**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001194 / Case Ref No: 0814-13612**

**Appellant Landlord:** Thomas Durran

**Respondent Tenant:** Nichola Uzell

**Address of Rented Dwelling:** 8a Walkinstown Green, Walkinstown , Dublin 12, D12YF21

**Tribunal:** Eoin Byrne (Chairperson)

John Keaney, Deirdre Bignell

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

**Date & time of Hearing:** 27 August 2015 at 10:30

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| **Attendees:** | Thomas Durran, Appellant Landlord  Donal Johnston, Solicitor (on behalf of the Appellant);  Andrew King, Barrister (on behalf of the Appellant)  Nichola Uzell, Respondent Tenant  Cllr. Pat Dunne (Tenant’s representative) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

1. On the 13th August, 2014, 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 an adjudication which took place on the 16th October, 2014. The Adjudicator determined that:

The notice of termination served by the Landlord on the Tenant on the 23rd July, 2014, was invalid and that the Landlord should also pay to the Tenant the sum of €2,342, being reimbursement of costs incurred by the tenant, plus damages, as a result of the Landlord’s breach of obligations.

Subsequently an appeal was received from the Landlord by the PRTB on the 1st April, 2015.

The Board, at its meeting on the 3rd July, 2015, approved the referral to a Tenancy Tribunal of the appeal. The PRTB constituted a Tenancy Tribunal and appointed Eoin Byrne, John Keaney and Deirdre Bignell as Tribunal members, pursuant to Section 102 and 103 of the Act and appointed Eoin Byrne to be the chairperson of the Tribunal (“the Chairperson”).

On the 6th July, 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 the 27th August, 2015, the Tribunal convened a hearing at 10:30 at the offices of the PRTB, Floor 2, 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:**

1. Invoice from Chadwicks in respect of the boiler in the dwelling (submitted by Landlord);

2. Invoice from Des Kelly interiors in respect of the carpets in the dwelling, along with a copy of a cheque from St Vincent de Paul used as part payment (submitted by 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.

**5. Submissions of the Parties:**

Prior to the commencement of the hearing proper, the Tenant’s representative made a preliminary point in respect of the jurisdiction of the Tribunal to hear the case. He stated that the adjudication hearing took place in October, 2014 and that subsequently, the adjudicator’s report was posted on the 24th November, 2014. He indicated that it was clear from the documentation submitted that the Landlord had received that report, given that he referred to telephoning the PRTB on the 8th December, 2014. He thus stated that the final date for the Landlord to lodge an appeal was the 15th December, 2014, 21 days after the report had been sent to him.

The Landlord’s representatives indicated that the appeal had been accepted by the Board and asked for the Tribunal to consider the matter on its merits.

The Tribunal indicated at that stage that they would proceed with the hearing on the merits but would nonetheless consider the preliminary point and that, if they were satisfied it was well founded, not consider the remaining matters.

Appellant Landlord’s Case:-

The Landlord contended firstly that the notice of termination served on the 23rd July, 2014, was valid. He indicated that he had broken up with his partner and needed a home to live in. He stated that he got the relevant details from the PRTB website’s template and used that as the basis for his notice of termination. He asserted that the notice was served in person on the Tenant on that date. Counsel for the Landlord submitted that the notice contained all pertinent information and identified the relevant provisions of the Act. He stated that the word “if” used in the notice was conjunctive and that the Landlord was only required to provide the Tenant with the notice indicating that she was entitled to a new tenancy if the two conditions in paragraph 4 of the Table annexed to section 34 were complied with, and not before then.

In respect of the heating system, the Landlord asserted that the boiler in the dwelling was first installed in 2007. He stated that he received a call from the Tenant the Thursday before Christmas in 2013 and that he sent a plumber out to fix the boiler. He stated that the plumber was sent out at least twice between the first contact of the 19th December, 2013, and the new boiler being installed on the 7th January, 2014. He also stated that he provided the Tenant with a heater during this period. He indicated that he had heard nothing further from the Tenant in respect of the heating system since that date. An invoice was provided in respect of the cost of the new boiler, dated the 6th January, 2014. He indicated that the receipt had only been sourced by him on the morning of the hearing.

