

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000677 / Case Ref No: 0114-09889

Appellant Tenant:	Patricia Creaton, Denis Creaton
Respondent Landlord:	Andrew Hanley
Address of Rented Dwelling:	No 1 Hanley Avenue, Loughglynn, Castlerea, Co. Roscommon
Tribunal:	John FitzGerald (Chairperson) Gene Feighery, John Tiernan
Venue:	Ante Chamber, Athlone Civic Centre, Church Street, Athlone, Co. Westmeath
Date & time of Hearing:	10 September 2014 at 2:30
Attendees:	Patricia Creaton - Appellant Tenant Andrew Hanley - Tribunal Respondent Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 17 January 2014 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 24 April 2014. The Adjudicator determined that;

The Respondent Tenants shall pay the total sum of €2508.58 to the Applicant Landlord within 42 days of the date of issue of the Determination Order, being rent arrears, in respect of the tenancy of the dwelling at No. 1 Hanley Avenue, Loughglynn, Castlerea, Roscommon.

Subsequently the following appeals were received by the Board on 3 June 2014 from the Tenant. The grounds of the appeal were rent arrears and this appeal was approved by the Board at its meeting on 06 June 2014.

The PRTB constituted a Tenancy Tribunal and appointed John FitzGerald, Gene Feighery, John Tiernan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John FitzGerald to be the chairperson of the Tribunal ("the Chairperson").

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 10 September 2014 the Tribunal convened a hearing at Ante Chamber, Athlone Civic Centre, Church Street, Athlone, Co. Westmeath.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

Bank statements of Mr Andrew Hanley (6 pages).

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 also advised the Parties that any member of the Tribunal may ask a question during the hearing which must be answered.

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 up to €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].

The parties were sworn in.

5. Submissions of the Parties:

Evidence of the first named Appellant Tenant.

The first named Appellant Tenant outlined how this had been an informal letting as she and her husband had known the Respondent Landlord prior to moving into the dwelling. She said that she took up occupancy of the Dwelling on 27th July 2012. She stated that she accepted that she was not a very good manager of her affairs and that she accepted that rent was outstanding and owing to the Respondent Landlord. She calculated this rent to be in the amount of €800 for the initial two months of the tenancy which she claimed had been as a result of an error on the part of her bank and a further €640 over the period of the letting which totalled €1,440.00. In response to a query from the Tribunal she confirmed that during the course of the tenancy she had not made up the payment of €800 allegedly made through her bank to cover the payments due during the initial two months of the tenancy and which she claimed went astray.

The Appellant Tenant gave evidence that the initial rental agreement was that the rent would be €400 per month. She referred to copies of email communications between the

parties to support her contention that following a request from herself to the Respondent Landlord the original agreement was amended to a monthly rent of €320 comprised of 4 weekly payments of €80 to be paid on each Friday. She gave evidence that this new arrangement incorporated the agreement between the parties that in a month that included five Fridays no payment would be due on the fifth Friday. The email evidence as submitted by the Appellant Tenant showed that the parties agreed that the new rental arrangement was to commence from 1st October 2012. In support of this interpretation of the revised agreement between the parties she pointed to the fact that the matter of arrears arising which would follow if the Respondent Landlord's interpretation were the case was not mentioned in the emails from the Respondent Landlord subsequent to the changed arrangement and even though she skipped payments on the fifth Friday in months with five Fridays. The Appellant Tenant said that she believes that the amount of rent arrears which she owes to the Respondent Landlord amounts to a total sum of €1,440. The first named Appellant Tenant did not submit any supporting documentation in the form of Bank receipts or other independent verification of any rental payments pertinent to the tenancy period.

The first named Appellant Tenant stated that she had notified the Respondent Landlord of anti-social behaviour in the estate in which the Dwelling is situated. She said that this was specifically in relation to two neighbouring properties. She outlined various communications between herself and the Respondent Landlord wherein steps to address the issue were apparently being pursued by the Respondent Landlord at her urging. From the evidence adduced it was evident that the first named Appellant Tenant was aware that neither of the two Dwellings from which the alleged anti-social behaviour emanated was owned by the Respondent Landlord. She gave evidence that the Respondent Landlord was part of the management company that was responsible for the estate.

