**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001192 / Case Ref No: 0415-17672**

**Appellant Tenant:** Nedjem Eddine Lalaymia

**Respondent Landlord:** Mairead De Lacy

**Address of Rented Dwelling:** 36 Lorcan O'Toole Park , Dublin 12, D12X65A

**Tribunal:** Roderick Maguire (Chairperson)

Andrew Nugent, Louise Moloney

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

**Date & time of Hearing:** 24 August 2015 at 10:30

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| **Attendees:** | Ryan O'Shaughnessy, Agent for the Landlord; Feilim O'Heanaigh, Desmond de Lacy; Landlord witnesses. |
| **In Attendance:** | Gwen Malone Stenography |

**1. Background:**

On 02/04/2015 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 28/04/2015. The Adjudicator determined that

1. The Notice of Termination dated and served on the Respondent tenant on the 9th January 2015 in respect of the property at 36 Lorcan O’Toole Park, Crumlin, Dublin 2 is valid.

2. The Respondent tenant shall vacate and give up possession of the above dwelling within 28 days of the date of issue of the Order.

3. The Respondent tenant shall pay the total sum of €500.00 to the Applicant landlord in instalments at the rate of €100.00 per calendar week commencing on the 28th day of the month immediately following the date of issue of this order, the said sum being damages for breach of tenant obligations in over-holding, in respect of his tenancy at 36 Lorcan O’Toole Park, Crumlin, Dublin 12.

4. The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the number of weekly instalments of €100.00 made to the Applicant landlord on each due date until the sum of €500.00 has been paid in full.

5. For the avoidance of doubt any default in the payment of the weekly instalments of €100.00 shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Applicant landlord.

6. The Respondent tenant shall continue to pay rent from the 28th April 2015, at the rate of €1000.00 per month, or proportionate part thereof at the daily rate of €32.88, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each week or part thereof, until such time as he vacates the above dwelling.

7. The Applicant landlord shall refund the entire of the security deposit of €1100.00 to the Respondent tenant, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently an appeal was received from the tenant on 27/05/2015. The grounds of appeal were stated as being furnishing of false documentation and misleading information and forgery. The categories of the appeal: Overholding, Unlawful termination of tenancy (Illegal eviction), Breach of landlord obligations ; approved by the Board on 05/06/2015

The PRTB constituted a Tenancy Tribunal and appointed Andrew Nugent, Louise Moloney, Roderick Maguire as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Roderick Maguire to be the chairperson of the Tribunal (“the Chairperson”).

On 08/07/2015 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 24/08/2015 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:**

PRTB File

**3. Documents Submitted at the Hearing Included:**

1. Letter from D.C. Shaw & Co. to the PRTB dated 5 August 2015

2. Leases with cover letter dated 5 December 2013 and 13 November 2014 submitted by the Appellant Tenant

3. Leases dated 1 November 2011 and 15 October 2012 submitted by the Respndent Landlord

**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 Applicants) would be invited to present his 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 Applicants.

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 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 or 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.

**5. Submissions of the Parties:**

Appellant Tenant's submissions:

The Appellant Tenant submitted that he had told Mr. O’Shaughnessy, the Agent of the landlord, before he moved into the dwelling, that he was looking for somewhere longer term as he had a number of children (now he has four children living in the dwelling ages 15, 7, 5 and 1 and a half). He submitted that therefore there was never a break clause in the first two fixed term leases, though he acknowledged that those leases were for fixed terms of 12 months, as were the subsequent leases of 2013 and 2014. He submitted that at the end of 2013, the Agent spoke to him and stated that the lease would be ending in July 2014. He was provided with a lease in November 2013 which included a break clause, stating that the fixed term of 12 momths could be terminated for a variety of reasons including in a case where the Landlord wished to sell the property. As he did not agree to this condition he did not return a signed copy to the Landlord, though he did sign the lease, and provided a signed copy to the Department of Social Protection in order to continue to secure the payment of his benefit. July 2014 came and no termination notice was received.

The Tenant submitted that he did the same thing in relation to the lease that he received in November 2014, which also contained a break clause - he signed the lease and submitted it to the Department of Social Protection so that he could continue to claim his benefits, but did not return it to the Landlord as he did not agree with its terms and he felt it represented a departure from the agreed longer term letting that he had through Mr. O’Shaughnessy. In response to questions, the Tenant was not able to quantify the length of the lease that he envisaged or that was agreed to at the beginning of the tenancy but estimated that it was approximately 4 years.

