**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0515-001196 / Case Ref No: 0315-17378**

**Appellant Tenant:** Leanne McCarthy

**Respondent Landlord:** Sabrina Dilon, David Brady (Receiver), Sean Webb (Receiver)

**Address of Rented Dwelling:** 12 Allendale Place, Clonsilla , Dublin 15, D15E1RH

**Tribunal:** Healy Hynes (Chairperson)

Anne Colley, Roderick Maguire

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

**Date & time of Hearing:** 25 August 2015 at 10:30

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| **Attendees:** | Leanne McCarthy, Appellant Tenant  Eoin Burke,Respondent Landlord’s Agent  Naomi Williams ,Receivers’ Representative  Helena Dunne ,Receivers’ Representative |
| **In Attendance:** | Gwen Malone Stenography |

**1. Background:**

On 19 March 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 April 2015. The Adjudicator determined in the matter of Sean Webb & David Brady (the Applicants), in their capacity as joint Receivers over certain assets of Sabrina Hanlon, also known as Sabrina Dillon (the Landlord) and Leanne McCarthy (the Respondent Tenant), that:

1. The Notice of Termination served on 23 July 2014, by the Applicant Joint Receivers on the Respondent Tenant, in respect of the tenancy of the dwelling at 12 Allendale Place, Clonsilla, Dublin 15, is valid.

2. The Respondent Tenant and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 14 days of the date of issue a Determination Order by the Board.

3. The Respondent Tenant shall pay the total sum of €11,873.95 to the Applicant Joint Receivers, in 11 consecutive monthly payments of €1,000.00, on the 28th day of each month, followed by one payment of €873.95 on the 28th day of the immediately succeeding month, commencing on the 28th day of the month immediately following the date of issue of the Determination Order by the Board, being rent arrears in respect of the tenancy of the above dwelling.

4. The enforcement of the Order for such payment of €11,873.95 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Respondent Tenant to the Applicant Joint Receivers on each due date until such time as the total sum of €11,873.95 has been paid in full.

5. For the avoidance of doubt, any default in the payment of any of the monthly instalments 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 Applicant Joint Receivers.

6. The Respondent Tenant shall also pay any further rent outstanding from 28 April 2015, at the rate of €880.00 per month or proportional part thereof at the rate of €28.93 per day and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as she vacates the above dwelling.

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

Subsequently the following appeal was received from the tenant on 28 May 2015. The grounds of the appeal were: Rent arrears and Overholding. The appeal was approved by the Board on 12 June 2015.

The PRTB constituted a Tenancy Tribunal and appointed Anne Colley, Healy Hynes, Roderick Maguire as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Healy Hynes to be the chairperson of the Tribunal (“the Chairperson”).

On 8 July 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 25 August 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:**

No further documentation was submitted on the day of the Tribunal.

**4. Procedure:**

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Tenant against a determination made following an adjudication held on 28 April 2015 in the case of a dispute between the Tenant and the Respondent Landlord in respect of a tenancy at 12 Allendale Place, Clonsilla, Dublin 15. 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 Chairperson 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 a formal procedure but would be conducted in as informal a manner as was possible, 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 Tenant 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 Landlord; that the Respondent Landlord’s representatives would then be invited to present their case, followed by an opportunity for cross-examination by the Appellant Tenant. 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 Tenant and the Respondent Landlord 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 Tenant’s Case:

The Appellant stated to the tribunal that her case in the matter related to two points:

1. That she was not in breach of her obligations in failing to pay rent as the Respondent Landlord did not provide documentation she had requested to enable her to claim rent allowance for her tenancy in the matter.

The tenancy commenced with two co-tenants in occupation in the property. The Tenant stated that they were in receipt of rent supplement, and that the Landlord owner of the dwelling had let it to her on that basis. Following the appointment of the receivers in the matter, the second party to the tenancy vacated the property. Therefore the circumstances of the Tenant changed and she was required to apply to change the allowances being claimed to remain in occupation as otherwise her rent allowance would not be sufficient to pay the rent.

As the Tenant had been in receipt of rent allowance, she stated that the failure of the Receivers’ agent to provide this document meant that she was unable to pay rent. Therefore the Respondent Landlord in the matter was essentially the cause of the failure of the Tenant to receive rent allowance, and she was not the cause of arrears of rent due. She said she had spoken with Eoin Burke from the agent’s firm following the receipt of the Adjudicator’s Determination and was shocked when she said he told her that they could now give her the necessary letter of confirmation, as the delay in giving it to her had caused the rent arrears to build up and also caused her great distress and worry. The Appellant Tenant said that she was currently working with the Community Welfare Officer and other officials to restore the payment of Rent Supplement to her, which could facilitate the discharge of rent arrears. Due to the passage of time since her co-tenant had left she was now unable to arrange for her original rent supplement payment to be adjusted but had to make a full re-application for the payment.

The Appellant Tenant stated that she had had a good working relationship with the landlord prior to the appointment of the receivers in the matter and had kept all rents up to date.

The Appellant Tenant felt that, regardless of the validity of rent arrears or not, the determination order that issued was not tenable in light of the level of her income, which currently derived solely from Lone Parents Allowance.. She further stated that she did not believe the Adjudicator had taken her submissions at the adjudication hearing into account in relation to payment of rent arrears, as they were not reflected in the report and determination made by him.

2 The Appellant further stated that the first Notice of Termination served on her by the Receivers was invalid as it had only allowed 28 days for termination as her lease was in existence for 11 months longer than inferred by the Receivers, but that a second one was served on 23rd July 2014 giving her 56 days to vacate. However, she stated that she had nowhere for herself and her child to move to, despite having searched very actively for an alternative dwelling, and having approached other bodies for assistance in sourcing one.