The first named Appellant Tenant said that the anti-social behaviour eventually became intolerable for her and that she vacated the Dwelling. She said that due to the alleged anti-social behaviour in the estate she and the second named Appellant Tenant had only lived intermittently in the Dwelling in July 2013 and hardly at all in August 2013. She said that she did not issue any formal notice of termination but she said that she did inform the Respondent Landlord by text on 22nd August 2012.

The first named Appellant Tenant stated that she had to purchase two fire grates and organise repairs to the boiler and washing machine in the Dwelling. She outlined payments she had made in cash to workmen for repairs viz; 1) repair to the oil burner which cost €100 2) the purchase of 2 new fire grates which cost €100 and 3) a further payment to the boiler service man of €50.00 4) repairs necessitated due to a leaking radiator in the sum of €250 and 5) and repairs to the washing machine in the sum of €150. She did not adduce any receipts in evidence respect of these payments

The first named Appellant Tenant summed up her evidence by stating that she regretted that the relationship with the Respondent Landlord had become sour. However she said that he had been untruthful with her in regard to the progress being made in relation to the alleged anti-social behaviour.

Evidence of the Respondent Landlord

The Respondent Landlord outlined how he was acquainted with the second named Appellant Tenant and his family prior to agreeing to rent the Dwelling to the Appellant Tenants. He said that the first named Appellant Tenant was anxious to move into the

house and that she had been very nice and polite in her interactions with him. He said that the tenancy agreement was an informal arrangement, that he did not request a deposit and that he told the first named Appellant Tenant that he would follow up by supplying her with his bank account details into which she could lodge rental payments. He gave evidence that he had supplied these details by email on 13th September 2012. He stated that he had been played along by the Appellant Tenants in relation to outstanding rent and payments were never on time. He said that he could not ever establish the inconsistencies in the first named Appellant Tenant's story regarding rent payments to his account. He said that during the tenancy the payments were intermittent and inconsistent.

The Respondent Landlord said that the rent had initially been agreed at €400 per month. He said that he was not charging rent in respect of any period in July 2012 and that in his assessment liability for rental payments on the part of the Appellant Tenants commenced on 1st August 2012. He also stated that outside of his bank statements which showed the lodgements made by the first named Appellant Tenant he had collected a cash payment of €320 in October 2012 at the Dwelling. He referred to the email correspondence submitted in evidence and which showed that when requested by the first named Appellant Tenant he had agreed to reduce the rent to €80 per week. He averred that the interpretation in regard to the fifth Friday in a month being rent free was not grounded in reality and that there was no evidence to support this interpretation.

The Respondent Landlord stated that he had received no Notice of Termination from the Appellant Tenants and that he had not received any text advising him of their impending departure from the Dwelling on 22nd August 2013 as alleged by the first named Appellant Tenant. He said that he received the keys to the Dwelling on 13th September 2013 and that an email on that date informed him that the Appellant Tenants had vacated. He said that despite initial advertising the Dwelling has not been re-let since which he opined was due largely to the market conditions particularly in the rural area of Loughlynn.

The Respondent Landlord stated that as far as he was concerned the alleged repairs to the dwelling by the Appellant Tenant were 'pie in the sky' except perhaps for the heating system which she may have fixed. He dismissed the allegation that the estate was anti-social but accepted that the Gardai had been in attendance there at times.

6. Matters Agreed Between the Parties

The following matters were agreed between the Parties:

1. The first month was to be a rent free period.
2. The rent agreed for the next two months was €400 per month.
3. The rent payable from 27 October 2012 was to be €80 per week.
4. The tenancy ended on 13th September 2013.
5. There was no deposit paid by the Appellant Tenants.

7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence presented to it by the Parties and based upon the balance of probabilities the Tribunal's findings and reasons therefor are set out hereunder.

7.1 Finding No 1: The Tribunal finds that the agreement between the parties in regard to rental payments was amended in October 2012 from €400 per month to €80 per week.

Reason: The Tribunal accepts the evidence contained in the email correspondence between the parties and the two emails of 13th September 2012 the second of which unambiguously states that the rent from 1st October 2012 was to be €80 per week.

