**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001181 / Case Ref No: 1114-15222**

**Appellant Tenant:** Olamrewaju Lateef Saka, Bimpe Oladipupo

**Respondent Landlord:** Bremore Properties Ltd

**Address of Rented Dwelling:** 3 Bremore Pastures Avenue, Hamlet Lane, Balbriggan , Dublin, K32YN36

**Tribunal:** Vincent P. Martin (Chairperson)

Dairine Mac Fadden, Roderick Maguire

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

**Date & time of Hearing:** 18 August 2015 at 2:30

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| **Attendees:** | Niamh Carney (Agent for the Respondent Landlord);  Martina Hughes (Agent for the Respondent Landlord). |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 12/11/2014 the Landlord 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 24/04/2015. The Adjudicator determined that In the matter of Bremore Properties Limited (then Applicant Landlord) and Bimpe Oladipupo and Olamrewaju Lateef Saka (then Respondent Tenants), the Private Residential Tenancies Board, in accordance with Section 121 of the Residential Tenancies Act, 2004, determines that:

1. The Notice of Termination served on 20th August 2014 by the Applicant Landlord on the Respondent Tenants in respect of the tenancy of the dwelling at 3 Bremore Pastures Avenue, Balbriggan, Co. Dublin, is valid.

2. The Respondent Tenants and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 14 days of the date of issue of the Order.

3. The Respondent Tenants shall pay the sum of €8,034 to the Applicant Landlord, within 56 days of the date of issue of the Order, being rent arrears in respect of the tenancy of the above dwelling.

4. The Respondent Tenants shall also pay any further rent outstanding from 24th April 2015, at the rate of €825 per month or proportional part thereof at the rate of €27.12 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as they vacate the above dwelling.

5. The Applicant Landlord shall refund the entire of the security deposit of €825 to the Respondent Tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received:

Tenants: received on 20/05/2015. The grounds of the appeal: invalid Notice of termination, rent arrears, over holding. This application for an appeal hearing was approved by the Board on 17/07/2015.

The PRTB constituted a Tenancy Tribunal and appointed Dairine Mac Fadden, Roderick Maguire, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Vincent P. Martin to be the chairperson of the Tribunal (“the Chairperson”). On 20/07/2015 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 18/08/2015 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:**

• The Agent acting on behalf of the Respondent Landlord submitted what she described was an up to date rent arrears schedule.

**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 and stated that the Tribunal was a formal procedure but that it would be as informal as was possible.

The Chairperson said that he would be willing to clarify any queries in relation to the procedures either then or at any stage during the course of the Tribunal hearing. The Chairperson said that members of the Tribunal might ask questions from time to time. The Chairperson stated that all evidence would be taken on Oath or Affirmation and be recorded by the official stenographer present and he reminded the parties present 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 this Hearing, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court only on a point of law. All persons giving evidence to the Tribunal were then sworn in.

**5. Submissions of the Parties:**

The Respondent Landlord’s Case:

Evidence of Niamh Carney (Agent on behalf of the Respondent Landlord).

She stated that the Respondent Landlord is a registered company which is an investment fund and it purchased a development of 68 units (inclusive of the dwelling) from the receivers appointed over certain assets jointly owned in the names of Monkspark Developments Limited and Joseph Daly. She stated that the Respondent Landlord retains a security deposit in the sum of €825.00 paid by the Appellant Tenants to a previous owner of the dwelling and that it is her instructions that the current Respondent Landlord wishes to recognise and honour the said deposit paid.

She stated that there were two parts to the Respondent Landlord’s claim, namely, a claim for rent arrears and the validity of notice of termination dated 20 August 2014. She stated that the notice of termination dated 20 August 2014 was served on the Appellant Tenants, with the 2nd of October 2014 being the date when she submitted the Appellant Tenants should have vacated the dwelling. She submitted that this notice was preceded by a number of warnings including a 14-day warning letter dated the 13th February 2014 and submitted that she also sent emails to the Appellant Tenants dated the 3rd March 2014, 14th April 2014 and as recently as the 13th August 2014.

She stated before she sent the 14-day warning letter she had a face to face meeting with the Tenant warning them about their position and the serious consequences of being in rent arrears and she stated that she also had at least one telephone conversation with the second named Appellant Tenant in respect of same. She alleged that the second named Appellant Tenant had told her, ‘numerous things on numerous occasions and has not stuck to any of them’

She denied that a letter that the Respondent Landlord sent to the Appellant Tenants dated 1st September 2014 amounted to a cancellation and/or withdrawal of the said notice submitting that it was a genuine mistake and that this letter was a standard letter of information that went to all other units informing tenants, inter alia, that the bank details for payments had changed. She added that at no point did this letter refer to the notice of termination being revoked and/or withdrawn, nor does it make any reference at all to the notice of termination. She also stated that the tenants at no stage contacted them to seek clarification of this letter. She accepted that a mistake was made and in hindsight the letter ought to have been worded in a different way but repeated that at no point did the letter say that this notice of termination was cancelled.