Concerning the washing machine and dryer, the Landlord indicated that the first he became aware of any issue in this respect was in late January or early February, 2014, and that he sent the same workman up to resolve the issue. He indicated that he was informed the issue was with the filter. He stated that the same thing happened again in February 2014, and that people were there on his behalf three times in that month but that he received no further contact thereafter about the machine. He asserted that the first he was aware of an issue with the dryer was during the adjudication hearing in October 2014 and that that was the first he became aware the machines had been replaced. He indicated that no request for payment for the replacement machines was ever made to him, until he was first made aware of the issue during the adjudication hearing in October 2014. In respect of the expenses claimed for laundry, he stated that no bill was received by him, only one receipt for €54, allegedly comprising one week’s laundry costs, the original of which was given to the adjudicator.

In respect of the rodent issue raised by the Tenant, the Landlord indicated that the first he became aware of the issue was in October 2014 at the adjudication hearing. He stated that he believed the issue was resolved in August 2014, having regard to the receipt submitted by the Tenant and also given that he had had no further contact with the Tenant concerning rodents since that time. He stated that the dwelling was a new house with concrete floors and that there had never been a pest problem before. He also stated that he would have no difficulty in sorting out any problems with pests.

In respect of other issues complained of by the Tenant, in particular in respect of the flooring, the dishwasher and lighting issues, he indicated that he had not heard of those issues before the date of the adjudication hearing. In general, he asserted that Ger, the plumber/ handyman, dealt with most issues in respect of the Dwelling, albeit that he had not worked for the Landlord in over one year.

When cross-examined, the Landlord indicated that he believed the heating system had been working correctly at the commencement of the tenancy and that he had no idea why the adjudication report stated that he agreed it was not working. He indicated that he would not let a dwelling with a non-functioning heating system.

He also indicated under cross-examination that there had been discussions about extra rent, on top of the €1,100 being paid by RAS, being paid by the Tenant directly to the Landlord. He stated that there had been an agreement that €300 per month extra would be paid but that after the Tenant moved in, within three days, she stated that she could not afford the extra €300 per month and that he had only been receiving €1,100 per month from September 2013 to the date of the Tribunal hearing. However, he also stated that his judgment was not coloured by this and that he had always got on well with the Tenant. He stated that he had replaced the boiler, had the washing machine fixed and sorted out other items, including the side gate. He indicated that while he had only visited the Dwelling twice during the tenancy, to serve notices on the Tenant, he otherwise got people who worked for him to visit the Dwelling and that there was no need for him to personally visit the Dwelling.

In his closing submissions, he stated that Ger, his former employee, stopped working for him in March, 2014 and that the Tenant could not have been in contact with him after that date in respect of any issues. He stated that the only contact he had with Threshold was in respect of the heating issue in December, 2013 and that the heating issue was resolved.

Respondent Tenant’s Case:-

The Tenant’s case at all times was that the notice of termination was invalid but no further submissions were made by the Tenant before the Tribunal concerning the notice, other than the assertion that it was invalid.

In respect of the alleged breach of obligations by the Landlord, the Tenant submitted that all problems arose as a result of the fact she would not agree to pay top up in addition to the rent being paid by RAS.

In respect of the heating, she indicated that she spoke to the Landlord in July 2013, stating that it was not working. She stated that the plumber, Ger, called to the Dwelling and said the boiler needed to be replaced, but that this was not done. She refuted any suggestion that the Landlord had provided a heater and indicated she had purchased a heater herself, in addition to extra duvets, in order to keep warm. She accepted that the electric shower worked but stated that there was no hot water in the Dwelling. She indicated that Theresa Snow in Threshold contacted the Landlord in respect of the heating and it was only at that stage that anything was done, despite her contacting him a number of times from July to December, in particular more frequently from October to December. She stated that the plumber was also told of issues with the lighting in the bathroom not working but that she did not want him to look at it, as he was a plumber and not an electrician. She indicated that Ger was aware of the issues with the lighting but that these were never sorted.

