**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001158 / Case Ref No: 1114-15301**

**Appellant Landlord:** Ann Moran

**Respondent Tenant:** Marina Campbell, Bryan Campbell

**Address of Rented Dwelling:** 27 Aspen Drive, Kinsealy, Dublin, K67D433

**Tribunal:** John FitzGerald (Chairperson)

James Egan, Nesta Kelly

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

**Date & time of Hearing:** 23 October 2015 at 10:30

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| **Attendees:** | Ann Moran (Appellant Landlord)  Clement Loscher (Appellant Landlord’s Representative)  Tommy Walsh (Appellant Landlord's Witness)  Bryan Campbell (Respondent Tenant)  Marina Campbell (Respondent Tenant |
| **In Attendance:** | Gwen Malone Stenographer |

**1. Background:**

On 17 November 2014 the 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 10 March 2015. The Adjudicator determined that:

1. The Applicant Tenants application under the grounds of standard and maintenance of the dwelling and breach of Landlord obligations and deposit retention is upheld.

2. The Respondent landlord shall pay the sum of €3810 to the Applicant Tenants

within 14 days of the issue of the order, being the entirety of the unjustifiably retained security deposit of €1230, plus damages of €500 for the consequences of retaining the said deposit,€1180 being rent paid to the respondent having deducted €50 for paint, €300 in damages for breach of Landlord obligations in relation to standards and maintenance, €600 to include €300 towards van hire and storage in relation to damages for breach of agreement in respect of the tenancy of the dwelling at 27 Aspen Drive, Kinsealy, County Dublin.

Subsequently a valid appeal was received from the Landlord by the PRTB on 08 May 2015 and this was approved by the Board at their meeting on 22 May 2015.

The PRTB constituted a Tenancy Tribunal and appointed John FitzGerald,Nesta Kelly and James Egan as Tribunal members, pursuant to Section 102 and 103of the Act and appointed John FitzGerald 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 23 October 2015 the Tribunal convened a hearing at 10.30a.m.at the offices of the PRTB, Floor 2, O’Connell Bridge House, D’Olier Street, Dublin

**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 her case first; that there would be an opportunity for cross-examination by the Respondents; that the Respondents would then be invited to present their case, and that there would 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].

Prior to receiving submissions from the Parties the Tribunal found it necessary to question the “Locus Standi” of Clement Loscher who had been listed as a Landlord at the adjudication hearing and had also signed the PRTB appeal documents as Landlord. He was questioned on this aspect and in answer said that he had no involvement in the dwelling as a Landlord as Ms Moran was the sole owner and was only acting as a kind of agent cum representative of the Landlord, although he agreed he had been involved in dealings with the Respondents as well as with the professional agents engaged by the Appellant Landlord.

The Parties were then sworn in.

**5. Submissions of the Parties:**

Appellant Landlords Case:

Evidence of Ann Moran (Appellant Landlord)

She said that the dwelling was her family home and she had lived there with her son since he was a child. It had never been let prior to the present letting. She had left the dwelling due to having to care for her sick mother, leaving her adult son in residence. He left the dwelling about 8 days prior to the 1st November 2014 letting. She had to rent out the dwelling due to what she said were economic reasons. She engaged rental agents and there were viewings of the house on 1st October 2014. The date of the lease with the tenants was from 1st November 2014. She had, prior to this had the carpets cleaned, washed the curtains and thoroughly cleaned the house and shed for a full day on 31st October and had left wine, flowers and a card to greet the Respondents. The first she knew that they had not moved in was a few days later when she was contacted by the agents. She rebutted all the Respondents allegations as to the dirty state of the dwelling and all other allegations submitted by photographic evidence by the Tenants. She said that all that needed to be done was some painting which had been allowed for at the Respondents request regarding the purchase of paint. There were no leaks as alleged by the Tenants re the bathroom and her witness was a plumber who she engaged to check the premises a month before the tenants moved in. She had only received the deposit from the agents as she alleged they had absconded with the rent money paid to them by the Tenants. In relation to this she accepted that this was her own responsibility as the Tenants had paid the money as shown by the receipts in the PRTB files. She challenged the Tenants’ photographs and said they were taken using a magnifying glass. She had not re-let the dwelling and her son was back living there. There had never been a wasps nest in the shed and definitely no cannabis left on top of the wardrobe as alleged by the Tenants. She said that the Tenants had viewed the property prior to signing the lease one month earlier and she was surprised that they had not asked to view again during that month. The Tenants had rebutted this, saying they had been refused access. She was challenging the Tenant’s claims for storage charges as she said the dwelling had been left fully furnished. She said that the alarm was working a she had recently been contacted by neighbours to say the alarm was going off. The decking was in order and not broken as alleged by the Respondents. She was happy to allow €200 for paint as she said the tenant wanted to do their own painting as his father was a painter and decorator.

Evidence of Appellant Landlord’s Witness:

Tommy Walsh

He said he was a plumber with 30 years’ experience and had been asked by the Landlord to check over the property in late September 2014 with particular regard to leakage and blocked drains. He did not find any leaks around the toilet as alleged by the Tenants, the staining on the ceiling was probably caused by a leak that had been caused some years ago as stated by the Landlord in the evidence. There was no evidence of any water flowing. When cross examined by the Tenants as to his experiences with plasterboard ceilings and exposed beams he said it was all part of his work. He said in answer in cross examination that he had not been at the dwelling in October 2014.