He believed that he would be offered a City Council apartment soon as he had a friend who was offered one. He had been offered one previously but it was not suitable as he had had another child since his application and so he continued to rent.

The Tenant did not believe that the Landlord was going to sell the property but wanted to get rid of him to avoid taxation and increase the rent. He also submitted that page 4 of 58 of the PRTB file was a forgery as it was a signed page from another lease, as he had never provided a signed copy of the lease to the Landlord. He submitted that the display of this forgery indicated that the Landlord’s were not trustworthy or reliable in their evidence or motives.

The Tenant submitted that he would move if he could find alternative accommodation.

He further submitted that there was a breach of Landlord obligations as the house was not kept in good repair. He submitted that the wood in the kitchen had insects in 2012 and that someone was sent to remedy this but left a letter to say that the kitchen should be changed but it was not. He also submitted that there were broken tiles and wood in the kitchen.

Respondent Landlord's Case:

The Respondent Landlord’s Agent submitted that the incorrect page was added to the case file in relation to the signing page of the Lease referred to by the Appellant Tennat and that this had been explained previously. He referred to a letter dated 5 August 2015 from D.C. Shaw as furnished as evidence that the dwelling was to be sold following Probate but that there were delays. He said that this was not an attempt at forgery but an administrative error. He said that the Respondent Landlord had remedied any defects but had not invested in the property more than necessary as the house was going to be sold.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The tenancy commenced on 1 November 2011;

2. A deposit was paid of EUR 1,100 on commencement of the tenancy;

3. The current rent payable under the tenancy for the dwelling is EUR 1,000 per month;

4. The Notice of Termination dated 9 January 2015 was served by the Respondent Landlord and received by the Appellant Tenant;

The Appellant Tenant continues to reside in the dwelling.

**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.

1 Finding:

The Tribunal finds that the Notice of Termination served on 9 January 2015 was a valid notice under the Residential Tenancies Act 2004.

Reason:

The Tribunal is satisfied that the Respondent Landlord intended to sell the property within the required time period under the Act and that she had reserved to herself the right to terminate the tenancy under the lease agreement of November 2013 that had been provided to the Tenant. Despite the fact that the Tenant had signed that agreement and relied on it with third parties, he maintained that it was not in effect. The Tribunal finds in favour of the Landlord in that the lease offered to the Tenant at that time was on the basis that the Landlord could terminate for reason of sale and this was accepted by the Tenant in remaining in the property and signing the lease and relying on it. Even if that fixed term tenancy was not valid, as submitted by the Tenant, then there would be no fixed term tenancy and the Landlord would be able to terminate the tenancy under the Act for reason of sale.

2 Finding:

The Tribunal finds that the Tenants are overholding and awards EUR 500 in damages.

Reason: The Appellant Tenant failed to vacate the premises on foot of the valid notice of termination.

3 Finding:

The Tribunal finds that there was no breach of Landlord obligations.

Reason:

The Tribunal finds the Appellant Tenant has not shown that the Landlord failed in her duty to keep the dwelling in good repair.

**8. Determination:**

**Tribunal Reference TR0515-001192**

**In the matter of Nedjem Eddine Lalaymia (Tenant) and Mairead De Lacy (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 9 January 2015 by the Respondent Landlord on the Appellant Tenant in respect of the tenancy of the dwelling at 36 Lorcan O’Toole Park, Dublin 12, Ireland is valid.

2. The Appellant Tenants and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 56 days of the date of issue of this Order;

3. The Appellant Tenants shall pay the total sum of €500 to the Respondent Landlord in 5 monthly instalments of €100 on the 28th day of each month commencing on the 28th day of the month immediately following the date of the Determination Order by the Board being damages for overholding and failure to comply with the Notice of Termination;

4. The enforcement of the Order for such payment of €500 will be deferred and the sum owing reduced by the cumulative sum paid in the monthly instalments made by the Appellant Tenant to the Respondent Landlord at the date of default until such time as the total sum of €500 has been paid in full.

5. For the avoidance of doubt any default in the payment of a monthly instalment shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Respondent Landlord.

6. The Appellant Tenants shall also continue to pay rent outstanding from 24 August 2015 to the Respondent Landlord at the rate of €1,000 per month or proportionate part thereof at the rate of €32.88 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.

7. The Respondent Landlord shall refund the entire of the security deposit of €1,100 to the Appellant Tenant, upon the Appellant Tenant vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

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| **Signed:** |  |

**Roderick Maguire Chairperson**

For and on behalf of the Tribunal.