She stated that the keys were not returned on the said 2nd October 2014 and that the Appellant Tenants continue to reside in the dwelling. She stated that subsequent to the said 2nd October 2014, numerous attempts were made to contact the Tenants in order to try to liaise with them as to when they were going to vacate the dwelling. She added that,

‘phone calls weren’t answered, emails weren’t answered and at no point was a date forthcoming as to when they would be vacating the property.’

In relation to the rent arrears claimed, she stated that the Respondent Landlord has and continues to receive directly a welfare subvention payment each month in the sum of €643.00 (of the total monthly rent in the sum of €825.00) but submitted that no top up rental payments has been received from the Appellant Tenants since a €50.00 payment on the 15th April 2015.

She stated that she was claiming rental arrears which accrued by the said Appellant Tenants from the time they resided in the dwelling when it was owned by the previous landlord, submitting that the current owners (the Respondent Landlord) purchased the rental debt at this same time when the dwelling was purchased. She accepted that in a letter dated 13th February 2015, the Respondent Landlord wrote to Appellant Tenants claiming that at that point that the total arrears owing was in the sum of €701.00 but stated that this was done in error, submitting that at the time of sending this letter she was unaware that outstanding rental arrears (debt) had been purchased from the Appellant Tenants’ immediately preceding landlord and in response to a query raised by the Tribunal said that she never had permission or authority to waive this debt and/or give the tenants any debt forgiveness. She submitted that up and including today’s appeal hearing, the Appellant Tenants owe the total sum of €7,782.22 in rent arrears and referred to a compiled rental payment schedule which documented the rent due each month and the actual rental payments made each month, if any, beginning in the month of March 2013.

The Appellant Tenants’ Case:

Evidence of Bimpe Oladipupo (the second named Appellant Tenant).

In relation to rent arrears, the second named Appellant Tenant agreed that she authorised for welfare rent subvention payments to be paid directly to the Respondent Landlord on a monthly basis. In reply to a query raised by the Tribunal, she accepted that the last rental payment paid by them was in the sum of €50.00 on 15 April 2015. In response to a further question by the Tribunal she stated that they made previous payments of €50.00 on the 1st, 3rd, 10th and 31st March 2014. She stated that the Respondent Landlord sent the Tenants a letter dated 13th February 2015 claiming that at that point that the total arrears owing was in the sum of €701.00 and she therefore submitted that this is proof that no rental arrears were owing and/or existed prior to this date.

There was a conflict of evidence concerning what these payments represented with the Appellant Tenants alleging they were part of an agreed repayment of rental arrears in the total sum of €701.00 but the Agent for the Landlord disagreed with this assessment saying these rental payments made were top up payments only.

She accepted that she was not in a position to refute the claim made by the Respondent Landlord in respect of the amount of arrears due and owing and had no documentary proof to support her claim that the Appellant Tenants had made significant rental payments other than relying on the said letter written by the Respondent Landlord dated 13th February 2015. She accepted, inter alia, that she made no rental payments in October 2014, November 2014, December 2014, January 2015 and February 2015.

In response to a question raised under cross-examination by the Respondent Landlord, she stated that,

‘I can’t agree to vacate. The reason is that I make an attempt to go to the Council in order to give me a place but all they are saying is that I should wait, they haven’t got a place yet and I have a little baby with me. I have been looking for a house everywhere’

The second named Appellant Tenant accepted that she did receive the said notice of termination. She stated that she is not challenging it procedurally but submitted that the Respondent Landlord cancelled and/or withdrew the said notice in a letter that was sent to her dated 1st September 2014.

The Chairperson thanked the parties for attending and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the PRTB of that Determination.

**6. Matters Agreed Between the Parties**

1. The Appellant Tenants together with their two children reside in the dwelling.

2. The dwelling is a 3 bedroom mid terraced house constructed around 2011.

3. The monthly rent is €825 per month and the daily rental rate is €27.12.

4. The Respondent Landlord retains a security deposit in the sum of €825.00 paid by the Respondent Tenants.

5. The tenancy commenced on the 1st March 2013 by way of 6 month fixed term written tenancy agreement with no break clause.

**7. Findings and Reasons:**

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

Finding No.1:

The Tribunal finds that the notice of termination dated 20 August 2014 is valid. The notice is procedurally correct and in compliance with the requirements of the Act.

