**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001191 / Case Ref No: 0315-17132**

**Appellant Tenant:** Christina Sheils

**Respondent Landlord:** Janet Mc Cormack

**Address of Rented Dwelling:** 11 church square, church road, east wall, dublin 3 , Dublin 3, D03N9K4

**Tribunal:** John Keaney (Chairperson)

Jack Nicholas, Mary Doyle

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

**Date & time of Hearing:** 23 September 2015 at 10:30

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| **Attendees:** | Janet Mc Cormack (Respondent Landlord), Desmond Maguire (Respondent Landlord's Husband); Christina Sheils (Appellant Tenant) |
| **In Attendance:** | Gwen Malone Stenographer |

**1. Background:**

On 05 March 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 a Mediation which took place on 18 March 2015. The Mediator determined that No agreement was reached in this matter.

Subsequently the unresolved matters between the parties were referred to a Tribunal by the tenant on 27 May 2015. The grounds of the appeal was regarding deposit retention. This appeal was approved by the Board on 07 August 2015.

The PRTB constituted a Tenancy Tribunal and appointed Jack Nicholas, Mary Doyle, John Keaney as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Keaney to be the chairperson of the Tribunal (“the Chairperson”).

On 13 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 23 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:**

Photographs submitted by the Appellant Tenant

**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 their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant.

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 €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 could be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

**5. Submissions of the Parties:**

Appellant Tenant's Case

The Appellant Tenant stated that she had vacated the dwelling on the 3rd January 2015, that she gave the Landlord more than the required period of notice and had paid the rent up to the end of the tenancy on 4th March 2015. She refuted the Landlord's allegation that she had left the house in an unfit state and was seeking the return of her deposit. She had taken photographs of the condition of the house as at the date that she had vacated. She doubted the accuracy of the Landlord’s photographs. She was not responsible for the blocked vacuum cleaner as she had never used it preferring to use her own anti-allergy vacuum cleaner instead. She had left behind in the dwelling any contents that were there when she moved in such as pots, pans, duvets, pillows, toaster, sandwich maker. She had not damaged the electric hob as it was in need of repair when she moved in. The carpet was damaged by a leak in 2011 from the bath that went down the stairs. She did not know why it was stained in the way that it was shown in the photographs as she had not lifted the carpet. The landlord had agreed the carpet was worn. She was not responsible for the damage to the microwave as she had never used it. The damage to the armchairs was not caused by a cat as alleged but was probably due to her placing them too close to the fire to get warm. She had had to do this as the house was impossible to heat. They were damaged on the side furthest away from the fire as she had turned them around after they were damaged. She had not kept a cat as a pet. The entire neighbourhood were feeding one particular cat and the Landlord was aware of this. The cat was only allowed in the sitting room when leaving by the front door. She had cleaned the windows inside the dwelling before she left but not outside as she could not reach without ladders. There was no grate in the fireplace when she moved in. She had cleared the rear garden twice during her occupancy. She was possibly responsible for the ashes in the rear garden that the Landlord complained of. The photographs showed the debris that had been left in the garden but it had been moved to the middle before the photograph was taken. She had no idea how the rubbish got in the back garden. She had never mentioned this as a problem to the Landlord.

