

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000682 / Case Ref No: 0913-07785

Appellant Landlord:	Kevin O Connor
Respondent Tenant:	Thomas Fortune
Address of Rented Dwelling:	Kilcarra, Arklow , County Wicklow
Tribunal:	Tim Ryan (Chairperson) Orla Coyne, Gene Feighery
Venue:	Tribunal Room, PRTB, 2nd Floor, PRTB, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	21 July 2014 at 2:30
Attendees:	Kevin O'Connor, Appellant Landlord Rachel O'Connor, Witness for Appellant Landlord Stephen Mangan, Witness for Appellant Landlord Richard Joyce, Solicitor for Appellant Landlord Thomas Fortune, Respondent Tenant
In Attendance:	Gwen Malone Stenogrpahers

1. Background:

On 16/09/2013 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 25/03/2014.

The Adjudicator determined that in the matter of Thomas Fortune, Applicant Tenant and Kevin O'Connor, Respondent Landlord, it is determined that:

The Respondent Landlord shall pay the total sum of €782 to the Applicant Tenant within 28 days of the date of issue of the Order by the Board, being damages of €852 for breach of obligation on the part of the Respondent Landlord, having offset the sum of €70 in respect of damages for the Applicant Tenant's breach of agreement, in respect of the tenancy of the dwelling at Kilcarra, Arklow, County Wicklow.

Subsequently an appeal was received from the Landlord on 04/06/2014. The grounds of the appeal were that the Adjudicator erred in his findings relating to an alleged joint ownership of horses between the parties, the ownership of land and the fact that the Tenant was entitled to a refund arising out of ESB charges and whether or not a TV was given as a present to the Tenant by the Landlord. The appeal was approved by the Board on 06/06/2014. The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Orla Coyne, Gene Feighery as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Tim Ryan 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 21/07/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, PRTB, 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 solicitor for the Appellant Landlord submitted a copy of a bank draft for €420.00 which was the final sum of rent paid by the Respondent Tenant. There was no objection from the Respondent Tenant.

4. Procedure:

The Chairperson asked the parties to identify themselves and to identify in what capacity they were attending the Tribunal. 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 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 as informal as possible; that the person who appealed (in this case the Appellant Landlord) would be invited to present his case first, that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present his case and that there would be an opportunity for cross-examination by the Appellant Landlord.

He also said that members of the Tribunal might ask questions of both parties from time to time.

The Chairperson explained that, following this, both parties would be given an opportunity to make a final submission.

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 €4,000 and/or up to 6 months imprisonment or both.

The Chairperson noted that should the parties indicate that they would be able to resolve the dispute through negotiation, the Tribunal would facilitate any such settlement. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal and thus become enforceable through the Courts.

The Chairperson also reminded the parties that, as a result of the Hearing that they, 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 under Section 123(3) of the Residential Tenancies Act, hereafter referred to as the 'RTA'.

The Parties giving evidence were then sworn in and the hearing commenced.

5. Submissions of the Parties:

Appellant Landlord's case:

Evidence of Kevin O'Connor:

Opening his evidence, the Solicitor for the Appellant Landlord said the case centred around the Respondent Tenant's claim that he had been wrongfully charged for electricity in the dwelling during his six year tenancy in the dwelling. He said the ESB meter account of the dwelling also served a cattle shed and a light in the farmyard. An electric pump was used to pump water from a well on the land to the rented dwelling and the farm shed where cattle were housed during the winter months. He said the Respondent Tenant knew and actually agreed to this arrangement. He said the relationships between the parties were so personal and mingled that it was unjust to charge the Appellant Landlord for the electricity used for the shed.

The Appellant Landlord told the Tribunal that the Respondent Tenant was his wife's uncle. Her mother was the brother of the Respondent Tenant. He said that in 2007 the Respondent Tenant had returned from Donegal and had nowhere to stay and had, in fact, stayed with his wife's mother for a while. The Appellant Landlord said he and his wife were, at the time, moving from the dwelling into a new house nearby and they offered to rent the dwelling to the Respondent Tenant.