Respondent Tenant’s Case:

Evidence of Bryan and Marian Campbell, Respondent Tenants

They had viewed the dwelling at night on around 1 October 2014 and signed a Lease and paid part of the deposit and rent, the balance being due when they had the keys on the 1st November. They said the agreement was that the house should be thourghly cleaned and painted prior to their moving in. They had never lived in the dwelling: for after receiving the keys on 1st November and handing over the balance owing to the agent’s representative, they inspected the dwelling and found it was in a dirty state as laid out in their photographs submitted to the PRTB. They further alleged the decking was broken and referred to what they said were leaks in the bathroom, all rebutted by the Appellant landlord and her witness. They said they could not contact the agents or Respondent for some days,but sent a letter on 6th November 2014 following a conversation with Clement Loscher who told them they were not getting their money back as they had broken the lease. They said they had been denied access prior to moving in in order to further inspect the dwelling. When asked by the Tribunal as to where they moved to, they said they were now living with relatives as they had no money to pay another deposit. When asked about their claim for storage costs of €2,178.53 from November 2014 to October 2015, they said they has a lot of belongings and a collection of “Movie Memorabilia”. They also wanted €100 for van hire in addition to the return of their deposit and one month’s rent paid in advance. They said they had contacted Threshold prior to issuing the letter of 6th November as submitted to the PRTB. They denied that they had been offered €200 in respect of paint.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. A lease was signed for a 12 month fixed term tenancy from 1 November 2014.

2. The rent was €1,230 monthly, a deposit of €1,200 was paid.

**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 thereof, are set out hereunder.

7.1 Finding:

The Tribunal finds that the Appellant Landlord was not in breach of her duties under Section 12(1)(b) of the Act in relation to the standard and maintenance of the dwelling

Reasons:

On the balance of probabilities upon hearing the sworn evidence of the parties and due to the fact that the Respondent Tenants (on their own evidence)never took up occupation of the said dwelling the Tribunal is satisfied no breach occurred in this respect. The defects that were alleged by the Respondent Tenants were not borne out by the evidence at the Tribunal. The Tribunal is satisfied that a leak did not exist at the dwelling at the commencement of the tenancy having had regard to the evidence of the Appellant Landlord's witness, the photographs and the level of inspection by the Respondent Tenant. There was no independent evidence to substantiate the claim that there was drugs on top of a wardrobe in the dwelling. In addition, the Tribunal is satisfied that the dwelling was cleaned to an adequate degree in advance of the letting. The Tribunal is satisfied that the Respondent Tenants had adequate notice of the condition of the dwelling prior to the tenancy commencing having examined it prior to handing over a booking deposit. In this regard, the Respondent Tenants were aware that they would have to paint the dwelling and offered to complete this task themselves. The disagreement over the contribution that the Appellant Landlord would make towards the costs of the painting does not come within the ambit of a breach of obligations. The Tribunal is satisfied that there was insufficient evidence to substantiate the claim that the dwelling was uninhabitable at the commencement of the tenancy.

7.2 Finding:

The Tribunal finds that the Respondent Tenants were in breach of Section 66 of the Act in that they terminated a fixed term tenancy of 12 months without giving the required notice and that the Appellant landlord is entitled to keep the months’ rent paid in advance to compensate the consequences of this breach.

Reasons:

A fixed term lease of 12 months was broken prematurely by the tenants not taking up occupation of the dwelling and failing to give the correct period of notice as was required under the Act.. The Respondent Tenants were obliged to serve a valid notice of termination on the Appellant Landlord in advance of terminating the lease. In the absence of a valid notice of termination, the Respondent Tenants unlawfully terminated the tenancy.

7.3 Finding:

The Appellant Landlord is in breach of Section 12(1)(d) of the act in that she did not repay the security deposit to the tenants.

Reason.

The Tenants did not reside at the said dwelling. The Appellant Landlord did not justify the retention of the deposit at the Tribunal. Under s. 12 (d) of the Act, a Landlord is obliged to repay the deposit promptly to the Tenant, subject to there being arrears in rent or deterioration beyond normal wear and tear in the dwelling. In the absence of any justification for the retention of the deposit, the Tribunal directs its return the Respondent Tenant.

7.4 Finding:

The Tribunal does not allow the tenants claim for storage fees for 12 months and hire of a van.

Reason:

The dwelling was let as fully furnished and the tribunal did not receive sufficient evidence as to the nature of the items stored other that of “Movie Memorabilia”

**8. Determination:**

**Tribunal Reference TR0515-001158**

**In the matter of Ann Moran (Landlord) and Marina Campbell, Bryan Campbell (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

That the Appellant Landlord shall pay the sum of €1,200 to the Respondent Tenants within 14 days of the date of issue of the Order, being the entire of the unjustifiably retained security deposit in respect of the tenancy of the dwelling at 27,Aspen Drive Kinsealy,County Dublin.

Signed:

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 02 November 2015.

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

**John FitzGerald Chairperson**

For and on behalf of the Tribunal.