7.2 Finding No 2: The termination of the tenancy of the Dwelling by the Appellant Tenants did not comply with the requirements of the Act of 2004. The Tribunal awards €320 being weeks rent to be paid by the Appellant Tenants to the Respondent Landlord in lieu of adequate notice

Reason: The Tribunal accepts the evidence of the Respondent Landlord in regard to the manner in which he was informed that the Appellant Tenants informed him that they had vacated the Dwelling on 13th September 2013 and that the keys were returned to him on that day. The first named Appellant Tenant stated that she sent a text message which was not adduced in evidence to the Respondent Landlord on 22nd August 2013 which text message in itself would not have comprised an appropriate form of notice under the Act of 2004.

7.3 Finding No 3: The Tribunal finds that rent is outstanding in the sum of €2,360 and that the Appellant Tenant is in breach section 16(a) of the Residential Tenancies Act 2004 by failing to pay rent on the date it fell due.

Reason: The Tribunal accepts that rent arrears now stand at €2,360 and accepts that the Appellant Tenant is in breach of her obligations under Section 16 of the Act to pay rent on the date it falls due. Findings No 1 and 2 above are instructive in calculation of the amount due. The Tribunal has taken in to account the content of the bank statements submitted by the Respondent Landlord. The Tribunal also considers that rent was due and owing for the period of one month in lieu of notice of termination from 13th September 2013 to 12th October 2013.

For the purpose of clarity to the parties the Tribunal has compiled the arrears as set out below:

The arrears of rent and amount owing are calculated in the table hereunder

Date	Rent Paid	Month	Rent Due
27/07/2012	400	August	400
12/10/2012	320	September	400
23/11/2012	160	October	320
30/11/2012	80	November	400
14/12/2012	80	December	320
18/12/2012		January	320
15/01/2013	80	February	320

18/01/2013	80	March	400
29/01/2013	80	April	320
14/02/2013	80	May	400
25/02/2013	80	June	320
04/03/2013	80	July	320
12/03/2013	80	August	400
19/03/2013	80	September	320
28/03/2013	80	October 14 days	160
14/06/2013	320		
28/06/2013	400		
15/07/2013	280		
Total Paid		2760	
		Total Due	5120
Balance Due =		2360	
		Less costs incurred	400
			1960

7.4 Finding No 4: The Tribunal finds that the Respondent Landlord was in breach of his obligations under Section 12(1)(b) of the Act of 2004 in failing to carry out maintenance to the heating system in the Dwelling. The Tribunal awards €400 in damages arising from the consequences of that failure.

Reasons:

The Tribunal accepts the evidence of the first named Appellant Tenant that she expended the sum of €400 on repairs to the heating system including two payments totalling €150 in relation to boiler repairs and a payment of €250 for repairs to a leaking radiator. The Tribunal accepts the evidence of the first named Appellant Tenant that these sums were expended by the Appellant Tenants and that the Respondent Landlord was aware of and had on the balance of probabilities acquiesced to this arrangement. The Respondent Landlord said in evidence that he considered the list of repairs allegedly carried out by the Appellant Tenants to be 'pie in the sky' except for the heating system which he said they may have fixed.

8. Determination:

Tribunal Reference TR0614-000677

In the matter of Patricia Creaton, Denis Creaton (Tenant) and Andrew Hanley (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1) The Appellant Tenants shall be jointly and severally liable to pay €1,960 to the Respondent Landlord in six consecutive monthly instalments of €300 on the 28th day of each month followed by one further instalment of €160 on the 28th day of the immediately succeeding month commencing on the 28th day of the month immediately following the issue of the Determination Order by the Board being rent arrears of €2,360 having deducted the sum of €400 in respect of damages arising in costs as a consequence of the failure of the Respondent Landlord to carry out repairs to the Dwelling, in respect of the tenancy of the Dwelling at 1 Hanley Avenue, Loughlynn, Castlerea, County Roscommon.

2) The enforcement of this Order for such payment will be deferred and the total sum owing will be reduced by the amount of the cumulative sums of the instalments made to the Respondent Landlord on each due date until the entire sum owing is paid.

3) For the avoidance of doubt any default in the payment of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Respondent Landlord.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 12/10/2014.

A handwritten signature in blue ink, reading "John FitzGerald", with a horizontal line underneath.

Signed:

John FitzGerald Chairperson

For and on behalf of the Tribunal.