In respect of the washing machine and dryer, the Tenant indicated that for around 8 weeks before they were replaced, the washing machine was not functioning correctly and the dryer was not properly drying clothes. She stated that there was a hole in the washing machine drum and a scratching sound, and that the water was not draining correctly. She indicated that Ger was advised of the problem and provided with a list of complaints. She did, however, accept that she was still able to dry clothes, given the fact she had a clothes horse and garden space. She stated that she advised Ger that she would have to buy new machines as the problems were not being resolved. In respect of the consequences of the machines not working, she advised that she had to pay to have her clothes laundered. She stated that this cost €54 per week, as it comprised three full bags of laundry each week, given the fact she has three children. She indicated that a receipt for this amount was given to the adjudicator during the adjudication hearing. She asserted that she had to have her clothes laundered for approximately 8 weeks until the new machines were purchased. She indicated that the old machines were removed when the new machines were installed. She did accept that if she was reimbursed for them, she would be happy for them to remain in the Dwelling at the end of her tenancy.

In respect of the rodent issue, she stated that she advised Ger of an issue with rodents around the time they started. She indicated that she got OnGuard pest control out within a couple of days to look into the problem and that she was told by them that the work they did was not going to get rid of the problem. However, she did state that she had not seen droppings or rodents since then, albeit she did hear scratching noises. She stated that she believed Theresa Snow of Threshold contacted the Landlord about the matter. She indicated that she was never advised by anyone to put matters in writing and that, after a certain point, where she was being fobbed off by the Landlord and getting no response from him or Ger, she saw no point in further contacting him.

In respect of the dishwasher, she indicated that it was raised with Ger that it was not functioning correctly and that he stopped coming to the house and that she had not further contact with him in respect of it. She also raised an issue with the carpet in the sitting room being in a poor condition, such that she had it replaced. However, she accepted that the issue was never raised with the Landlord or with Ger, and also that Saint Vincent de Paul had helped with the cost of the replacement.

In respect of lighting and electricity, she indicated that in only three of the eight rooms in the house did the lighting function correctly. She stated that numerous problems had existed from the commencement of the tenancy and had been brought up with Ger but were never dealt with satisfactorily. She indicated that as Ger was a plumber and not an electrician, she did not want him to deal with the lighting.

Under cross-examination, she indicated that Theresa Snow had helped her a number of times, including in putting a complaint in writing to the PRTB. She stated that she was never advised to inform Dublin City Council of the problems, and accepted that she had never written directly to the Landlord, as she dealt with Ger. She asserted that she had raised the issue of rodents with Ger in August, 2014 given that she always raised issues with Ger. She stated that she never used the immersion in the dwelling as it was expensive to run and she was not sure if it worked. She refuted any suggestion that she had got a heater from the Landlord and asserted she had purchased one herself when the heating was not working. She accepted that she did not contact a plumber herself in respect of the heating, albeit she did contact Ms. Snow. She also accepted that she had only contacted Ger, not the Landlord directly, in respect of the washing machine and dryer issues. She also refuted any suggestion that she had ever actually agreed to pay €300 per month extra.

In closing, she stated that all she wanted were the necessities to live in the Dwelling and that the Landlord had not made any effort to help her since she refused to pay the €300 top-up. It was submitted that the procedural issues meant the appeal was not validly before the Tribunal, that the RAS tenancy should have offered her security of tenure, that the notice of termination was invalid and that all the Tenant sought was to protect her tenancy and ensure she had the necessities required. She indicated that she did not put things in writing as she did not believe she would have to prepare a case to compel him to do so. She indicated that the failure of the Landlord to comply with his obligations had caused her stress and that she wanted the issues resolved.

