**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001177 / Case Ref No: 0215-16817**

**Appellant Landlord:** Maria Hutchinson, John Hutchinson

**Respondent Third Party:** Phyllis Keeley

**Address of Rented Dwelling:** 16 The Elm, Parkview, Belarmine Avenue, Stepaside , Dublin,

**Tribunal:** Aidan Brennan (Chairperson)

Anne Colley, Mary Doyle

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

**Date & time of Hearing:** 17 September 2015 at 10:30

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| **Attendees:** | Maria Hutchinson (Appellent Landlord)  John Hutchinson (Appellent Landlord)  Phyllis Keeley (Respondent Third Party)  Mark De Boer (Appellant Landlord’s witness and tenant);  Olivia Keeley (Third Party Advocate, joint owner and witness) |
| **In Attendance:** | Gwen Malone stenographers |

**1. Background:**

On 19 February 2015 the Third Party made an application to the Private Residential Tenancies Board (the PRTB) pursuant to Section 77 of the Residential Tenancies Act 2004 (hereafter referred to as the Act). The matter was referred to an Adjudication which took place on 08 April 2015. The Adjudicator determined that:

1. The Respondent Landlords shall, within 14 days of the date of issue of the Order, pay to the Applicant Third Party the sum of €2000 in damages for the consequences of the breach by the Respondent Landlords of their obligation pursuant to section 15 of the Residential Tenancies Act 2004.

2. The Respondent Landlords shall, within 28 days of the date of issue of the Order, in compliance with the relevant provisions of the ownership lease in respect of the dwelling, carry out all remedial measures necessary to sound-insulate the floors of the rented dwelling.

3. The Respondent Landlords shall furnish the Applicant Third Party copies of all receipts for works carried out to improve the sound insulation of the floors of the dwelling within 14 days of the completion of the works and shall make arrangements within that 14 days for the Applicant Third Party, or her agent, to inspect the measures that have been put in place to improve the sound insulation of the dwelling.

An appeal was received from the Landlords on 19 May 2015. The ground of the appeal was breach of landlord obligations. This appeal was approved by the Board of the PRTB on 05 June 2015.

The PRTB constituted a Tenancy Tribunal and appointed Aidan Brennan, Anne Colley and Mary Doyle as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Aidan Brennan to be the chairperson of the Tribunal (the Chairperson).

On 26 August 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 17 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:**

N/a

**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 titled “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 Appellants would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Third Party; that the Respondent Third Party would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellants. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson said 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 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

The parties intending to give evidence were sworn in.

**5. Submissions of the Parties:**

Appellant Landlords:

Evidence of John Hutchinson

The landlord said they met the respondent third party, Ms Phyllis Keeley, only once, and only received one letter from the management company of the apartment block about the noise complaint. The dwelling is on the 2nd floor and the third party’s apartment is on the 1st floor. The apartments were constructed about 2006 and the BER rating was stated to be B2. It is a corner apartment and only touches another apartment on one wall on that floor. There are two balconies. They bought the apartment in 2014 as second owners from new. There are about 6 apartments on each floor and 5 floors.

Their meeting was cordial despite the fact that the meeting occurred as Ms Keeley had come to their apartment to complain about the noise she and her daughter were experiencing from the landlord’s apartment while he and his wife were readying it for letting. Various concerns were also expressed by the third party about the neighbourhood and also the construction of the building. They have now received with the PRTB papers a copy of a letter sent by the third party to the builders in 2008 complaining about the structure and finish of the building. They had employed an agent to ensure they would get a suitable tenant who would be quiet and fit in and they have never had any difficulty at all with the current tenants. When the landlord received a letter on 17 September 2014, through the agent, from the management company complaining about doors banging and constant noise coming from the rented apartment he was very upset to hear of the complaint by the third party. He immediately went to the apartment and adjusted the door closers (one of the doors was banging) and made sure the mats on the floors in the circulation area and under the dining table and chairs that they had supplied to the tenants were still there. He reported his actions back to the agent and the agent said she would let the management company know and, at his request, ask them for the information about the original sound insulation. They then heard nothing further until they received the PRTB documents which included a letter dated 19 February 2015 (P 3 of 59 in case file 1), a letter from the third party to the PRTB, setting out her complaint.