Respondent Landlord’s Case

The Respondent Landlord stated that she and her husband had lived in the house for ten years before letting it. It was not a cold house and the tenant had never complained of poor heating. The furniture was less than a year old when the tenant moved in. The armchairs were perfect at the commencement of the tenancy but the settee did sag in the middle which is why she was only claiming for the cost of replacing the armchairs. They had been damaged by cat scratches. She was only claiming for approximately half of all the money that she had spent as she accepted that some expenditure was due to wear and tear. The amount she had spent that was attributable to the Tenant was €1294.32 which was more than the deposit paid by the Tenant. She had replaced the hob, microwave, grate and a carpet as a result of damage by the Tenant. There was a bucket of wet black ash in the garden. It was so heavy it could not be lifted and had to be shovelled into bags and carried through the house to the skip. Then the pile of ash on the flower bed had to be dealt with. The letting agent advised that it could not be advertised in the state the Tenant left it and the original photographs from before the tenancy commenced were used. The Landlord referred to the letter from the letting agent about the appalling state in which the Tenant had left the house. There was damage to the carpet caused by a leak. The damage that she complained of was to a different carpet and had been caused by a cat. She had supplied a vacuum cleaner and a grate in the fireplace at the commencement of the tenancy. She had also supplied one duvet and one set of pillows for each bedroom, but had had to throw out seven duvets when clearing the house. It was apparent from the dirt that the tenant had smoked in the house. The Landlord referred to photographs she had submitted at page 53 of 76 in Case File 1 as an example of the nicotine stains and their removal. They had to hire two skips to dispose of all the rubbish left behind by the Tenant. Her husband had to travel from Wicklow and work for four days to clear and clean the dwelling. She had also paid their son €100 for 4 days work which she felt was reasonable. Anytime she enquired of the Tenant the Tenant had told her everything was “ok”. There were only two occasions when the Tenant asked for repairs to be done and these were done straight away. The chimney had been cleaned before the Tenant moved in and she was not aware of a saucepan lid being placed up the chimney to prevent a draft.

**6. Matters Agreed Between the Parties**

* The rent was €960 per month;
* The rent was paid up to the end of the tenancy;
* The tenancy ended on 04 March 2015;
* A deposit of €1,050 had been paid by the Appellant Tenant at the commencement of the tenancy; and no part of the deposit had been repaid to the Appellant Tenant.

**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 thereof, are set out hereunder.

Finding: The Tribunal find that the tenant is not entitled to the return of the deposit of €1,050.00 paid at the commencement of the tenancy

Reasons:

1. Pursuant to s.12 (1) (d) of the Act the Landlord is obliged to return the deposit paid by the Tenant promptly at the end of the tenancy.

2. This obligation is subject to the provisions of s.12(4) which entitles a Landlord to retain the deposit if the Tenant has been in breach of her obligations under s16(f) of the Act and the Landlord has incurred costs in restoring the dwelling and such costs exceed the amount of the deposit.

3. S.16 (f) of the Act requires a Tenant not to allow the condition of the dwelling to deteriorate during the tenancy, other than through normal wear and tear.

4. In breach of s.16 (f) the Tenant did allow the condition of the dwelling to deteriorate and the costs incurred by the Landlord in restoring the dwelling exceeded the amount of the deposit.

5. The Landlord and the Tenant each presented contradictory evidence of the state and condition of the dwelling at the termination of the tenancy.

6. The Tribunal preferred the evidence of the Landlord as to the state and condition of the dwelling at the termination of the tenancy. The Landlord’s photographs of the damage were more detailed than the general photographs furnished by the Tenant. The Tenant accepted that she was probably responsible for the large amount of ash in the back garden. The Tenant accepted that the Landlord’s photographs accurately showed the amount of debris she left in the back garden; she only commented that it had been moved. The Tenant’s explanation for the damage to the armchairs was not credible. Even if her explanation is believed it is still an admission that she caused the damage. The Tenant admitted that a cat had been allowed into the house and it is therefore more likely than not that she allowed the cat to cause the damage to the carpet which resulted in it needing to be replaced. The Tenant denied using the microwave but it is apparent from the Landlord’s photographs that it had been used. The Tribunal accepts the Landlord’s evidence that there was a grate in the fireplace at the commencement of the tenancy and that this had to be replaced. All of the expenditure incurred by the Landlord was supported by receipts. The claim for €200 for labour was reasonable and justified.

**8. Determination:**

**Tribunal Reference TR0515-001191**

**In the matter of Christina Sheils (Tenant) and Janet Mc Cormack (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Applicant Tenant’s application, regarding deposit retention in respect of the tenancy of the dwelling at 11 Church Square, Church Road, East Wall, Dublin 3, is not upheld.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 13 October 2015.

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| **Signed:** |  |

**John Keaney Chairperson**

For and on behalf of the Tribunal.