**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001195 / Case Ref No: 0315-17626**

**Appellant Tenant:** Arshia Syed

**Respondent Landlord:** Paul Donnelly

**Address of Rented Dwelling:** Door No. 4, 4 Campbell Court, Little Britain Street, Dublin 7.

**Tribunal:** Louise Moloney (Chairperson)

Andrew Nugent, Roderick Maguire

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

**Date & time of Hearing:** 24 August 2015 at 2:30

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| **Attendees:** | Sanobar Syed, witness for Appellant Tenant. |
| **In Attendance:** | Gwen Malone Stenography |

**1. Background:**

On 31/03/2015 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 an Adjudication which took place on 07/05/2015. There was no appearance by either party and the Adjudicator determined that Application was abandoned.

Subsequently the following appeal was received:

Tenant’s Appeal received on 27/05/2015. The grounds of the appeal: Deposit retention, Rent arrears, Standard and maintenance of dwelling; 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 Louise Moloney to be the chairperson of the Tribunal (“the Chairperson”).

On 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:**

* 1. PRTB File

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

The Appellant Tenant submitted the original tenancy agreement and the original Closure Notice issued by Dublin City Council, copies of the tenancy agreement and of the Closure Notice (save for page 3 of 3) are held on the PRTB file. Page 3 of 3 of the Closure Notice was copied by the Tribunal to be retained on the PRTB file and the original paperwork was returned to the Appellant Tenant at the conclusion of the Hearing.

**4. Procedure:**

The commencement of the Hearing was delayed by approximately 15 minutes to give the Respondent Landlord time to appear, he did not appear at any time during the Hearing.

The Chairperson asked the persons present to identify themselves and to identify in what capacity they were attending the Tribunal. She noted that there was no appearance by or on behalf of the Respondent Landlord. She confirmed with the Appellant Tenant that she had received the relevant papers from the PRTB in relation to the case and that she had received the PRTB document entitled “Tribunal Procedures”.

The Chairperson explained the procedure which would be followed; that while the Tribunal Hearing was a formal procedure the Tribunal would seek to be as informal as was possible; that the person who appealed (the Appellant Tenant) would be invited to present her case including the evidence of any witnesses; that if the Respondent Landlord appeared there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord if he appeared would then be invited to present his case, including the evidence of any witness, and that there would be an opportunity for cross-examination by the Appellant Tenant. She said that members of the Tribunal might ask questions of the Parties from time to time.

The Chairperson explained that following submissions, the Appellant Tenant would be given an opportunity to make a final submission and if the Respondent Landlord appeared he would be given an opportunity also to make a final submission.

She stressed that all evidence would be taken on oath or affirmation and would be recorded by the official stenographer present. She said that the Hearing is a public Hearing and members of the public were free to attend. She reminded the Appellant Tenant that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 and up to 6 months imprisonment or both. The Chairperson drew the Appellant Tenant`s attention to Section 7 of the Tribunal Procedures. She asked the Appellant Tenant if she had any queries about the procedure, there were no queries.

The Chairperson also reminded the Appellant Tenant 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].

The Persons giving evidence were then sworn in.

**5. Submissions of the Parties:**

Appellant Tenant’s case:

The Appellant Tenant said that she entered into an agreement for a six months tenancy in the dwelling with the Respondent Landlord which was due to commence on the 1st of February 2015 at a weekly rent of €200 payable four weekly in advance. She said that the dwelling was not ready to move into until the middle of February 2015, she said that the Respondent Landlord offered her, and her sister who she was going to share with, a room in the same house to stay in until the dwelling was ready. She said that they moved into the dwelling in the middle of February 2015.

The Appellant Tenant`s sister who gave evidence said that they had asked if there was any problem with the dwelling and that the Respondent Landlord told them there was none.

The Appellant Tenant said that she paid four weeks rent in an amount of €800 plus a security deposit of €800 to the Respondent Landlord by an initial payment of €100 and the balance of €1500 paid on the 19th of January 2015 as evidenced by the endorsement on the Lease agreement on the PRTB file.

The Appellant Tenant and the Appellant Tenant`s sister said that in March a further payment of €700 was made to the Respondent Landlord who offered them a discount of €100 if the Appellant Tenant paid to him, in advance of when the rent payment was due, €700 to cover the rent for four weeks from the 20 March 2015 to the 17 April 2015. They said that this proposal is reflected by the note made by the Respondent Landlord on the page of the Lease headed “SECOND SCHEDULE” and that the payment of €700 was made to the Respondent Landlord in accordance with this proposal.

The Appellant Tenant said that the Closure Notice from Dublin City Council on the PRTB file was served on them on the date of the Notice being the 24th of March 2015, she said that they were told they must leave that day. They said they were also told that if they stayed even one night in the dwelling a fine of €10,000 would be payable by them. The Appellant Tenant said that she and her sister had to remove all their belongings, she said that they stayed with friends and that it took them 2/ 3 weeks to find another flat. She said that when they found the flat where they continue to live they had to pay a security deposit of €1200 and one month`s rent in advance of €1200. She said that she incurred re-location expenses of €120 to pay for three round trips by taxi to remove all their belongings from the dwelling.

She said that they did talk to the Respondent Landlord when an inspection was carried out by the Fire Brigade Service and that he had asked them what was said during the inspection. She said that when the Closure Notice was served she tried to make contact with the Respondent Landlord, she said that he did not respond.

The Appellant Tenant explained that she did not appear at the Adjudication Hearing as she was not aware of the Hearing date allocated, she said that she had given an incorrect contact address to the PRTB and therefore did not receive the notice of the Adjudication Hearing.

