

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0515-001182 / Case Ref No: 0215-16800

Appellant Tenant:	Paul Bourke
Respondent Landlord:	Marie Madigan
Address of Rented Dwelling:	Thornton, Kilsallaghan, Swords , Dublin
Tribunal:	Healy Hynes (Chairperson) Dervla Quinn, Roderick Maguire
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	14 August 2015 at 10:30
Attendees:	Marie Madigan, , Tribunal Respondent, Landlord, Paul Bourke, Tribunal Appellant, Tenant, Terry Gormley (Landlord Husband)
In Attendance:	N/A

1. Background:

On 18/02/2015 the then Applicant, now Respondent Tenant made an application for dispute resolution services to the Private Residential Tenancies Board (referred to as "the PRTB" in this report).

Pursuant to section 93 of the Residential Tenancies Act, 2004 (referred to as "the Act" in this report) the PRTB arranged for the matter to be the subject to an adjudication under section 97 of the Act. An adjudication was held on 24 March 2015 at 2:15. The Adjudicator's report in relation to the dispute was sent to both parties. The Adjudicator determined that:

1. The Notice of Termination served on the 12th January 2015 and 14th January 2014, by the Respondent Landlord on the Applicant Tenant, in respect of the tenancy of the dwelling at Thornton, Kilsallaghan, Swords, Co. Dublin, is invalid.
2. The Applicant Tenant's application, regarding breach of tenancy obligations by the Respondent Landlord, in respect of the tenancy of the dwelling at Thornton, Kilsallaghan, Swords, Co. Dublin, is not upheld.

Subsequently a valid notice of appeal was received by the PRTB from the Appellant Tenants on 20 May 2015.

The PRTB approved referral of the Tenants appeal to a Tenancy Tribunal. In accordance with Sections 102 and 103 of the Act, the PRTB constituted such a Tenancy Tribunal and appointed Healy Hynes, Dervla Quinn & Roderick Maguire as Tribunal members. The Board appointed Healy Hynes to be the Chairperson of the Tribunal (referred to as "the Chairperson" in this report). The parties were notified of the constitution of the Tribunal,

were provided with details of the date, time and venue set for the hearing and were provided with a copy of the Tenancy Tribunal Hearing Procedures.

On 14th August 2015 the Tribunal convened a hearing at 10.30 a.m. at the offices of the PRTB, Floor 2, O'Connell Bridge House.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

- Letter dated 1 August 2013
- Letter dated 30th November 2012
- Letter dated 1st March 2014
- Letter dated 30th November 2012

4. Procedure:

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Tenants against a determination made following an adjudication held on 24th March 2015 at 2:15 in the case of a dispute between the Tenants and the Respondent Landlord in respect of a tenancy at Thornton, Kilsallaghan, Swords, Dublin, Ireland. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. He 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". Both Parties confirmed that they had done so. The Chairman said that he 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 then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the 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. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Tenants would be invited first to present their case, including the evidence of any Witness; this would be followed by an opportunity for cross-examination by the Respondent Landlords; that the Respondent Landlords would

then be invited to present their case, followed by an opportunity for cross-examination by the Appellant Tenants. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

He also said that at the end of the hearing, both the Appellant Tenants and the Respondent Landlords would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only.

All persons giving evidence to the Tribunal were then sworn in.

5. Submissions of the Parties:

Appellant Tenants Case:

The Appellant in the matter stated to the tribunal that their case in the matter related to 2 points

1 That the Respondent Landlords in the matter were in breach of their obligations by not making clear to the Appellant Tenant at the time of taking occupation in the property, that it was liable to flooding.

The Appellant stated that the property had flooded on a number of occasions over a period stretching from before his occupation & the period throughout the tenancy causing distress to the Appellant. He stated that this flooding had caused a deterioration in the property damaging contents and floorboards. On foot of this deterioration the Appellant Tenant stated that he had cause to replace a number of furnished items including:

Coffee Table

Curtains

Mattress

Chest of Drawers

Fridge/freezer

Dryer

2 The Respondent Landlords were in breach of obligations by not providing the Appellant with a rent book in the matter of the letting.

