

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0614-000680 / Case Ref No: 1013-08538**

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|------------------------------------|---|
| <b>Appellant Landlord:</b>         | Siobhain O Connell  |
| <b>Respondent Tenant:</b>          | Aidan Devine  |
| <b>Address of Rented Dwelling:</b> | 12 Gainsborough Park, Malahide , Dublin   |
| <b>Tribunal:</b>                   | John Tiernan (Chairperson)<br>Finian Matthews, Gene Feighery  |
| <b>Venue:</b>                      | PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2   |
| <b>Date &amp; time of Hearing:</b> | 05 August 2014 at 10:30   |
| <b>Attendees:</b>                  | Siobhain O Connell, Tribunal Appellant, Landlord,<br>Aidan Devine, Tribunal Respondent, Tenant,<br>Catherine Devine, Tribunal Respondent, Tenant. |
| <b>In Attendance:</b>              | Gwen Malone Stenographers   |

**1. Background:**

On 23/10/2013 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 10/03/2014. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €1,050 to the Applicant Tenants within 14 days of the date of issue of the Order being the unjustifiably retained portion of the security deposit of €1,400 having deducted the sum of €350 for damage in excess of normal wear and tear in respect of the tenancy of the dwelling at 12 Gainsborough Park, Malahide, Co. Dublin.

Subsequently the following appeal was received:

Landlord : received on 30/05/2014. The grounds of the appeal: Deposit retention ;  
Approved by the Board on 20/06/2014

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

On 2/07/2014 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 05/08/2014 the Tribunal convened a hearing at 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:**

Two original invoices, one handwritten record of payment and one photograph submitted by the Appellant Landlord and accepted by the Tribunal.

## **4. Procedure:**

The Chairperson asked the persons present to identify themselves and to identify in what capacity they were attending the Tribunal. He confirmed with the parties present 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". He explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as was possible. He said that members of the Tribunal might ask questions of the parties present from time to time.

The Chairperson explained to the parties present that in the event that agreement is reached between the parties the terms of any such agreement can be incorporated in to a determination of the Tribunal and thus become enforceable through the Courts.

He 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.

He 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 enforced by either of the parties or in some cases by the Board of the PRTB at its discretion. He also advised the parties that the Tribunal process was the final step in the dispute resolution process unless appealed to the High Court on a point of law only.

He asked the parties if they had any queries about the procedure. There were none.

The parties were sworn in.

## **5. Submissions of the Parties:**

Evidence of the Appellant Landlord:

The Appellant Landlord explained that she became a Landlord by happenstance. She said that the Dwelling subject of this dispute had been her family home along with her then husband. Circumstances evolved such that they left the family home and the decision was taken to rent the Dwelling to prospective tenants in or about 2008. She said that the tenancy which is the subject of this dispute was the third such letting.

Tenancy Commencement

The Appellant Landlord gave evidence that prior to the commencement of the tenancy the Respondent Tenants were very eager to move in immediately and took up residence before a thorough deep cleaning following the previous tenancy was effected. She also confirmed that at the commencement of the tenancy due to the rushed urgency in

installing the Respondent Tenants she had walked through the Dwelling with the previous tenant and had returned his security deposit in full promptly. In response to a query from the Tribunal she said that she was aware at the commencement that the tenants had a family of two teenage boys and a daughter with special needs.

She said that she understood the position of the Respondent Tenants in relation to their special needs child and that she tolerated the fact that food and beverages were spilled on the sitting room carpet. She said that she knew the Respondent Tenants would have the carpet cleaned on a regular basis. However she said on vacation of the tenancy she had the carpets throughout the house professionally cleaned but that some stains still remained. One stain in particular on the sitting-room carpet could not be removed.

#### Sitting Room Carpet

The Appellant Landlord submitted evidence that a replacement for the sitting room carpet would cost €625. She said that she had not replaced it for the subsequent new tenant in the Dwelling because of the cost and time factor between the tenancies. In response to the Tribunal the Appellant Landlord confirmed that the Dwelling was 12 years old at the time of termination in 2013 and that the sitting room carpet was the original one. She said that it was scotch guarded and that despite its age it was a good wool carpet with a deep pile and in good condition at the commencement of the tenancy. Furthermore she said that there was stain damage on the carpet in the main bedroom and that she was claiming the sum of €95 in respect of the professional carpet cleaning in that room.