Reason:

The letting is a Part 4 tenancy under the Act as the Appellant Tenants are in continuous occupation of the dwelling in excess of the requisite six-month period. The Tribunal holds that the Appellant Tenants enjoyed a Part 4 tenancy and tenants who meet the requirements set out in Part 4 of the 2004 Act (“Part 4 Tenants”) enjoy a certain security of tenure. In order for the Respondent Landlord to terminate a Part 4 tenancy on the grounds that the tenants have failed and/or neglected to pay rent and thereby being in arrears of rent, the Landlord must follow all three procedural steps as follows:

STEP 1: Under Section 34 of the Act, the landlord must notify the tenant that:

a) the tenant is in arrears of rent;

b) the tenant is allowed a reasonable time (14 days) to remedy that breach of obligation;

c) the landlord is entitled to terminate the tenancy if the tenant fails to remedy that breach of obligation within the period specified.

STEP 2: Under Section 67(3) of the Act, where a tenant falls into rent arrears, the landlord must serve a written notice on the tenant informing him or her of the amount of rent that is due. The landlord must then give the tenant 14 days to pay those rent arrears.

STEP 3: Under Section 67(2) of the Act, if the tenant fails to pay the rent due within 14 days of receipt of the written notice under Section 67(3) (step 2 above), the landlord may proceed to terminate the tenancy by serving a 28 day notice of termination.

The Tribunal is satisfied that the Respondent Landlord has complied with the above statutory requirements. The said Notice of Termination required the Appellant Tenants to vacate the dwelling on or before the 2nd of October 2014. However the Tribunal has decided not to award damages in this case against the Appellant Tenants over holding since that said date because of some confusion, albeit genuine confusion, resulting from a written communication dated 1st September 2014 which the Respondent Landlord sent to the Appellant Tenants. The letter may have caused some ambiguity and/or confusion (albeit inadvertently on the part of the Respondent Landlord, its servants and/or agents) and as a result the Appellant Tenants were entitled have to have the matter clarified.

In reaching the decision that the notice of termination was never revoked or withdrawn by the Respondent Landlord, the Tribunal prefers, on the balance of probabilities, to rely on the oral testimony of Niamh Carney. The Tribunal is satisfied that the said confusion caused by some of the content contained in this standard type letter (written to all tenants), whilst unfortunate, did not amount to a cancellation of the said notice of termination. In the given circumstances, the Tribunal finds that the Appellant Tenants should vacate dwelling within a period of 72 days of the date of issue of this Order by the Board.

Finding No. 2:

The Tribunal finds that the Appellant Tenants were in breach of their statutory obligation under Section 16 (a) of the Act to pay rent when it becomes due and owing. The rent outstanding up to the 18th August 2015 (date of hearing) is €7,782.22

Reason:

The Tribunal accepts the evidence presented by the Respondent Landlord and is satisfied that the rent outstanding as at the 18 August 2015 (date of hearing) is €7,782.22. The Tribunal considered witness Niamh Carney (on behalf of the Appellant Landlord) to be a credible witness who adduced and was able to support in her oral testimony her persuasive documentary evidence in the form of a precise rental payments schedule. The Tribunal notes that the second named Appellant Tenant failed to offer any adequate explanation and/or refute adequately and/or at all the claim made. Moreover, the second named Appellant Tenants had no documentary evidence at all to support her claim which in essence was an unsubstantiated and simple point blank denial that no significant rent payments were not due and owing whatsoever.

In spite of being in breach of their said statutory obligation under Section 16 (a) of the Act to pay rent on the day it falls due, the Tribunal has decided to stop short of awarding damages against the Appellant Tenants for same in the circumstances where the Respondent Landlord caused some unnecessary and avoidable confusion and/or ambiguity by inadvertently circulating one letter of 13th February 2015 in relation to the correct amount of rent arrears due and owing.

The Tribunal notes that it was agreed between the parties that the monthly rent is €825 per month and the daily rental rate is €27.12.

**8. Determination:**

**Tribunal Reference TR0515-001181**

**In the matter of Olamrewaju Lateef Saka, Bimpe Oladipupo (Tenant) and Bremore Properties Ltd (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served by the Respondent Landlord on the Appellant Tenants dated 20th August 2014 in respect of the tenancy of the dwelling at 3 Bremore Pastures Avenue, Hamlet Lane, Balbriggan, County Dublin, is valid.

2. The Appellant Tenants and all persons residing in the dwelling shall vacate and give up possession of the dwelling within 72 days of the date of issue of this Order by the Board.

3. The Appellant Tenants shall pay to the Respondent Landlord the sum of €7,782.22 in rent arrears within 42 days of the date of issue of the Determination Order by the Board, together with any further rent outstanding from the 18th August 2015 (date of hearing), at the monthly rate of €825.00 or proportional part thereof at the rate of €27.12 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof until such time as they vacates the said dwelling.

4. The Respondent Landlord shall refund the entire security deposit of €825.00 to the Appellant Tenants on gaining possession of the above dwelling less any amounts properly withheld in accordance with the provisions of the Act.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\Vincent P. Martin.png |

**Vincent P. Martin Chairperson**

For and on behalf of the Tribunal.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 16/09/2015.