**6. Matters Agreed Between the Parties**

The parties agreed that the tenancy continued in being and that rent was paid up to date at the rate of €1,100 per month.

**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.

7.1 Finding: The Tribunal finds that the appeal was validly referred to the Board and that time was validly extended.

Reasons: The Tribunal is satisfied that the Board have the power, under section 88 of the Act, to extend time for the referral of a dispute to the Board. Having regard to the fact this section refers solely to the Board having such a power, and not the Tribunal, the Tribunal finds that it does not have the power to look behind this decision on the part of the Board. However, in any event, where it is clear that the Landlord had formed a bona fide intention to appeal within the 21 day period provided, having regard to the evidence that he contacted the Board expressing displeasure with the contents of the adjudicator’s report, the Tribunal is satisfied that the Board was entitled to extend time and that time was validly extended. In those circumstances, the Tribunal is satisfied that it was appropriate for it to consider all matters on their merits, in particular in the absence of any appeal having been lodged by the Tenant against the decision of the Board pursuant to section 88(4) of the Act.

7.2 Finding: The Tribunal finds that the notice of termination served by the Landlord on the Tenant on the 23rd July 2014, was invalid and that the Tenant has suffered general distress and inconvenience as a result of the service of this notice.

Reasons: The notice as served does not on its face comply with the provisions of section 34, in particular paragraph 4 of the Table annexed to section 34. The section in question is clearly forward looking and requires that the notice indicate to the tenant that the landlord is required to offer the tenant a tenancy of the dwelling if the dwelling is vacated within six months of the relevant date. It is clear from the section that the notice of termination must specify this, or be accompanied by a statement to this effect, and that the landlord is required to make such an offer by virtue of the notice being served. It is also clear to the Tribunal that the requirement must be complied with at the time the notice is served, not merely if the dwelling is in fact vacated within the required period, given the wording of the paragraph outlining that the relevant statement in this respect must either be contained in the notice of termination or given in a separate statement accompanying the notice of termination. In those circumstances, where it is clear that the notice of termination does not contain the required details specified at paragraph 4(b) of the Table, the Tribunal finds that the notice is not valid. Further, it is clear that the Tenant referred a dispute to the Board within the 28 days provided. Having regard to the level of general distress and inconvenience the service of this invalid notice has caused, the Tribunal is satisfied that it is also appropriate to award damages of €250 to the Tenant in this respect.

7.3 Finding: The Tribunal finds that the Tenant has proved that the Landlord was in breach of his obligations in respect of the heating system, the washing machine and dryer and the lighting in the dwelling, and that the Tenant has suffered loss, damage, inconvenience and expense such as entitle her to damages of €1,596 in this respect, being €750 in respect of the heating system, €330 reimbursement in respect of the new washing machine and dryer, €216 in respect of laundry costs and €300 in respect of the issues with the lighting in the dwelling.

Reasons: The evidence of the Tenant was clear that issues in respect of the heating of the Dwelling were raised by her with Ger, the Landlord’s employee, shortly after she moved in. It is clear that the Tenant had to engage the services of Threshold before the matter was resolved, which is indicative of the Landlord failing to give the matter due regard. It is also clear that the boiler in the dwelling was not fixed until January 2014. While the Landlord denied being aware of the issue, this does not mean that the Landlord’s employee was not aware, and there is no evidence offered by the Landlord such as would contradict the evidence given by the Tenant that Ger was advised of the issue with the heating shortly after the Tenant moved into the Dwelling. In the circumstances, the Tribunal is satisfied that the issue should have been resolved by the start of October 2014, given the increased need for heating in winter, and that accordingly, the Tenant is entitled to damages of €250 per month thereafter, until the boiler was replaced in January 2014 giving a figure of €750 damages in this respect. The Tribunal is satisfied that the Landlord was required to ensure that there was a functioning heating system in the Dwelling and that he failed in this respect, having regard to section 12(1)(b) of the Act and the Housing (Standards for Rented Houses) Regulations 2008, as amended.