He said himself, his wife and his witness present showed the Respondent Tenant through the house and explained how everything worked. Specifically, he stated he showed the Respondent Tenant the arrangement for the switch for the farmyard light. They agreed a rent of €500 per month. The Respondent Tenant received rent allowance of €420 per month and paid another €50 himself. They had let the other €30 go as he was his wife's uncle and they were close personal friends.

The Appellant Landlord said they were very close to the Respondent Tenant who generally called over every morning for a cup of tea to their house. Often in the evenings he himself called into to the Respondent Tenant for a chat. He said the Respondent Tenant often baby sat the children and it was a very close relationship. Each month the social welfare cheque came by post and the Respondent Tenant would sign it and drop it over to their house along with the €50 top-up.

The Appellant Landlord said the switch for the farmyard light was inside the rented dwelling itself and could only be turned on from there. He said the Respondent Tenant had bought two horses and these were kept in the shed during the winter months along with 15 weanling cattle which he owned himself. In the summer months the cattle and horses grazed on his farmland. There was no charge to the Respondent Tenant for keeping the horses which the Respondent Tenant eventually sold. The Respondent Tenant kept all the payment for the horses.

In May 2013 the Appellant Landlord said the Respondent Tenant was offered and accepted a local authority house in Arklow and he moved out in mid June of that year. When there was a delay in the payment of the final month's rent by the Respondent Tenant, he explained to the Landlord that it was common not to receive the final month's rent allowance in a tenancy from the Department of Social Protection. The Landlord's wife telephoned the Department's office and made enquiries about the late payment and was told that the rent supplement cheque had, in fact, been issued to the Respondent Tenant. A week or so later they received a bank draft for €420 in the post from the

Respondent Tenant. The €50 supplement was not included on this occasion. The Appellant Landlord said he also received a threatening text message from the Respondent Tenant saying he would get his own back on him, or words to that effect. He said he had deleted the text subsequently as he felt the Respondent Tenant might just have been in bad humour at the time.

He stated that the first they know about a claim for electricity used in the cattle shed by the Respondent Tenant was when a letter from the PRTB arrived in the post. He said comparisons made by the Respondent Tenant of electricity bills with his new house were not a valid comparison as the new house in Arklow was half the size and in a terrace.

The Appellant Landlord said he was not pursuing an issue about a new television which the Respondent Tenant had taken from the dwelling and indeed he and his wife would not have pursued the issue of the last month's rent with the Respondent Tenant if they knew it would have come to this.

Evidence of Witness Stephen Mangan:

The witness for the Appellant Landlord said he did jobs for the Appellant Landlord and was a regular caller to his home. He had been present on the night the Respondent Tenant moved in and often called to see him subsequently. He assisted the Respondent Tenant when he difficulty with his computer. He stated that he was present when the Landlord and his wife explained the workings of the central heating and the ESB connect to the Respondent Tenant.

Evidence of Rachel O'Connor:

The wife of the Appellant Landlord said that after the Respondent Tenant, her uncle, left the dwelling, postal deliveries continued to come to the dwelling. She said he would come and have a cup of tea and collect his post which she kept for him. On one occasion she recognised the social welfare cheque because of its distinctive envelope with a pink window on it. Previously, the Respondent would have signed the back of the cheque and given it to her along with his top-up sum. However, on this occasion, the Respondent Tenant denied he had received the cheque and insisted that the final month's rent allowance for a tenancy was not issued by the Department of Social Protection. She said she had made enquiries with the Department and discovered that the rent supplement cheque had issued to the Respondent Tenant. She said she challenged the Respondent Tenant about this and that subsequently a bank draft arrived in the post for €420 followed by a text message from the Respondent Tenant.

She said the farm cottage is now rented again for €450 per month to a friend of her husband, the Appellant Landlord.

Respondent Tenant's case:

Evidence of Thomas Fortune:

In his evidence, the Respondent Tenant said he had only become aware in the last week of his tenancy that there was "something wrong" when he looked at an electricity bill. He said that he discovered that a T-junction had been inserted in the water supply pipe for the dwelling in order to supply the cattle shed. He contended the cattle were much older than claimed by the Appellant Landlord and he had found out from Teagasc that a cow drinks 60 litres of water per day. Given the animals were kept there for up to five months of the year, this amounted to a huge amount of electricity when spread over the six year

tenancy term. He estimated that the amount of electricity used was €3,000 over the six year tenancy.