#### Dining Room Floor

The Appellant Landlord gave evidence that following vacation of the tenancy the dining-room floor was characterised by scratches and deep gouges particularly in the vicinity of the dining table. This she said that this was despite the fact that the dining chairs had padded feet. She said that restorative work required that the entire floor be sanded and that as the same flooring continued to an adjacent room it too needed to be stripped and re-varnished in order that the finished product would match in both rooms. She provided evidence that the cost of this work amounted to €400.

#### Kitchen Floor and Shower Unit

The Appellant Landlord claimed that at the end of the tenancy the kitchen floor which was comprised of un-glazed terracotta tiles was covered with layers of thick grease in respect of which she paid the sum of €320 to have same steam cleaned. She also claimed an amount of €195 for the specialist work in replacing a missing decorative feature tile in a shower unit. She said that luckily she had retained a spare tile and was able to use this but the work entailed investigative opening up to check for damage particularly to concealed timber work prior to reinstalling it and hence to cost of €195.

#### Decking

The Appellant Landlord said that the decking at the rear of the Dwelling was not maintained or cleaned prior to the end of the tenancy and that she had an outlay of €75 in respect of deck cleaning fluid to restore it to a satisfactory condition. She said she was not claiming for her own time involved in carrying out this work.

The Appellant Landlord gave evidence in regard to alleged damage beyond the level of normal wear and tear to a number of sundry items for which she said she was not making any claim however she was claiming for such damage in regard to a number of items as well as a sum for loss of rental income arising from the extra time taken before she could

re-let the Dwelling due to the repairs and cleaning that needed to be carried out following vacation of the tenancy.

#### Two Weeks Rent

The Appellant Landlord also claimed that she was entitled to retain the sum of €700 which represented an amount in respect of rent for 2 weeks being the time taken post vacation of the tenancy to repair the damage and prepare the Dwelling for the next letting. She confirmed to the Tribunal that the Dwelling was advertised in early October 2013 and a new tenant took up residence on 14th October 2013. She said that as the Respondent Tenants vacated on the 17th September 2013 overall the dwelling was almost a month vacant between tenancies.

The Appellant Landlord gave evidence in regard to matters that arose during the tenancy and which had been referred to by the Respondent Tenants in their submissions. She said that she had responded to them promptly. These included problems with the gas cooker which she averred were not of a nature whereby safety was at risk and that the unit was replaced within a matter of 4 or 5 days. She also cited the replacement of the fridge-freezer which originally was the wrong size but the entire matter was rectified and replaced within 5 days. She also instanced the fact that she had carried out pruning and cutting of trees in the garden every year.

In response to a query from the second named Respondent Tenant she confirmed that following vacation of the Dwelling by the Respondent Tenants when she notified the Respondent Tenants of the costs she was attributing to them she had not provided a response to a request from them to allow them to examine the carpets and to assess the condition of the dining room floor with a view to allowing them to address the matters themselves. She said that she needed to get the Dwelling re-let as quickly as possible and that she went ahead and just did the work.

#### Evidence of the Respondent Tenants:

##### Dining Room Floor/Sitting Room Carpet

The second named Respondent Tenant stated that they did not appeal the adjudicator's decision and whereas they had been seeking the return of their entire security deposit they considered that the determination was reasonable. She agreed that some damage had been caused to the dining room floor but disagreed with the necessity to sand and re-varnish the entire floors in the two rooms. She also agreed that if the stain on the sitting room carpet, which was caused by spillage from her special needs daughter's drink mug, had not come out following the further professional cleaning as arranged by the Appellant Landlord it was reasonable that they should bear some element of cost in respect of that.

##### Tenancy Commencement

The second named Respondent Tenant stated that they carried out extensive cleaning with the aid of friends for two days when they moved in to the Dwelling because the Dwelling had not been cleaned by the previous tenant. She also said that the condition of the en-suite shower was disgusting and that the grout was crumbling. She said that the shower tray would fill up with water thereby damaging the seal and grout.

##### Kitchen Floor

The second named Respondent Tenant stated that throughout the tenancy she used to get down on her hands and knees to clean the terracotta tiles on a weekly or twice weekly

basis. She said that she needed to keep the kitchen floor clean in case her special needs daughter would pick things up and put them in her mouth which she did from time to time. She put forward the opinion that such a floor in conjunction with the regular cleaning she had carried out would need a steam cleaning after a number of years usage which she believed should be the responsibility of the Appellant Landlord being normal wear and tear.

