**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001171 / Case Ref No: 0215-16897**

**Appellant Tenant:** Nereko Lekuona

**Respondent Landlord:** The Eblana Partnership

**Address of Rented Dwelling:** 5A Eblana Avenue, Dun Laoghaire , Dublin, A96NN23

**Tribunal:** Gareth Robinson(Chairperson)

Gerard Murphy, Elizabeth Maguire

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

**Date & time of Hearing:** 21 July 2015 at 2:30

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| **Attendees:** | Nereko Lekuona (Appellant Tenant)  Fionn Toland, (Appellant Tenant’s Representative)  Jana Keane , Keane Thompson, (Agent for Respondent Landlord). |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 23 February 2015 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 08 April 2015. The Adjudicator determined that:

1. The Applicant Tenant’s complaint that the increased rent imposed by the Respondent Landlord is in excess of market rent is not upheld.

2. The Applicant Tenant’s complaint in respect of the standard of the Dwelling at 5a Eblana Avenue, Dun Laoghaire, County Dublin is not upheld.

Subsequently the following appeal was received from the Tenant on 15 May 2015. The grounds of the appeal were in relation to Rent at more than market rate and the Standard and maintenance of dwelling. The appeal was approved by the Board on 27 May 2015.

The PRTB constituted a Tenancy Tribunal and appointed Gareth Robinson, Gerard Murphy, Elizabeth Maguire as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Gerard Murphy to be the chairperson of the Tribunal (“the Chairperson”).

On 25 June 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 21 July 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 her case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present its case, and that there would be an opportunity for cross-examination by the Appellant. The Chairperson 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.

The Chairperson 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 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 this could be appealed to the High Court on a point of law only.

The Chairperson asked the Parties if they had any queries about the procedure. There were none. The parties giving evidence were then sworn.

**5. Submissions of the Parties:**

Appellant Tenant’s Case:

The Appellant explained that she received a Notice of Rent Increase dated 27 January 2015 informing her that the rent was to be increased from €700 per month to €900 per month with effect from 1 March 2015. She said the increased rent being claimed is above market value. She said the Dwelling is a basement, studio flat. There is no separate bedroom. She said in her view, studios in Dun Laoghaire are being let for between €650 and €700 a month. She said she is not working full-time, and she cannot afford to pay €900 a month. She explained the Dwelling in contained within an old building and no repairs or renovations had been carried out to the Dwelling since she moved into the Dwelling in 2012. She said the Dwelling is approximately 50 metres square. She accepted the outside of the Dwelling had been painted. She said the washing-machine was not working properly because of low water pressure. She also complained of other repairs which required to be carried out, she had complained to Dun Laoghaire Rathdown County Council who carried out an inspection around 1 October 2014.

She said two families had left the building recently because of the increased rent being charged.

She referred to a number of advertisements from Daft.ie including a studio flat on Corrig Avenue in Dun Laoghaire which she said is being advertised to let for €650 per month, another studio flat on Patrick Street in Dun Laoghaire which is being let for €600 per month and another studio flat at Clarinda Park East which is being let for €675 per month. Other studio apartments were advertised for let at Clarinda Park North for €750 per month and at Crossthwaite Park West for €800 per month. In response to a question from the Tribunal she accepted these were advertised rents or asking rents and that she had not taken any steps to confirm the rents that may have been ultimately agreed for those properties.

Respondent Landlord’s Case:

On behalf of the Respondent, Ms Jana Keane of Keane & Thompson letting agents, said that the tenant had never informed the landlord or his agent about repairs required to be carried out at the Dwelling before contacting Dun Laoghaire Rathdown County Council. In response to this evidence, the Respondent accepted she had not made a complaint to the Respondent, but said she thought the Respondent would not do anything about repairs anyway.

Ms Keane said all repairs had been carried out following the inspection by Dun Laoghaire Rathdown County Council in October 2014. In relation to the washing-machine, she said the issue there was switching off the pump, rather than low water pressure and a new machine was bought three years ago and a plumber called to look at the machine about three months ago in April. The Dwelling had been renovated in 2004 and insulated.

