 per week or proportional part thereof at the rate of €17.14 per day, unless lawfully varied, and any other charges as set out in the

terms of the tenancy agreement for each week or part thereof, until such time she vacates the dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/08/2014.

A handwritten signature in black ink, appearing to read 'Tim Ryan', is positioned above a horizontal line.

Signed:

Tim Ryan Chairperson

For and on behalf of the Tribunal.