Mr Hutchinson went through his surveyor’s report for the Tribunal, which was based primarily on an inspection of the floor by opening a strip at the threshold between the wooden flooring in the living/dining area and the tiled floor in the kitchen. The surveyor stated in the report that as far as he could determine the sound proofing fully complies with the Building Regulations and appears reasonable in this circumstance.

Evidence of witness Mark De Boer for the Landlords.

The landlords’ witness said that he and his partner work 5 days a week, he leaves at about 7-7.30 gets back around 6 or even as late as 8. He works on Dutch time. His partner is out two days a week until 11pm doing her Masters, and he often picks her up late in the evening. They are therefore not at home a lot of the time. She also works full time and studies at the weekends and also in the evenings at home, and so needs a quiet environment. If they are not working or studying they would go out of the apartment to meet people etc. When they heard there was a noise problem they took greater care. They don’t hear anything much from the apartment that is over theirs, just the sound of heels from time to time. He sometimes works from home and he needs peace and quiet when he works there and both of them find it quiet in the apartment.

In his closing summary to the Tribunal the landlord said that the surveyor’s report shows that there was no difference in the layers underneath the floor and it is level throughout and he did not think there was any need to lift the floor to establish that. He knows that their apartment complies with Building Standards and he relies on that report. He said that sound travels up as well as down so if the third party can hear noises from the dwelling the television downstairs should also be audible in No 16. The tenants have renewed the lease and wouldn’t have done so if there was a lot of noise. He wants an order that says he has complied with his obligations.

Respondent Third Party:

Evidence of Olivia Keeley.

The witness for the third party said that there is obviously a real problem for them otherwise they would not have pursued the case. An idealistic situation was portrayed by the landlords as they know what they are hearing. There are 380 units in all the development, and each unit is made up of 2 prefabricated pods. Their unit is triple aspect and L shaped and they bought “off the plans”. The steel construction in the units allows vibration to pass through the surfaces causing the noise. Cork matting, which should have been laid at construction stage all over the floors, with no gaps, was not properly put down. The third party had put in additional insulation under their own flooring. She was on the management committee for a period and knew that many of the initial owners had serious concerns about the noise proofing. She gave a full description of the noise problem throughout the development and wants to have a portion of the flooring in the overhead apartment lifted by an independent person as she believes that the previous owner took up the essential original insulation layer. She clearly identified to the Tribunal that the noise is due to a floor issue caused by defective workmanship in the overhead apartment and she stated that no matter who moves in or lives overhead there will always be noise; floor noise transfer is the issue and whether rented or owned it will be an issue and the problem is with the apartment not with the tenant.

They had always experienced noise problems, even for the period when there was an owner occupier in the rented dwelling, when the noise was in fact worse than it is now. She had consulted a firm who said they could put in equipment to test the noise, but it would have cost €600, which she and her mother could not afford.

The Chairperson referred to the provisions in Sec. 17 of the Act and the strict confines of the terms of that section in the definition of what constituted anti social behaviour.

The third party witness said their only problem is the insulation layer between the apartments, not the other issues she had mentioned in her evidence or that were discussed between her mother, the other third party, and the landlord. They are not satisfied that the insulation of the floor has been looked at seriously enough. Noise from the unit directly above them is causing them great distress and difficulty, necessitating the use of sleeping pills and ear plugs, and they cannot hear their television in their living room. She wants an order to have the floor in the overhead apartment lifted and examined independently and suggested the cost would be about €2,500. They understand that living in an apartment is different to a house.