She said the rent had not been increased since the Appellant moved into the Dwelling in 2012. She said the Dwelling is larger than an average studio flat, and is approximately 50.48 square metres. In relation to the amount of the increased rent, she said that the rent being claimed of €900 a month was the current market rent in Dun Laoghaire. She referred to the letter dated 14 July 2014 submitted on behalf of the Respondent in advance of the hearing. She referred to the comparisons therein of a number of lettings by the same letting agency of other properties at Eblana Avenue. The first, 7d Eblana Avenue in December 2014, a one bedroom apartment, which is 2.81 square metres smaller than the Appellant’s Dwelling, was let for €1,100 per month in December. She said that one bedroom apartment was a basement apartment. She said the letting for that one bedroom apartment worked out at approximately €281.93 per square metre and this would indicate that the Appellant’s Dwelling should be let for €1,186.02 per month.

She said that a renewal was agreed through the same letting agency with the existing tenant of 7e Eblana Avenue for a new rent of €1,100 per month from April 2015. She said this is a one bedroom apartment which is 2.03 square metres smaller than the Appellant’s Dwelling, it is also located in the basement and has no back door. She said this would equate to €272.44 per square metre which would indicate the Appellant’s Dwelling should be let for €1,148.85 per month. Another 2-bedroom, 2-bathroom apartment at 7a Eblana Avenue was let for €1,650 per month in May 2015.

In relation to the Appellant’s comparisons with other properties in the area, she said that those were in no way comparable, as the standard studio apartment in Dun Laoghaire is 30 square metres in area. The main point to make was that the Dwelling was a larger studio flat with its own front and back doors.

The Tribunal put it to the Respondent’s agent that the Average Monthly Rent Report published by the PRTB indicated the average monthly rent for one bedroom flats in Dun Laoghaire at the moment was considerably less than €900, in the region of €680-€650. The Respondent’s agent said this did not reflect her experience of letting properties in Dun Laoghaire.

**6. Matters Agreed Between the Parties**

The parties confirmed the address of the Dwelling was correct. The parties agreed that the Appellant paid a deposit of €700 on 1 June 2012 and the initial rent was €700 per month. The Appellant is still living in the Dwelling. The Appellant received a Notice of Rent Increase dated 27 January 2015, however, the Appellant is disputing the amount of the rent being claimed. The tenancy is a Part 4 tenancy within the meaning of the Residential Tenancies Act 2004 (“the Act”).

**7. Findings and Reasons:**

Having considered the documentation before it and having considered the evidence presented by and on behalf of the parties, the Tribunal’s findings and reasons therefor are set out hereunder:

Finding 1: The Tribunal finds that the market rent in relation to the tenancy of the Appellant Tenant at 5a Eblana Avenue, Dun Laoghaire, Co. Dublin is €700.00 per month.

Reasons:

Part 3 of the Residential Tenancies Act 2004 provides for Rent and Rent Review. Section 19 of the Act provides in setting the rent under a tenancy the rent for a dwelling cannot be greater than the amount of the market rent for that tenancy at that time.

In relation to rent review, section 22 of the Act requires that at least 28 days before the date from which the new rent is to have effect, a notice in writing is served by the landlord on the tenant stating the amount of the new rent and the date it is to have effect.

The Tribunal is satisfied the correct period of notice was given to the tenant in relation to the rent review by means of the letter dated 27 January 2015, which provided the rent would be increased to €900 per month with effect from 1 March 2015. However, the Tribunal must still consider whether the amount of the reviewed rent being claimed by the Respondent is greater than the amount of the market rent for the dwelling at that time.

The term “market rent” is defined in section 24 of the Act as:

“the rent which a willing tenant not already in occupation would give and a willing landlord would take for the dwelling, in each case on the basis of vacant possession being given, and having regard to—

(a) the other terms of the tenancy, and

(b) the letting values of dwellings of a similar size, type and character to the dwelling and situated in a comparable area to that in which it is situated.”

