**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001155 / Case Ref No: 0614-12543**

**Appellant Landlord:** Patrick Byrne

**Respondent Tenant:** Hangsu Ma

**Address of Rented Dwelling:** 3 Grove House, Bettyglen, Maywood, Raheny , Dublin 5, D05VN27

**Tribunal:** Thomas Reilly (Chairperson)

Elizabeth Maguire, John Tiernan

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

**Date & time of Hearing:** 11 August 2015 at 2:30

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| **Attendees:** | Lorraine Downey |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 09/06/2014 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 09/03/2015. The Adjudicator determined that

The Respondent Landlord shall pay the total sum of €1,264.94 to the Applicant Tenant within 28 days of the date of issue of the Order, being the unjustifiably retained portion of the security deposit of €1,200.00, having deducted the sum of €356.71 for rent arrears, plus the sum of €421.65 in damages for the Respondent Landlord’s breach of his obligations pursuant to S.12 (1)(d) of the Residential Tenancies Act 2004, in respect of the tenancy at 3 Grove House, Bettyglen, Maywood, Raheny, Dublin 5.

Subsequently the following appeal was received:

Landlord : received on 06/05/2015. The grounds of the appeal: Deposit retention, Standard and maintenance of dwelling, Damage in excess of normal wear and tear, Rent arrears ; approved by the Board on 27/05/2015

The PRTB constituted a Tenancy Tribunal and appointed Elizabeth Maguire, John Tiernan, Thomas Reilly 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 29/06/2015 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 11/08/2015 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, 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. The Chairperson 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 held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his case, and that there would then be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson stressed that all evidence would be taken on oath or affirmation 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 up to €4,000 or 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 were then sworn in.

At the outset prior to any submissions of evidence the parties were asked if all the files, numbering four from the PRTB had been received by them? The Tribunal was advised by the Appellant Landlord that he had not received all the files. A short recess was called during which a full set of files were procured for him and time was allocated for a review prior to resumption of the Tribunal.

**5. Submissions of the Parties:**

Appellant Landlords Case:

Application for dismissal on the part of the Appellant Landlord.

The Appellant Landlord opened his appeal by stating that he believed that it was inappropriate for the Tribunal to hear this case on the grounds that it was lodged with the PRTB at 9.16am on Monday 9 June 2014 which was on the morning immediately following completion by him of acceptance of new tenants in to the dwelling on assignment of the lease agreement on the part of the Respondent Tenant on Sunday evening 8 June 2014 when they paid their deposit and first month’s rent. He said that the case brought against him was thus in his opinion premature. The Tribunal considered the matter and confirmed to the parties that under the provisions of the Act any aggrieved party may seek dispute resolution facilities from the PRTB on any issue where he/she considers that satisfaction has not been achieved.

Evidence of Patrick Byrne (Appellant Landlord)

The Appellant Landlord submitted that he was aware of the tenant’s interest in moving out of the rented dwelling at an early date and he tried to facilitate this fact by offering the Respondent Tenant the option of periods of 3, 4 or 5 month letting periods. The Tenant decided that he would sign a contract for twelve months duration as the most competitive monthly rental payment was accessible to him by doing so. This agreement was signed by the parties on 1 December 2013 and was due to expire on 30 November 2014. On confirmation by the tenant that he wished to depart the dwelling after the passing of six months, the Appellant Landlord agreed to the re-assignment of the Lease and requested the Tenant to proceed with re-tenanting the dwelling subject to the Appellant Landlord receiving suitable references and interviewing the prospective candidates. In due course a number of potential tenants were interviewed and the dwelling was re-let on the 8 June 2014 and the new Tenants were given access on Friday 6 June .The Appellant Landlord stated that he provided assistance in procuring a new Tenant by the placement of advertisements as requested by the Respondent Tenant. On Friday evening 6 June 2014 the Appellant Landlord was visited by the Respondent Tenant accompanied by a friend. The Appellant Landlord said that he was asked for the return of the deposit by the Respondent Tenant which he refused as he had yet to collect both the rent and a deposit from the new tenants who had just moved in. The Appellant Landlord expressed dissatisfaction and annoyance at the persistent requests from the Appellant Tenant to repay the deposit before his new tenants were in situ and had paid both rent and deposit. Reference was made by the Appellant Landlord to a telephone call from Appellant Tenant on an evening when a family birthday was being celebrated as a further intrusion. Numerous references to text communications between the parties were referred to by the Appellant Landlord including requests as to when new contracts were signed with the new tenants. Such were perceived by the Appellant Landlord as unwelcome and unnecessary intrusions into his affairs by the Respondent.Tenant. The Appellant Landlord stated that he had made efforts on numerous occasions to make contact with the Respondent Tenant with a view to addressing any of the issues regarding refund of the deposit, however he said that this was without success.