#### Decking

The second named Respondent Tenant said that the decking was at the north facing side of the Dwelling and thus would get slippery due to moss/algae growth. She said that they did not use the deck at all during the tenancy and that she considered any cleaning required of the decking to be as a result of normal wear and tear.

#### Two Weeks Rent

The second named Respondent Tenant rebutted the Appellant Landlord's claim in respect of €700 for two weeks rent in lieu of works carried out post their tenancy and pointed to the fact that in her opinion the entire Dwelling needed painting and cited the fact that no painting had been carried out at the commencement of their tenancy which lasted three years coupled with the period of the previous tenancy. She also said that the Appellant Landlord benefitted from the quick and immediate turnaround at the commencement of their tenancy and that this should be taken in to consideration. Furthermore she added that the correct calculation in respect of rent to the date of vacation was €650 and that this should be taken in to consideration.

#### Master Bedroom Carpet

The first named Respondent Tenant averred that the carpet in the master bedroom was stained at the commencement of the tenancy. Furthermore he said that they had the sitting room carpet cleaned three times during the tenancy. He also that as part of their termination clean-up they had engaged professional carpet cleaners at a cost of €120.

### **6. Matters Agreed Between the Parties**

- 1) The tenancy commenced on 3rd September 2010.
- 2) The tenancy terminated on 17th September 2013.
- 3) The rent payable was €1,400 per month.
- 4) The security deposit is €1,400 and is retained by the Appellant Landlord.
- 5) There were no rent arrears at the termination of the tenancy.

### **7. Findings and Reasons:**

Based upon the evidence as provided and based upon the balance of probabilities the Tribunal makes the findings as set out hereunder.

Finding No. 1

The Tribunal finds that the Appellant Landlord has not presented sufficient evidence to demonstrate that the alleged damage to 1) the terracotta kitchen floor tiles, 2) the master bedroom carpet, 3) the exterior decking and 4) the en-suite shower tiling amounted to damage in excess of the level of normal wear and tear. The Tribunal finds that the Appellant Landlord unjustifiably withheld monies from the Respondent Tenants' security deposit in respect of these damages.

Reason 1: The Tribunal accepts the evidence of the second named Respondent Tenant that she regularly endeavoured to keep the kitchen tiles clean particularly for the reasons stated. The Tribunal considers that any requirement for a deep steam cleaning is a matter of the periodic maintenance of such terracotta tiles and that the Appellant Landlord did not present sufficient evidence to demonstrate to the Tribunal that any damage or any requirement for such deep steam cleaning was in excess of the level of normal wear and tear or that it arose due to the actions of the Respondent Tenants. The Tribunal is conscious of the provisions of Section 16(f) of the Act and to the considerations of Sections 16(f)(i) & (ii) in this regard.

Reason 2: The Tribunal accepts the evidence of the first named Respondent Tenant that there was a stain on the master bedroom carpet at the commencement of the tenancy. The Tribunal is also conscious of the evidence of the Appellant Landlord regarding the circumstances of the walk through inspection with the previous tenant at the time of vacation of the Dwelling and in describing the quick tenancy turnaround. .

Reason 3: The Tribunal considers that the requirement to clean the exterior decking arose due to weathering and was not due to any act on the part of the Respondent Tenants as set out under Section 16(f) of the Act of 2004. Furthermore the Tribunal considers that the cleaning/maintenance of the deck described by the Appellant Landlord in her direct evidence is a matter of periodic maintenance and is a consequence of normal wear and tear.

Reason 4: The Tribunal considers that the Appellant Landlord has not presented sufficient evidence to establish that the missing feature tile in the en-suite shower unit constituted damage in excess of normal wear and tear on the part of the Respondent Tenants. Insufficient evidence was presented in regard to the condition of the shower tiles at the commencement of the tenancy. The Tribunal is also conscious of the evidence of the Appellant Landlord regarding the circumstances of the walk through inspection with the previous tenant at the time of vacation of the Dwelling and in her own evidence describing the quick tenancy turnaround afforded to the Respondent Tenants. The Tribunal also notes the assertion of the second named Respondent Tenant that the grouting and the condition of the shower unit at the commencement of the tenancy.