The Tribunal finds the onus is on the Respondent Landlord to satisfy the Tribunal the amount of the reviewed rent being claimed from 1 March 2015 is not greater than the market rent at that time, or in other words equates to the market rent at that time. It seems to the Tribunal section 19(1) of the Act is clear that in setting the rent “an amount of rent shall not be provided for that is greater than the amount of the market rent for the tenancy at that time”.

The Respondent’s agent has submitted a number of comparisons set out in a letter to the PRTB dated 14 July 2015. Two comparisons related to one-bedroom apartments on Eblana Avenue, and another comparison related to a two-bedroom apartment. It was suggested that based on those comparisons the market rent for the Dwelling can be calculated at a rate of between €272.44 and €281.93 per square metre, or between €1,146 and €1,186.02 per month. However, the Respondent also accepts some allowance must be made for the fact that the Dwelling is a studio, and therefore the Respondent’s agent concedes that “in our opinion €900.00 per month is a fair rent and is in no way in excess of current market values”.

The Tribunal finds that extrapolating a rate per square metre from lettings of other properties in an area and then applying that rate to the size of a dwelling, is not consistent with the definition of “market rent” in section 24 of the Act. Regard should be had to “the letting values of dwellings of a similar size, type and character to the dwelling and situated in a comparable area to that in which it is situated”. Applying a rate per square metre, based on other properties in a comparable location, to calculate the market rent of a dwelling only takes into account the size of a dwelling and the comparable area to which the dwelling is situated, and does not take into account either the type or character of a dwelling, and does not take into account all of those factors together.

The Tribunal finds that the Respondent has not put before the Tribunal any comparisons with dwellings of a similar size, type and character situated in a comparable area, overall. The Respondent has only offered comparisons with one or two bedroom apartments, rather than other studios in a comparable area. The Tribunal is not satisfied the Respondent has demonstrated the reviewed rent is not greater than the market rent, or in other words equates to the market rent at the relevant time.

The Tribunal has also had regard to the comparisons offered by the Appellant which indicate that studios in Dun Laoghaire are being advertised for let for considerably less than €900 per month, in the region of €650/675 and in some case in the region of €750/800 per month.

In the circumstances, the Tribunal is satisfied the increased rent claimed by the Respondent of €900 per month is “greater than the amount of the market rent” for the tenancy and therefore in breach of section 19 of the Act.

Section 115(2) of the Act provides the Tribunal may declare whether or not an amount of rent complies with section 19(1) of the Act. Where the Tribunal declares that an amount does not so comply, the Tribunal’s declaration “shall” be accompanied by an indication by the Tribunal as to what amount, in its opinion, would comply with section 19(1). The Tribunal finds it has not been provided with sufficient information by the Respondent to allow the Tribunal express an opinion as to what amount of rent would comply with section 19(1) of the Act. In relation to the comparisons offered by the Appellant, the Tribunal takes into account the submission on behalf of the Respondent that those studios may be smaller in size than the Dwelling. While the Tribunal is expected to give an opinion in relation to what amount would comply with section 19(1) of the Act, the Tribunal cannot give an opinion without appropriate evidence on which to base its opinion. It seems to the Tribunal appropriate evidence must relate to all the criteria specified in section 24 of the Act.

The Tribunal may have regard to the Average Monthly Rent Report published by the PRTB. It seems there is limited information available from that Report in relation to studios in Dun Laoghaire. However, the Tribunal notes that the average monthly rent for one-bedroom flats in Dun Laoghaire appears to have been decreasing since the last quarter of 2014 and is currently at approximately the same level as the last quarter of 2012.

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| **PRTB Average Monthly Rent Report (Euro) by Location, Property Type, Number of Bedrooms and Quarter** | | | | | | | | | | | | |
|  | **2012Q3** | **2012Q4** | **2013Q1** | **2013Q2** | **2013Q3** | **2013Q4** | **2014Q1** | **2014Q2** | **2014Q3** | **2014Q4** | **2015Q1** | **2015Q2** |
| **Dun Laoghaire, Dublin** |  |  |  |  |  |  |  |  |  |  |  |  |
| Other flats |  |  |  |  |  |  |  |  |  |  |  |  |
| One bed | 635.03 | 651.13 | 662.42 | 680.08 | 681.49 | 680.66 | 695.53 | 682.37 | 688.29 | 706.46 | 682.90 | 651.97 |

On the other hand, it appears that rents for one-bedroom apartments in Dun Laoghaire have been increasing in the same period. Between the last quarter of 2012 and the first quarter of 2015, average monthly rents have increased by approximately 15%.

