**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001175 / Case Ref No: 0315-17101**

**Appellant Landlord:** Karen Lawrence

**Respondent Tenant:** Clinton Martin

**Address of Rented Dwelling:** 45 Hazelgrove Court, Killinarden, Tallaght , Dublin 24, D24YH74

**Tribunal:** Deirdre Bignell (Chairperson)

Peter Shanley, Andrew Nugent

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

**Date & time of Hearing:** 07 September 2015 at 10:30

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| **Attendees:** | Karen Lawrence (Appellant Landlord)  Donnacha MacCarthaige (Witness for the Appellant Landlord)  Stuart Ring (Witness for the Appellant Landlord)  Patrick Martin (Father of and Witness for the Respondent Tenant)  Patrick O’Keeffe (assisting Patrick Martin) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 4 March 2015 the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 9 April 2015. The Adjudicator determined that

1. The Applicant Tenant’s application regarding unlawful termination of tenancy in respect of the tenancy of the dwelling at 45 Hazelgrove Court, Killinarden, Tallaght, Dublin 24, is upheld.

2. The Respondent Landlord shall pay the Applicant Tenant the sum of €2,000, within 28 days of the date of issue of the Order, being damages in respect of an unlawful termination of the tenancy of the above dwelling.

3. The Applicant Tenant’s application regarding invalid notice of termination in respect of the tenancy of the dwelling at 45 Hazelgrove Court, Killinarden, Tallaght, Dublin 24, is not upheld.

Subsequently the Landlord appealed to the PRTB on 19 May 2015, which appeal was approved by the Board on 5 June 2015.

The PRTB constituted a Tenancy Tribunal and appointed Peter Shanley, Andrew Nugent and Deirdre Bignell as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Deirdre Bignell to be the chairperson of the Tribunal (“the Chairperson”).

On 1 July 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 7 September 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:**

By Appellant:

The Witness for the Appellant, Mr MacCarthaige, submitted into evidence a photo of a summons bearing the name of the Respondent.

By Respondent:

The Witness for the Respondent submitted into evidence a thread of text messages he had exchanged with the Appellant’s witness, Mr Ring. The Appellant agreed to the submission of the messages into evidence.

**4. Procedure:**

The Chairperson asked the parties present to identify themselves and to identify the capacity in which 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 and understood 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 possible; that the person who appealed (the Landlord in this case) 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 his case, and that there would be an opportunity for cross-examination by the Appellant. The Chairperson explained that following this, the parties would be given an opportunity to make a final submission.

The Chairperson said that she would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson stressed that all evidence would be taken on oath or affirmation and recorded by the official stenographer present and that based on that recording a transcript could be made available to the Tribunal if necessary to assist it in preparing its report on the dispute, or to the parties for a fee.

The Chairperson reminded the attending parties that it was an offence for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his or her control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide false or misleading statements or information to the Tribunal. The Chairperson informed the parties that the above offences were punishable by a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson said that members of the Tribunal would ask questions from time to time to assist in clarifying the issues in dispute between the parties, and informed them that she would clarify any queries raised at the outset, or in the course of, the hearing. She also stated that she would consider an application made at any stage of the hearing seeking a short adjournment for the purpose of allowing the Parties to negotiate on a without prejudice basis, a settlement of the dispute.

The Chairperson also reminded the parties that as a result of the hearing, the Board would make a Determination Order which would be issued to the both parties to the dispute 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 and the hearing commenced.

**5. Submissions of the Parties:**

The Appellant Landlord’s case:

Evidence of Karen Lawrence (Appellant Landlord)

The Appellant submitted that a tenancy did not arise in the instant case as the Respondent was only ever a “potential tenant” of the Dwelling.

The Appellant stated that prior to the tenancy at issue, Mr Ring had occupied the Dwelling with a co-tenant. When the co-tenant vacated, the Appellant had agreed with Mr Ring that he could source a replacement tenant, and Mr Ring had advertised the room and met potential candidates.

According to the Appellant, Mr Ring never had authority to provide any assurances to potential tenants on her behalf, and it was understood that she or her partner, Mr MacCarthaige, were to meet Mr Ring’s preferred co-tenant prior to any tenancy being created. The Appellant said that while Mr Ring had permission to show the Dwelling to a potential tenant, he had no authority to enter into a tenancy agreement on her behalf.

The Appellant claimed that she only became aware on Monday 9 February that the Respondent had been permitted by Mr Ring to stay in the Dwelling the night before, and that a deposit had been paid over to Mr Ring.

Evidence of Donnacha MacCarthaige (Witness for the Appellant Landlord)

Mr MacCarthaige stated that upon hearing that Mr Ring had found a suitable replacement co-tenant in the Respondent, he attended the Dwelling on the night of Monday 9 February with a draft lease agreement and keys to the Dwelling, and found the Respondent intoxicated and incoherent. Mr MacCarthaige stated that he had asked the Respondent if he was in any state to sign a contract and that the Respondent had replied “no”.