Evidence of Phyllis Keeley:

The third party respondent gave background evidence concerning the purchase of the apartment and her attachment to the area. She outlined the noise difficulties over the years including years when the tenants the subject of the dispute were not living in the apartment. Throughout the hearing she corroborated the evidence given by her witness and clarified any points raised.

**6. Matters Agreed Between the Parties**

N/a

**7. Findings and Reasons:**

The Tribunal finds that the tenants in the dwelling at Apartment 16 The Elm, Parkview, Belarmine, Stepaside, Dublin 18 are not in breach of their obligations under section 16 (h) of the Act in that they do not behave within the dwelling in a way that is anti social within the meaning of the Act, and within the definition of anti-social behaviour in section 17(1) (c) (ii) of the Act. Accordingly the Tribunal finds that the landlord is not in breach of his duty under section 15 of the Act in enforcing the tenants’ obligations in the matter of alleged anti social behaviour.

Reason:

Under Section 15(1) of the Residential Tenancies Act 2004, a landlord of a dwelling owes to each person, who could be potentially affected a duty to enforce the obligations of the tenant(s) under the tenancy. In cases where a landlord fails to enforce a tenant’s obligation under Section 16 of the Act, a directly and adversely affected individual may bring a dispute against the landlord through the Private Residential Tenancies Board. The affected individual must first attempt to resolve the matter directly with the parties to the tenancy as is required under sec. 77 of the Act. The Tribunal is satisfied that the Third Party made reasonable and sufficient attempts to resolve the dispute by engaging with the parties to the tenancy and communicated with the landlord. They also researched the subject and obtained significant data which led them to believe that the underlying problem was the standard and quality of the flooring in the overhead apartment the tenancy of which was the subject of this dispute. The third party had also put forward possible solutions.

In this dispute the first matter to be determined is whether the tenants breached their obligations under section 16 (h) (anti-social behaviour) of the Act and if they did breach their obligations the Tribunal must then consider whether the landlords have failed in their duty to enforce the obligations of the tenants. A Tribunal can direct the landlord to enforce their tenants’ obligations and can also award substantial payments to affected parties for the distress caused by the landlord’s failure to enforce their tenants’ obligations.

Section 16 of the Act sets out a tenant’s obligations; the obligation that is relevant to this dispute is contained at section 16 (h) and that obligation is:

(h) not behave within the dwelling, or in the vicinity of it, in a way that is anti-social or allow other occupiers of, or visitors to, the dwelling to behave within it, or in the vicinity of it, in such a way.

Section 17 of the Act defines anti social behaviour and the relevant part of that section that applies to this dispute is contained at section 17(1) (c) ii under the heading:

‘‘behave in a way that is anti-social’’ means—

(c) engage, persistently, in behaviour that prevents or interferes with the peaceful occupation—

(ii) by any person residing in any other dwelling contained in the property containing the dwelling concerned, of that other dwelling.

On the evidence presented the Tribunal finds that the “noise” behaviour of the tenants was typical of normal day to day activities and that their use of household equipment and electronic equipment is in a similar fashion typical of normal day to day activity and did not contravene their obligations as tenants under the Act. The third party evidence was quite clear that the fault, if there be one, lies not with the occupants of the overhead apartment but with the quality of the flooring and sound insulation in that apartment. The Tribunal observes that the resolution of the dispute is not within the ambit of the PRTB dispute resolution service but is possibly within the cooperation of the apartment owners.

**8. Determination:**

**Tribunal Reference TR0515-001177**

**In the matter of Maria Hutchinson, John Hutchinson (Landlord) and Phyllis Keeley (Third Party) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlords are not in breach of their duty under section 15 of the Act to enforce the obligations of the tenants under section 16 (h) of the Act, in respect of the tenancy of the dwelling at 16 The Elm, Parkview, Belarmine Avenue, Stepaside Dublin 18.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 24 September 2015.

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

**Aidan Brennan Chairperson**

For and on behalf of the Tribunal.