Respondent Landlord’s case:

No submissions as no attendance/appearance by or on behalf of the Respondent Landlord.

**6. Matters Agreed Between the Parties**

None.

**7. Findings and Reasons:**

Having considered all 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 7.1

The Respondent Landlord shall pay the sum of €800.00 to the Appellant Tenant within fourteen days of the date of issue of the Determination Order being the unjustifiably retained security deposit of €800.00 paid by the Appellant Tenant in respect of the tenancy in the dwelling

Reason:

The Tribunal accepts the Appellant Tenant`s evidence with regard to the payment of the security deposit of €800 under the tenancy agreement, the abrupt ending of the tenancy agreement on service of the Closure Notice by Dublin City Council on the 24th of March 2015 and the failure on the part of the Respondent Landlord to refund the security deposit.

Finding 7.2

The Respondent Landlord shall pay the sum of €600 to the Appellant Tenant within fourteen days of the date of issue of the Determination Order being for rent paid in advance for the period of 24th March 2015 to the 17th of April 2015 in respect of the tenancy in the dwelling.

Reason:

The Tribunal accepts the Appellant Tenant`s evidence as to the discount offered by the Respondent Landlord of €100 for the advance payment of the rent for the four week period 20 March 2015 to 17 April 2015 and that payment of €700 was made by the Appellant Tenant to the Respondent Landlord in acceptance of this discount. The Appellant Tenant had to vacate the dwelling on the 24th of March 2015 when the Closure Notice was served on her by Dublin City Council and therefore only had the benefit of the dwelling for four days of the four week period paid for in advance. The Appellant Tenant paid €700 for the four week period being a 28 day period which is equivalent to €25 rent per day, four days rent at €25 per day is €100. Therefore the Tribunal has deducted the sum of €100 in respect of the four days benefit received by the Appellant Tenant in respect of the said rent payment of €700 leaving a sum of €600 to be repaid to the Appellant Tenant by the Respondent Landlord.

Finding 7.3

The Respondent Landlord shall pay the sum of €4,120.00 to the Appellant Tenant within fourteen days of the date of issue of the Determination Order being damages for breach of the Respondent Landlord` obligations under the Act and in particular Section 12 (1) (a), (b) and (d) thereof in respect of the tenancy of the dwelling.

Reason:

The Tribunal accepts the Appellant Tenant`s evidence with regard to the tenancy agreement entered into in respect of the dwelling, the payments made in respect of the security deposit of €800, the rent of €800 paid to the Respondent Landlord prior to the commencement of the tenancy and the rent payment of €700 paid in advance to the Respondent Landlord in March 2015 in respect of the period 20 March 2015 to the 17 April 2015.

The Tribunal also accepts the Appellant Tenant`s evidence with regard to the Closure Notice served by Dublin City Council on the 24th of March 2015 which required the Appellant Tenant to immediately leave the dwelling which gave rise to difficulty and expense for the Appellant Tenant who with her sister had to move in with friends, remove their belongings from the dwelling and ultimately find somewhere else to live which took two/three weeks for them to do. The Tribunal notes that to obtain somewhere else to live the Appellant Tenant had to provide upfront payments totalling €2400 for a security deposit and one month`s rent.

The Tribunal accepts the Appellant Tenant`s evidence as to taxi expenses of €120 incurred in her removal of belongings from the dwelling and relocation to another place.

The Tribunal is satisfied from the evidence furnished that the Appellant Landlord is in breach of his obligations under the Act with regard to the standard and maintenance of the dwelling, the Closure Notice served by Dublin City Council dated 24th of March 2015 is noted by the Tribunal in this regard. The Tribunal is also satisfied that the Appellant Tenant was entitled to the return of her security deposit when the tenancy was ended on the 24th of March 2015 and that the Respondent Landlord unjustifiably retains the security deposit paid of €800 paid by the Appellant Tenant in the dwelling.

The Tribunal notes and accepts the evidence given concerning the abrupt ending of the tenancy in the dwelling by the service of the Closure Notice, the failure of the Respondent Landlord to communicate with the Appellant Tenant on or after the date of the Closure Notice, the arrangements which had to be made by the Appellant Tenant to find somewhere else to live for herself and her sister without any notice or warning in advance of the 24 March 2015. The Tribunal considers in the circumstances that €4120 in a reasonable sum to award for damages for breach of the Respondent Landlord`s obligations with regard to the standard and maintenance of the dwelling, the right of the Appellant Tenant to enjoy peaceful occupation of the dwelling under the tenancy and the Respondent Landlord`s failure to return promptly the security deposit. The said sum of €4120 includes the Appellant Tenant`s taxi expenses of €120.

**8. Determination:**

**Tribunal Reference TR0515-001195**

**In the matter of Arshia Syed (Tenant) and Paul Donnelly (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

In the matter of Arshia Syed (Appellant Tenant) and Paul Donnelly (Respondent Landlord) the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act 2004 determine that:

The Respondent Landlord shall pay the total sum of €5,520.00 to the Respondent Tenant within fourteen days of the date of issue of the Determination Order, the reason being the unjustifiably retained of the security deposit of €800.00 plus the refund of rent payments made in advance of €600.00 plus €4,120.00 in respect of damages for the breach by the Respondent Landlord of his obligations under the Act and in particular Section 12 thereof in respect of the tenancy of the dwelling at Door No. 4, 4 Campbell Court, Little Britain Street, Dublin 7.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 04/09/2015.

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

**Louise Moloney Chairperson**

For and on behalf of the Tribunal.