The Appellant Landlord stated that during the tenancy the Respondent Tenant sublet the attic room for a short period of time and he indicated that he understood this was to aid the Tenant’s cash flow situation. He said that however he was not made aware of who the extra tenant was and as damage was caused to the Velux window in the attic room culpability had to be pursued. A letter was issued to the Respondent Tenant on 28 April 2014 by registered post in which the Appellant Landlord stated he requested the name of the person using the attic room, however he said it was not delivered at the dwelling and the Landlord was advised it was available for collection and the Appellant Landlord arranged for its collection from the PO on being notified of its presence there .The Appellant Landlord said that he facilitated the Respondent by allowing him pay the May rent in two instalments. The Appellant Landlord said that during the tenancy he had carried out a number of upgrades to the dwelling amongst which was the replacement of all external windows and doors and a Velux window in the attic. He said that on the departure of the Respondent Tenant the rent due for payment on 1 June had not been paid and the Appellant Landlord said this was a breach of the Lease agreement to pay the rent on the due date. He said that damage was noted in a number of areas notably the Velux window which had been forced at some point and was now insecure. He said that the carpet required replacement as in the view of the Appellant Landlord it was not suitable for cleaning and needed to be replaced. Finally he said that damage was caused to the bi-fold doors necessitating repairs to be carried out. The items and amounts claimed are,

Rent €260.00

Cleaning of dwelling and restoration of gardens €350.00

Attendance at dwelling re early exit 75.00

Attendance at dwelling 8June 2014 re collection of rent € 75.00

PRTB Appeal fee €100.00

TOTAL €860.00

Repairs and renewals claimed.

Supply and fit velux window €1,175.00

Remove carpet, prepare and lay wooden floor € 475.00

Remove and repair Bi Fold Doors € 90.00

TOTAL €1,740.00

Cross examination of Appellant Landlord:

The Appellant Landlord was asked to confirm the content of the letter he issued via post to the Respondent Tenant and he stated that it contained a request to inform him of the name of the person who occupied the attic room plus the name of the person who visited him with the Respondent on Friday 6 June 2014.

Respondent Tenant’s Case:

Evidence of Hangshu Ma , ( Respondent Tenant )

The Respondent Tenant stated that during his period of residence he had his contract renewed three times and the rent was also increased. He said that he had been planning to move out of the dwelling at an early date and had advised the Landlord of his intentions. He said that for this reason when it came to Lease renewal time he was uncertain as to opting for a short or long term contract. The Appellant Landlord did offer him the option of taking either a long or short contract, however the short contract would have incurred a higher rent per month. He said that it was decided to go for the 12 month contract. He gave evidence that as he was experiencing cash flow problems at the time he agreed to allow a friend of his wife to occupy the attic room and advised the Tribunal he received a sum of €450.00 per month for this facility. On being questioned by the Tribunal as to the length of that guest’s residency in the dwelling the Respondent Tenant was unable to give a definite answer but said it could be three months.