Respondent Landlord’s case:

The Respondent Landlord’ representatives stated that the Tenant had not made any payments for rent due from 13 March 2014 subsequent to when the appointment of the Receiver (on 6 March) was notified to the Tenant. A sum of €14,960 was claimed as arrears of rents which represented rent due up to the date of the hearing.

A Notice of Termination was served on the Tenant on 23rd July 2014 on the grounds that the receivers sought to sell the property.

The Respondent Landlords denied that they had been made aware of the Tenant’s requirement for a letter confirming her continued occupancy of the dwelling before the adjudication. They also said they had not received a copy of the Tenant’s letting agreement until shortly before the Tribunal hearing and had not known the commencement date of the tenancy until then, but now accepted that it had been the 2nd December 2011. The representative of the agents present at the hearing, Mr Burke, denied that he had told the Tenant after the Adjudication Determination had been received by the parties, that he would furnish her with the relevant letter at that stage. However, he acknowledged that he had not kept notes of his conversations with the Tenant, and that he had many such calls in his daily work schedule. Subsequent to the Adjudication hearing, he said they had worked with the Appellant Tenant to complete the documentation required by the Social Welfare officers.

**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 names of the parties and the address of the rented dwelling are as set out above.

• The tenancy commenced on 2nd December 2011.

• The Tenant remains in occupation of the dwelling on the date of the Hearing.

• The rent is currently was €880 per month. The Rent was cited in the letting agreement at €925, however a reduction was agreed prior to the appointment of the receivers.

**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 Respondent Landlords’ claim in respect of breach of Tenant obligations for failing to pay rent in relation to the tenancy of the dwelling at 12 Allendale Place, Clonsilla, Dublin 15, is upheld, and finds that the Appellant Tenant is liable to pay the outstanding rent amount of €14,960 to the Respondent Landlord.

Reasons: Although it is acknowledged that the Respondent Landlord’s representatives did not provide documentation to the Appellant in the matter, there is no obligation under the 2004 Residential Tenancies Act for them to do so. The obligation of the Tenant under Sec. 16(a) of the 2004 Act does not rely on any action by the Landlord in the matter. Failure to pay rent is a breach of obligation in and of itself. It must also be noted that under the Act, the requirement by one party to abide by their obligations is not reduced by the failure of the other party to carry out theirs. Therefore the onus is on the tenant to pay rent agreed, regardless of the source of same.

However, although the failure of the Respondent Landlord’s receivers in the matter, to provide the requisite documentation is not a breach as defined by the Act, the tribunal finds that in their position that they were not aware of the Tenant’s requirement to have confirmation of occupation is not tenable. It appears that poor record keeping was a contributing element but is not found by the Tribunal to be a valid position for the Landlord’s receivers’ agents.

The actions of the Receivers’ agents, subsequent to the initial adjudication, in working with the Appellant Tenant in the matter to complete the requisite documentation is an acknowledgement that they understood the Appellant did require this assistance to be able to comply with tenant obligations under the Act.

It is therefore reasonable to infer that the information required to allow the Appellant Tenant to receive the allowances for the period in question has now been provided and it is for the Tenant to follow up and complete the formalities with the Welfare Officers responsible for her case and to arrange for the discharge of the rent arrears.

Finding 2:

The Tribunal finds that the Respondent Landlord’s claim in respect of overholding in respect of the tenancy at 12 Allendale Place, Clonsilla, Dublin 15, is upheld.

Reasons: The tribunal finds that the Notice of Termination as served on 23rd July 2014 is in compliance with the requirements of Sec. 62 of the 2004 Residential Tenancies Act. Specifically, irrespective of the date of lease commencement, the tenancy was in existence for under 3 years, therefore a 56 day notice period of termination is valid.

The tribunal fully acknowledges the statements as expressed by the Appellant relating to her personal circumstances and have therefore determined under Section 115 (1)(e) of the Act that she should be given a longer period within which to vacate the dwelling, being 84 days from the date of the issuing of the Determination Order by the Board.

**8. Determination:**

**Tribunal Reference TR0515-001196**

**In the matter of Leanne McCarthy (Applicant Tenant) and, David Brady (Receiver over certain assets of Sabrina Dilon), Sean Webb (Receiver over certain assets of Sabrina Dilon) (Respondents), Sabrina Dilon (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 23 July 2014, by the Respondents on the Appellant Tenant, in respect of the tenancy of the dwelling at 12 Allendale Place, Clonsilla, Dublin 15, is valid.
2. The Appellant Tenant and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 84 days of the date of issue of a Determination Order by the Board.
3. The Appellant Tenant shall pay the total sum of €14,960 to the Respondents, in a maximum of 748 or minimum of 1 consecutive weekly payments of a minimum amount of €20 per week or a maximum of €14,960 per week on the Monday of each week, commencing on the first Monday of the week immediately following the date of issue of the Order, being rent arrears of €14,960.
4. The enforcement of this Order for such payment of €14,960 will be deferred and the total sum owing reduced by the cumulative sum paid in at least the minimum weekly instalments made by the Appellant Tenant to the Respondents on each due date until such time as the total sum of €14,960 has been paid in full.
5. For the avoidance of doubt, any default in the payment of any of the weekly instalments shall act to cancel any further deferral and the balance due at the date of default of any such weekly payment shall immediately become due and owing to the Respondents.
6. The Appellant Tenant shall also pay any further rent outstanding from 25 August 2015, at the rate of €880 per month or proportional part thereof at the rate of €28.93 per day and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as she vacates the dwelling.

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

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

**Healy Hynes Chairperson**

For and on behalf of the Tribunal.