He did not agree that he owned the horses. He claimed that they were owned by himself and the Appellant Landlord. He accepted that they would also drink water but that it would have been a lot less than the cattle. When the horses were sold, while he had kept the proceeds of the sale, he had offered a portion of the proceeds to the Appellant Landlord but he refused to accept it.

He stated that the electricity for the water pump and the lighting for the yard, shed and dwelling could not be calculated separately and therefore, he was basing his estimated figure on conjecture and the fact that his current ESB bills in his new dwelling were considerably less than those he received during his tenancy in the dwelling

In relation to the social welfare cheque, he said he had not noticed it on the day he picked up the post until he was reminded of it by a Community Welfare Officer. He subsequently found it among other letters. He said he had been told by the Community Welfare Office that he must pay the cheque over to the Appellant Landlord as it was for rent owed and he said he did so "under protest". He had not included the extra €50 top-up as he alleged items in regard to his disability were removed from the dwelling. These included a disabled toilet.

In regard to the rent amount, he said while it had been €500 at the beginning, it was subsequently reduced to €470 when his rent allowance was cut back by the new Government in 2011.

The Respondent Tenant said he had brought the issue of the electricity costs for the water for the farm to the attention of the Appellant Landlord. He said he never believed matters would come to this stage.

He confirmed that in the past he had owned a house and 25 acres of land in Tralee on which there was an electric pump to pump water from a well so he was familiar with this type of arrangement.

6. Matters Agreed Between the Parties

The tenancy commenced on 26 June 2007.

No deposit was paid.

The tenancy terminated on 31 May 2013.

7. Findings and Reasons:

The only issue before the Tribunal was the question of the excess electricity charges as claimed for by the Respondent Tenant as the Appellant Landlord dropped all other matters.

Finding:

The Appellant Landlord's appeal to the unjustified refund of ESB charges is the sum of €782 to the Respondent Tenant is upheld.

Reasons:

The Tribunal finds that that all electricity costs incurred for lighting and supplying water to the farm shed where paid for by the Respondent Tenant. However, he said the Respondent Tenant was fully aware of the arrangement whereby the ESB meter and account for the dwelling were also connected to the yard and cattle shed.

The Respondent Tenant failed to satisfy the Tribunal on the balance of probability that the various electricity bills, some estimated together with figures quoted from his research with Teagasc could accurately quantify his alleged overpayment of electricity during the period of the tenancy. The Respondent Tenant confirmed to the Tribunal that he was aware that the electricity for the farmyard light was provided from the dwelling as the switch was located within the dwelling. The ESB bills provided by the Respondent Tenant from his new home in support of his claim are not relevant comparators to the tenancy and are of little use to the Tribunal in circumstances where they represent a different time of the year and a totally different type of house to that of the dwelling at issue.

In addition, given the close relationship between the parties, there was a great deal of fluidity in the arrangements made between them and it was not in any way a typical landlord/tenant relationship situation. This is shown, for example, by the fact that there was no deposit paid and no written tenancy agreement of any kind. The fluidity of the agreement is also shown by the Appellant Landlord's agreement to provide free livery for the two horses purchased by the Respondent Tenant.

The Tribunal finds there was never any attempt on the part of the Appellant Landlord to take advantage of the Respondent Tenant financially and the Respondent Tenant was fully cognisant of, and agreed with the arrangement which included the ESB connection to the farmyard and cattle shed as part of the tenancy agreement between the parties. The Tribunal does not therefore find the Appellant Landlord is in breach of the agreement with the Respondent Tenant.

8. Determination:

Tribunal Reference TR0614-000682

In the matter of Kevin O Connor (Landlord) and Thomas Fortune (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord is not in breach of the agreement with the Respondent Tenant in respect of the tenancy of the dwelling at Kilcarra, Arklow, County Wicklow. The Respondent Tenant is not entitled to the re-imbursement of electricity charges.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 26/07/2014.

Signed:



Tim Ryan Chairperson

For and on behalf of the Tribunal.