The Respondent Tenant said that around April 2014 he was in a position to vacate in May 2014 and sought the permission of the Landlord to assign the remaining lease period to another person. He said that the Appellant Landlord agreed to this proposal subject to him being issued with suitable references and having the final decision on the candidate to be offered the dwelling. It was stated by the Respondent Tenant that the Appellant Landlord assisted him in the placement of advertisements for the letting of the dwelling. He said that prospective tenants had their references passed to the Appellant Landlord who then followed through with them but no feedback was given to the Respondent Tenant as to the outcome. He said that he had vacated the dwelling on 10 May 2014 and that he had advised the Appellant Landlord of this subsequently by letter dated 28 May. New tenants took up residence in the dwelling on 6 June and the Respondent Tenant sought to visit the Appellant Landlord and seek return of his deposit. Due to his view that the Landlord “was not nice to deal with” he brought a friend along with him “in case anything happens”. He said that the Appellant Landlord had told him at that meeting that he would not be returning the deposit back until he had the new tenants in situ and had received their rent and deposit money. The Respondent Tenant said that he was fearful for himself at the meeting due to past experience and the Appellant Landlord pointing his fingers at him and trying to touch him in an intimidatory manner. The Respondent Tenant referenced emails he received from the Appellant Landlord where he was referred to in a distasteful way and referenced other exchanges between the parties by text which he found to be threatening. He referred to copies of text messages exchanged between the parties over the weekend of 6 June to 9 June 2014 were before the Tribunal and featured the instruction from the Appellant Landlord to the Respondent Tenant not to make any further contact with him and stating that the Respondent Tenant had intruded enough already in his affairs. The Respondent Tenant stated that he had issued the Appellant Landlord with his Bank details as requested and on one occasion had, at the request of the Appellant Landlord made a call at 6am in the morning to which he received no reply. He submitted that he was being denied the opportunity by the Appellant Landlord to pursue repayment of his deposit. He said that resulting from the absence of any update from the Appellant Landlord on the reassignment of the lease he texted the new tenant to seek confirmation of the signing of the contract. The Respondent Tenant stated that on departure from the dwelling it was cleaned and no damage was done as featured in the photographs included in the case file.

Cross examination:

The Appellant Landlord asked the Respondent Tenant why he did not pay rent on 1 June 2014 as per his Lease. The Respondent Tenant responded that it was not right that the Appellant Landlord could receive two rents and retain two deposits and stated that he had no issue with the payment of rent for the five days of June 2014 ie from 1st to 5th June 2014 inclusive. Queried by the Tribunal on whether a final inspection of the dwelling was conducted at the time of departure, the Respondent Tenant stated that none had taken place. Asked whether he had kept pets in the dwelling contrary to the lease the Respondent Tenant said that that was so.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1.The date of first occupation of the dwelling by the Respondent Tenant was 1 September 2012

2. A fixed term Lease of 12 months duration was signed by the parties on 1 December 2013.

3. The tenancy terminated on 10 May 2014.

4. The security deposit paid was €1,200 and is held by the Appellant Landlord.

5. The monthly rent was €1,550.00

6. New Tenants occupied the dwelling on 6 June 2014.

**7. Findings and Reasons:**

Having considered all of the documentation before it, and having considered the evidence presented to it by the Parties, the Tribunal’s findings and reasons therefor are set out hereunder.

7.1 Finding:

The Tribunal finds that the Respondent Tenant is in breach of his obligation under section 16 (f) of the Act and of his lease agreement by keeping dogs in the dwelling without the permission of the Appellant Landlord and not notifying him of this which was contrary to the terms of his lease agreement.

Reasons:

1. The Respondent Tenant conceded under cross examination that he had acted outside the terms of his lease agreement and its provisions concerning the keeping of pets in the dwelling. The Tribunal accepts that this constituted a breach of his obligations. However, the Appellant Landlord did not adduce any compelling evidence to make of consequential damage to the dwelling and makes no award of damages resulting arising from this breach.

7.2 Finding:

The Tribunal finds, that the Appellant Tenant is not in breach of his obligations in respect of damage beyond normal wear and tear to the carpet, bi-fold doors, or the Velux window under section 16(f) of the RTA 2004 as amended.