The rent was paid by means of direct payment to the son of the Respondent Landlords in the matter. The Appellant did not like this arrangement and would have preferred to make the payments via the banking system. The Appellant was looking to establish a payment record for rent so as to improve their eligibility for a mortgage. The Appellant felt that payment via bank accounts would improve these efforts.

Respondent Landlords case

The Respondent Landlord stated that

1. In relation to the flooding, the Respondent Landlord stated that the property did flood in 2012 as a consequence of unseasonably heavy rains. The property is lower than the

main road and run off from same did pool in the property. The Respondent Landlord stated that they contacted the County Council to address the matter with sandbags.

Subsequent to the flooding, an insurance assessor attended at the dwelling and that since then she stated they were unable to gain access to the premises to address the damages. The Respondent Landlord stated they had attempted to contact the Appellant Tenants to gain access but their phone numbers were blocked by the Appellant Tenant and they were unable to get in contact to gain access. (The Appellant countered this point by stating they were having issues with their phone provider).

In respect to the contents, the Respondent Landlord stated that the matter was never brought to her attention and that if the contents were the property of the Appellant Tenants, there would be no issue with them being removed from the premises at the end of tenancy.

2. In respect to the rent book, the Respondent Landlord stated that they were remiss in not providing one at the commencement and that a rent book had now been provided with rent record dating back to the commencement of tenancy.

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 parties did not enter into a formal fixed term lease agreement.
- The tenancy was ongoing at the time of tribunal hearing
- The rent was € 800 per month
- The Appellant Tenants paid a deposit of € 800.

Both parties accepted that they were in agreement in relation to the foregoing matters.

The Appellant Tenants were invited to open their case.

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 therefore are set out hereunder.

Finding 1: The Tribunal finds that The Applicant Tenants case in respect of breach of Landlord obligations for failing to inform them of a history of flooding in Thornton, Kilsallaghan, Swords, Dublin, Ireland, is not upheld.

Reasons: The tribunals findings in this matter are predicated on the fact that there is no obligation on the Respondent Landlord in the 2004 Residential Tenancies Act to inform the Appellant Tenant of any history relating to the property.

The Tribunal further considered the Respondent Landlord obligations in the matter relating to maintaining the standards of the property under Sec 12.1.(b). The Tribunal finds that the Respondent Landlord in the matter is in compliance with this section of the act as she has been unable to gain access to the house to carry out the remedial works.

The Appellant Tenant evidence that their phone service was causing such extended difficulties in not found to be reasonable.

Finding 2: The tribunal finds that the Appellant Tenants case in relation to breach of obligations in failing to provide a rent book in relation to the tenancy at Thornton, Killsallaghan, Swords, Dublin, Ireland is not upheld.

Reasons: Rent books are a useful method for the parties to record rent paid and received. However the Residential Tenancies Act 2004 does not list this as an obligation of the landlord. Bank statements are often accepted as proof of rental payment. Rent book regulations are covered under Section 25 of the Housing (Private Rented Dwellings Act) 1982 and SI 146/1993 Housing (Rent Books) Regulations 1993. It is a matter therefore for the local authority and does not fall under the auspices of the Tribunal as established under the 2004 Residential Tenancies Act.

8. Determination:

Tribunal Reference TR0515-001182

In the matter of Paul Bourke (Tenant) and Marie Madigan (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Appellant Tenants case in relation to breach of landlord obligations for failure to disclose flooding risk in relation to the tenancy at Thornton, Killsallaghan, Swords, Co. Dublin is not upheld.
2. The Appellant Tenants case in relation to breach of landlord obligations for failure to provide rent book in relation to the above tenancy is not upheld.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/08/2015.

Signed:

A handwritten signature in black ink, appearing to read 'Healy Hynes', written over a horizontal line.

Healy Hynes Chairperson

For and on behalf of the Tribunal.