Mr MacCarthaige stated that he did not wish to “throw him out” as it was clear that he was in a troubled state, and he indicated that he would call again to the Dwelling the following day.

The next day, Mr MacCarthaige received a call from Mr Ring who said that the Respondent had damaged his belongings and taken his food etc. Mr MacCarthaige stated that he contacted the Respondent’s father, Mr Martin,

Mr MacCarthaige stated that he arranged with Mr Martin to return the Respondent’s belongings on Wednesday 11 February and brought the belongings to Mr Martin’s house, but there was no answer. According to Mr MacCarthaige, he tried to contact Mr Martin again, but the phone rang out twice, and on the third attempt the number was unavailable. Mr MacCarthaige had begun unloading the belongings into Mr Martin’s garden, when a woman appeared from an attached residence to the side of the house and requested that the belongings be placed in the porch. Mr MacCarthaige finished unloading the belongings into the garden and departed.

According to Mr MacCarthaige, the Respondent’s UPC box, and two remote controls and certain clothing items are in a bag in the hallway of the Dwelling and are available for collection. Mr MacCarthaige denied that he saw an iPod while packing up the Respondent’s belongings.

Mr MacCarthaige further submitted that when packing up the Respondent’s belongings, he found drug paraphernalia, a summons naming the Respondent on charges of drug possession, and a number of small plastic bags containing residue which he alleged was indicative of drug use by the Respondent.

Mr MacCarthaige stated that he did not leave keys to the Dwelling or a draft tenancy agreement with the Respondent at any time.

Evidence of Stuart Ring (Witness for the Appellant Landlord)

Mr Ring stated that he had advertised the room to rent on daft.ie and that his phone number was on the advertisement.

Mr Ring initially stated that he had accepted a deposit of €200 from the Respondent on Friday 6 February and that he received the balance of the first month’s rent and deposit on Sunday 8 February, the day upon which the Respondent arrived with his belongings. Mr Ring subsequently submitted that he may have received the sum of €450 on the Friday and the balance of €400 on the Sunday.

According to Mr Ring, although he had wanted someone to move in on the Sunday (to offset rent payable by him), when he communicated with him on the Friday 6 February, the Respondent said he would not be moving in until after this date. Mr Ring stated that he did not recall arranging a meeting between Mr. Martin and the Appellant on Friday 8 February.

Mr Ring stated that Mr Martin had called him on Saturday 7 February saying that the Respondent had a black eye and was not “in a good way”. According to Mr Ring, after the Respondent arrived at the Dwelling between 4 and 5 o’clock on Sunday 8 February, the Respondent informed him that his father had beaten him with a brush, and was in a distressed state. The Respondent had become intoxicated that night.

Mr Ring stated that when Mr MacCarthaige arrived at 5 pm on Monday 9 February, Mr Ring had knocked on the door of the Respondent’s bedroom for fifteen minutes until the Respondent “fell out of the door”, and was unable to speak coherently. Mr MacCarthaige had told him who he was but the Respondent was in and out of consciousness. Mr MacCarthaige asked the Respondent if he “wanted to leave this until tomorrow” and left.

Mr Ring stated that he felt that the Respondent was a danger to himself and informed Mr MacCarthaige of what the Respondent had alleged against his father, and they decided to “give him another night”.

Mr Ring stated that on Tuesday 10 February, when he returned to the Dwelling at 3 p.m., he found someone who appeared to be under the influence of heroin at the front door of the Dwelling, which was wide open. Mr Ring entered the Dwelling and knocked on the Respondent’s bedroom door, and found the Respondent in a bad state. Mr Ring stated that he had called Mr MacCarthaige, and had received a call from Mr Martin who apologised on behalf of the Respondent, and said he would arrange with Mr MacCarthaige to collect his belongings. The Respondent then left the Dwelling and did not return.

Mr Ring stated that he had subsequently found small bags containing a substance in the Respondent’s room.

The Respondent Tenant’s Case:

Evidence of Patrick Martin (Witness for the Respondent Tenant)

Mr Martin gave evidence that he was with the Respondent when Stuart Ring first showed his son the room in the Dwelling available for rent. Mr Martin said that Mr Ring agreed to inform the Respondent in a couple of days of whether he could take the room, and that Mr Ring said that he was acting on behalf of the Appellant and was in charge of finding a co-tenant. On Thursday 5 February 2015, Mr Ring had called the Respondent and informed him that he could take the room, and that the Appellant would be there the following day. On Friday 6 February Mr Martin had arranged to pay the deposit on behalf of the Respondent, who paid the first month’s rent on Sunday 8 February 2015.

At the request of the Tribunal, Mr Martin submitted an exchange of text messages between himself and Mr Ring, into evidence, which reads as follows:

Feb 6: “How are you Pat. As it stands at the moment it will have to stay at 40. Karen will require a deposit of €450 anyway and she was asking me if I could arrange a time for the 2 of you to sit down for a chat and discuss contract what not so if you could pick a time I will tell her to be here then. “

Feb 6: “hi Stuart Clinton is away at a friends party this weekend I’ll call you when he is back and we’ll sort things out then, Pat”

Feb 6: “Lucky him not to worry would you have a rough time so that I could tell Karen to be here?”