Reasons:

1. Section 16 (f) stipulates that a tenant of a dwelling shall not do any act which would cause a deterioration in the condition of a dwelling was in at the commencement of the tenancy. The claim submitted by the Appellant Landlord features:

Supply and fit Velux window €1,175.00

Remove carpet, prepare and lay wooden floor € 475.00

Remove and repair Bi Fold Doors € 90.00

TOTAL €1,740.00

The Tribunal considers that the Appellant Landlord has not submitted sufficient evidence to attribute the alleged damage to the Velux window to be the responsibility of the Respondent Tenant who claimed no knowledge of a deficiency in its operation. Equally the Tribunal considers that the Appellant Landlord did not adduce sufficient evidence to establish that any damage to the carpet and bi-fold doors was damage in excess of normal wear and tear having regard to the period of occupancy of the dwelling by the Respondent Tenant.

7.3 Finding:

The Tribunal finds that Respondent Tenant is in breach of his obligations under s16 (a) (1) of the RTA 2004 to pay rent on the date it falls due for payment.

Reasons:

1. The Respondent Tenant conceded from the outset that he owed rent for the period 1 June 2015 to the 5 June 2015 inclusive, being the void dates from his last month’s payment and the date of occupation of the dwelling by new tenants. This has given rise to rent arrears in the sum of €254.80

This amount has been calculated as follows:

Monthly rent was €1,550.00

This amount is multiplied by 12 to yield an annual rent = €1,550 X 12 = €18,600.00

The Annual Rent is divided by 365 to yield a daily rate = €18,600 ÷ 365 = €50.96

For 5 days this amount is multiplied by 5 = 5 X 50.96 = €254.80

7.4 Finding:

The Tribunal finds that the Appellant Landlord’s claim in respect of garden maintenance costs and cleaning of dwelling is upheld.

Reasons:

1. The Tribunal accepts that photographic evidence submitted in evidence featured an overgrowth of shrubbery, the responsibility for the containment of same being the responsibility of the Respondent Tenant as provided for in the lease agreement. The Tribunal also accepts the evidence of the Appellant Landlord that the dwelling required cleaning when he regained access prior to the reassignment of the tenancy to the new tenants. The Tribunal is satisfied that an award of €350.00 in favour of the Appellant Landlord for garden maintenance and cleaning of the dwelling is justified. The Tribunal make no award for, Attendance at the dwelling re early exit, Attendance at dwelling on 8 June re collection of rent or the reimbursement of PRTB Appeal fee. Such costs are associated with the routine running of the business of letting a residential property.

2. Cleaning of dwelling and restoration of gardens €350.00. Allowed in full

3. Attendance at dwelling re early exit € 75.00 Disallowed

4. Attendance at dwelling 8 June 2014 re collection of rent € 75.00 Disallowed

5. PRTB Appeal fee €100.00 Disallowed.

7.5 Finding:

The Tribunal finds the Appellant Landlord in breach of his obligations under s 12 (1) (d) of the RTA 2004 in not repaying the deposit to the Respondent Tenant promptly.

Reason :

The Appellant Landlord has retained the Respondent Tenants deposit in the sum of €1,200.00 despite efforts by the Respondent Tenant to have the sum returned. Numerous efforts on the part of the Respondent Tenant to retrieve the deposit were frustrated by the actions of the Appellant Landlord who ,resulting from the delay is in breach of his obligations under s 12 (1) (d) of the Act.

**8. Determination:**

**Tribunal Reference TR0515-001155**

**In the matter of Patrick Byrne (Landlord) and Hangsu Ma (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 €595.20 to the Respondent Tenant within 7 days of the date of the issue of the order, being the unjustifiably retained portion of the security deposit of €1,200 having deducted the sum of €254.80 in respect of rent due and €350.00 damages for breach of tenant’s obligations in respect of the tenancy of the dwelling at 3 Grove House, Bettyglen, Maywood, Raheny, Dublin 5.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\Thomas Reilly.png |

**Thomas Reilly Chairperson**

For and on behalf of the Tribunal.