Similarly, in respect of the dryer and washing machine, the Tribunal is satisfied that Ger was advised by the Tenant of issues with the machine and dryer and that these were not adequately resolved. However, the Tribunal is satisfied that some time must be provided in this respect, and that it would be reasonable to expect a Landlord to take up to four weeks to repair or replace a washing machine or dryer. In those circumstances, while the machines may have been non-functional for up to eight weeks, the Tenant is only entitled to damages in respect of the costs of four weeks’ laundry, being €216. The Tribunal are satisfied that €54 per week is reasonable in the circumstances, having regard to the cost of laundry and the fact there are four residents in the dwelling, comprising the Tenant and her three children. Also, having regard to section 12(g) of the Act, the Tribunal are satisfied that the Landlord is obliged to pay the full cost of replacement of the washing machine and dryer, being €330. The Tribunal is satisfied that Ger acted as the Landlord’s authorised agent for the purposes of section 16(d) of the Act and that the Tenant complied with all her obligations in advising Ger of defects in the dwelling, rather than contacting the Landlord directly.

In respect of the lighting in the Dwelling, the Tribunal is again satisfied that this issue was brought to the attention of Ger near the commencement of the tenancy. While the Tenant did stop Ger giving it his attention, the Tribunal is satisfied that he was advised of the issue and that no further adequate steps were taken to resolve the issue. In circumstances where it appears the Landlord was not directly contacted in this respect, however, and as it appears Ger hasn’t worked for the Landlord since March, 2014 the Tribunal are satisfied that it is appropriate to award only €300 damages in this respect, notwithstanding the length of time a number of lights in the dwelling have not been working. However, the Tribunal are satisfied that this issue is ongoing and should be resolved by the Landlord as soon as is reasonably practicable .

7.4 Finding: The Tribunal finds that the Tenant has not proved that the Landlord was in breach of his obligations in respect of issues surrounding rodent control, the floor and carpets in the Dwelling or the dishwasher.

Reasons: It is clear on the evidence before the Tribunal that Ger ceased employment with the Landlord in March 2014. It is also clear that at no stage prior to the Tribunal hearing was the Landlord directly advised of issues surrounding rodent control, carpeting or the dishwasher. From the Tenant’s own evidence, none of these issues were raised directly with the Landlord, and accordingly, there is no evidence the Landlord was aware of the issues. While the Landlord may have been made aware of the issue with rodents in October 2014 at the adjudication hearing, there is no conclusive evidence before the Tribunal that rodents present an ongoing issue that requires action on the part of the Landlord, in particular in the absence of any sightings of either rodents or rodent droppings in the dwelling, the only evidence being assertions of hearing scratching sounds. Further, in any event, there is no evidence that the presence of rodents was caused by a structural issue with the dwelling such that the failure of the Landlord to remedy it would constitute a breach of obligations. In the circumstances, the Tribunal is not satisfied that the Landlord was in breach of his obligations in respect of any of these issues.

**8. Determination:**

**Tribunal Reference TR0515-001194**

**In the matter of Thomas Durran (Landlord) and Nichola Uzell (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on the 23rd July, 2014, by the Appellant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at 8a Walkinstown Green, Dublin 12, is invalid.

2. The Appellant Landlord shall pay the sum of €1,846 to the Respondent Tenant within 28 days of the date of issue of the Order, being reimbursement of costs in the sum of €546 incurred by the Tenant, plus damages of €1,300 as a result of the service of the invalid notice and as a result of the Landlord’s breach of obligations in failing to carry out necessary repairs and replacements in respect of the tenancy of the dwelling at 8a Walkinstown Green, Dublin 12.

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

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

**Eoin Byrne Chairperson**

For and on behalf of the Tribunal.