Mr Martin stated that he knew that there was a lease to be signed and that he intended upon receiving a copy of the lease, to review it and return it signed. According to Mr Martin, the Appellant knew that the Respondent was moving in on Sunday 8 February and anticipated signing contracts on Tuesday 10 February backdating the tenancy to 8 February. Mr Martin did not recall calling Mr Ring on Saturday 7 February and was not aware of his son having been assaulted as he himself was away from home.

Mr Martin stated that he had locked up his own home prior to going away and that although his daughter had a set of keys to his house, his son did not. Mr Martin said that he had never witnessed any signs of drug use by the Respondent.

According to Mr Martin, although the Appellant was to deliver “contracts and keys” on Tuesday 10 February 2015, she sent Mr MacCarthaige to the Dwelling instead. Upon seeing the Respondent, Mr MacCarthaige allegedly told him to leave, and when the Respondent left the Dwelling later that day, upon his return he discovered that he had been locked out, and was unable to access either the Dwelling, or his belongings inside. When the Respondent tried to contact Mr Ring, Mr Ring’s phone rang out.

Mr Martin said that his wife had telephoned Mr MacCarthaige, who allegedly accused the Respondent of drug-taking. Although Mr Martin spoke with Mr MacCarthaige later, who agreed to meet him at 4 p.m. to allow him to collect the Respondent’s belongings, when he contacted Mr MacCarthaige at 4 p.m., Mr MacCarthaige said he was unable to make it but would deliver the Respondent’s belongings to him at 8 p.m. At 6:30 p.m., Mr MacCarthaige telephoned Mr Martin and informed him that he was leaving the belongings in the front garden of Mr Martin’s daughter’s home. Although Mr MacCarthaige was requested to place the belongings in the porch as it was about to rain, he refused. When Mr Martin arrived home at 8 p.m., he discovered that water had seeped into the back of the Respondent’s television and that cats had urinated on his bedding and clothing to the point that they had to be discarded. A UPC box, a remote control and an iPod were missing from the items.

Mr Martin stated that the full amount of monies paid had been returned and no written lease agreement was signed.

The Respondent is seeking damages of €500 in respect of his clothing and bedding, €500 in respect of the television and UPC box, and additional damages in respect of his illegal eviction.

**6. Matters Agreed Between the Parties**

Before inviting the parties to make their submissions, the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

• The Respondent moved himself and his belongings into the Dwelling on 8 February 2015.

• A deposit of €450 and the first month’s rent of €400 were paid on or around 6 February 2015. Both sums were returned to the Respondent, and are not in dispute.

**7. Findings and Reasons:**

Having considered all the evidence, the Tribunal’s findings and reasons therefor are set out hereunder:

Finding:

The Tribunal does not have jurisdiction to deal with the dispute.

Reason:

The 2004 Act applies to every dwelling the subject of a residential tenancy, but has no application in circumstances where two parties merely agree that they will enter into a tenancy agreement. Specifically, section 4(1) of the Act states that a ““contract of tenancy” does not include an agreement to create a tenancy”. An actual tenancy must be, or have been in existence for a matter to come within the jurisdiction of the 2004 Act, and for it to be capable of determination under the dispute resolution procedures set out thereunder.

It is clear from the evidence submitted, particularly the text messages exchanged between Mr Ring and Mr Martin, that although steps were taken by both parties, acting on behalf of the Appellant and the Respondent respectively, with a view to creating a tenancy, that such creation was subject to a condition precedent being fulfilled. The condition precedent was that the Appellant, or Mr MacCarthaige acting on behalf of the Appellant, and the Respondent, would meet, sign a tenancy agreement, and that keys would be handed to the Respondent. Due to the way in which matters transpired, this condition precedent was not satisfied and what was, in effect, an agreement to create a tenancy, did not become a contract of tenancy. The arrangement between the parties was no more than an agreement to enter into a tenancy.

As such, at no stage could the Respondent be said to have fallen under the definition of tenant of the Dwelling, as at no stage prior to his belongings being removed, could he be said to have been entitled to occupation of the Dwelling under a tenancy.

Pursuant to sections 84(1)b) and 85(1) of the Act, if a tribunal is of the opinion, that the dispute at issue does not come within the Board’s jurisdiction, it shall not deal any further with the dispute.

**8. Determination:**

**Tribunal Reference TR0515-001175**

**In the matter of Karen Lawrence (Landlord) and Clinton Martin (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The PRTB has no jurisdiction in respect of the Respondent Tenant’s application in respect of the tenancy of the dwelling at 45 Hazelgrove Court, Killinarden, Tallaght, Dublin 24.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 7 September 2015.

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| **Signed:** |  |

**Deirdre Bignell Chairperson**

For and on behalf of the Tribunal.