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| **PRTB Average Monthly Rent Report (Euro) by Location, Property Type,** | | | | | | | | | | | | | |  | |  | |  | |  | |  | |  | |
| **Dun Laoighaire,** | | **2012Q3** | | **2012Q4** | | **2013Q1** | | **2013Q2** | | **2013Q3** | | **2013Q4** | | **2014Q1** | | **2014Q2** | | **Q2014Q3** | | **2014Q4** | | **2015Q1** | | **2015Q2** | |
| **Dublin** |  | |  | |  | |  | |  | |  | |  | |  | |  | |  | |  | |  | |  | |
| Apartment | |  | |  | |  | |  | |  | |  | |  | |  | |  | |  | |  | |  | |
| One Bed |  | | **870.29** | | **870.01** | | **885.31** | | **881.76** | | **911.62** | | **925.89** | | **952.67** | | **957.88** | | **979.68** | | **987.77** | | **1002.78** | | **1001.39** | |

In relation to the Average Monthly Rent Index, the Tribunal takes into account that this is the “average” monthly rent. Depending on the size, type, character and the particular location of a dwelling, and indeed the terms of the tenancy, the actual rent may be higher or lower than the “average”. However, this information is a good indication as to whether rents for particular properties in a particular location are increasing or decreasing at a particular time.

In the absence of more precise information from the Respondent, the Tribunal concludes that while the average monthly rent for one-bedroom flats, or studios, appears to have increased between the last quarter of 2012 and the last quarter of 2014, the average monthly rent has been decreasing since then and is currently at approximately the same level as the last quarter of 2012. On the other hand, the average monthly rent for one-bedroom apartments in Dun Laoghaire has continued to increase between the last quarter of 2012 and the first quarter of 2015. This may explain the difference in the comparisons offered by the Respondent (one bedroom apartments) and those offered by the Appellant (studios).

In the circumstances the Tribunal can only indicate that in its opinion the current market rent for the Dwelling in this case should remain the same as the initial rent for the Dwelling set in June 2012 of €700 per month. This appears to be consistent with the average monthly rent for one-bedroom flats, or studios, in Dun Laoghaire since 2012 as explained above.

Finding 2: The Tribunal makes no finding in relation to the Appellant’s claim against the Respondent for breach of the Respondent’s obligations under Section 12(1)(b) of the Residential Tenancies Act 2004 with regard to the standard and maintenance of the dwelling.

Reasons:

The Tribunal is satisfied that the Appellant did not make a complaint to the Respondent in relation to repairs to the Dwelling before contacting Dun Laoghaire Rathdown County Council. The Tribunal notes that since an inspection took place the Respondent has taken steps to carry out necessary repairs. The Tribunal also notes that the Respondent sent a plumber to look at the washing-machine. Overall the Tribunal finds the Respondent is not in breach of its obligation under section 12(1)(b) of the Act. The Appellant’s complaint on this ground is not upheld.

**8. Determination:**

**Tribunal Reference TR0515-001171**

**In the matter of Nereko Lekuona (Tenant) and The Eblana Partnership (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Tenant’s application, under the grounds of standard and maintenance of the dwelling and breach of the Respondent Landlord’s obligations in respect of the tenancy of the dwelling at 5a Eblana Avenue, Dun Laoghaire, Co. Dublin is not upheld.

The Appellant Tenant’s application, regarding rent more than market rate in respect of the tenancy of the Dwelling at 5a Eblana Avenue, Dun Laoghaire, Co. Dublin is upheld. The Tribunal finds that the market rent in relation to the tenancy of the Appellant Tenant at 5a Eblana Avenue, Dun Laoghaire, Co. Dublin is €700.00 per month with effect from 1 March 2015.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 17 October 2015.

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| **Signed:** |  |

**Gareth Robinson**

For and on behalf of the Tribunal.