Reason 5: In accordance with the provisions of Section 12(4) of the Act the Appellant Landlord had a duty to return the relevant element of the security deposit promptly.

## Finding No. 2

The Tribunal finds that damage in excess of normal wear and tear occurred in the Dwelling during the course of the tenancy in regard to the sitting room carpet and the timber flooring in the dining room. The Tribunal finds that the Appellant Landlord justifiably withheld the sum of €350 in respect of these damages.

Reason 1: The Tribunal accepts the evidence of the Appellant Landlord that there was a permanent stain on the sitting room carpet caused by the actions of the Respondent Tenants even after a professional cleaning job post the tenancy. The Tribunal notes that the Respondent Tenants agreed that there was a stain on the sitting room carpet resulting from a spillage from their special needs daughter's drink mug and that their own efforts to remove it in the course of the tenancy had failed. In accordance with the provisions of Section 16(f) the Tribunal considers that the said stain constituted damage in excess of normal wear and tear.

Reason 2: In determination of the appropriate sum to award in damages in respect of this carpet the Tribunal is conscious of the evidence in regard to the age of the carpet and to the fact that the Respondent Tenants were not, in accordance with Section 16(g) of the Act, offered an opportunity to further assess and effect cleaning when they requested one post the tenancy. The Tribunal considers that that an appropriate amount in this case is €150.

Reason 3: In accordance with the provisions of Section 16(f) of the Act the Tribunal considers that the scratches and gouges in the dining floor as described by the Appellant Landlord amounted to damage in excess of normal wear and tear. The Tribunal also note that the second named Respondent Tenant acknowledged that one area under the table had been scratched most likely by the dining chairs due to the pads under the legs having become worn.

Reason 4: In determination of the appropriate sum to award in damages in respect of the dining room floor the Tribunal is conscious of the evidence in regard to fact that the Respondent Tenants were not offered an opportunity when they requested one post the tenancy. Furthermore the Appellant Landlord did not provide sufficient evidence to warrant the sanding and re-varnishing of the two rooms. The Tribunal considers that that an appropriate amount of award in this case is €200.

### Finding No. 3

The Tribunal finds that the claim of €700 by the Appellant Landlord in lieu of rent for two weeks as a consequence of a resulting time delay in re-letting the Dwelling due to necessary repairs arising from damage in excess of normal wear and tear is not justified.

Reason 1: The Tribunal notes that the Dwelling was re-let within a period of just under four weeks from the date of vacation by the Respondent Tenants. The Tribunal notes also that the duration of this tenancy was for a period of over three years and that the previous tenancy lasted for one year. Furthermore on the evidence presented there was insufficient time at the commencement of this tenancy that would have allowed for the normal repainting, window cleaning and other such works to be carried out by the Appellant Landlord. Thus on the balance of probabilities there was a four year accumulation of rented house maintenance matters on the Dwelling which were the responsibility of the Appellant Landlord and that required attention at the end of the tenancy under dispute. The Tribunal notes that the Appellant Landlord failed to produce any details of specific delays due to items of work required arising from the items of damage in excess of normal wear and tear that directly delayed the re-letting of the Dwelling. The Tribunal also considers notwithstanding that the Respondent Tenants requested the quick turnaround and that the Appellant Landlord kindly facilitated this it is nonetheless the responsibility of the Appellant Landlord to demonstrate clearly and justify

any case for the retention of monies or claim in respect of any damages or consequential damages.

**8. Determination:**

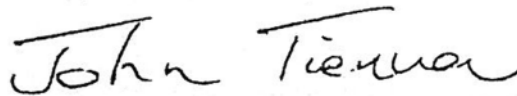
**Tribunal Reference TR0614-000680**

**In the matter of Siobhain O Connell (Landlord) and Aidan Devine (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord shall pay the net sum of €1,050 to the Respondent Tenants within 14 days of the date of issue of the Determination Order by the Board being the unjustifiably retained portion of the Respondent Tenants' security deposit of €1,400 having deducted the sum of €350 awarded to the Appellant Landlord in respect of damage in excess of normal wear and tear all in respect of the tenancy of the Dwelling at 12 Gainsborough Park, Malahide, Co. Dublin.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08/09/2014.

**Signed:**

A handwritten signature in black ink, reading "John Tiernan". The signature is written in a cursive, flowing style.

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**John Tiernan Chairperson**

For and on behalf of the Tribunal.