

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0614-000688 / Case Ref No: 0513-05713**

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| <b>Appellant Tenant:</b>           | Thomas Stralkowski   |
| <b>Respondent Landlord:</b>        | Catherine O'Reilly, Jack O'Reilly  |
| <b>Address of Rented Dwelling:</b> | Flat 2, 165 Lwr Kimmage Road , Dublin 6W,  |
| <b>Tribunal:</b>                   | Patricia Sheehy Skeffington (Chairperson)<br>Tim Ryan, Vincent P. Martin   |
| <b>Venue:</b>                      | Tribunal Room, PRTB, Floor 2, O'Connell Bridge<br>House, Dublin 2  |
| <b>Date &amp; time of Hearing:</b> | 22 September 2014 at 10:30   |
| <b>Attendees:</b>                  | Thomas Stralkowski , (Appellant Tenant)<br>Catherine O'Reilly, (First Named Respondent<br>Landlord)<br>Jack O'Reilly, (Second Named Respondent<br>Landlord)<br>Andrew Murnaghan, Counsel representing<br>Respondent Landlords<br>Stephen Kirwin, KOD Lyons Solicitors,<br>(representing Respondent Landlords, in attendance<br>on the first day only)<br>Alan FitzGerald, KOD Lyons Solicitors,<br>(representing Respondent Landlords, in attendance<br>on second day only)<br>David Swaine, Witness on behalf of Respondent<br>Landlords<br>Tanya Moeller, Witness on behalf of the<br>Respondent Landlords, in attendance on the<br>second day only. |
| <b>In Attendance:</b>              | Gwen Malone Stenographers  |

**1. Background:**

On 02 May 2013 the Tenant made an application for dispute resolution 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 8 May 2014. The Adjudicator determined that;

1. The Tenant's Application regarding the breach by the Landlords of their obligations under s.12(1)(d) of the Act is not upheld.

2. The Tenant's Application regarding the breach by the Landlords of their obligations under s.12(1)(b) of the Act is not upheld.
3. The Tenant's Application regarding the theft or impounding by the Landlords of his personal effects while in prison is upheld in part.
4. The Landlords breached their obligations under s.12(1)(a) of the Act by failing to allow the Tenant of the Dwelling to enjoy peaceful and exclusive occupation of the Dwelling.
5. Neither the Landlords nor the Tenants shall be required to pay any sum of money on foot of this Determination.

Subsequently the Tenant applied to appeal the Adjudicator's determination on 5 June 2014. He cited as grounds deposit retention, the standard and maintenance of dwelling and other breaches of landlord obligations. His application for the appeal was approved by the Board on 13 June 2014.

The PRTB constituted a Tenancy Tribunal and appointed Patricia Sheehy Skeffington, Tim Ryan, and Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Patricia Sheehy Skeffington 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 24 July 2014 and on 22 September 2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, Dublin 2. The hearing was re-convened at the same venue on 22 September 2014.

## **2. Documents Submitted Prior to the Hearing Included:**

PRTB File

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

Statement of Appellant Tenant's case, submitted without objection from the Respondent Landlords.

A further (third) case file through which both parties were entitled to submit further documents for consideration between the two hearing dates was made available to the Tribunal and the parties in advance of the second day of the hearing.

Originals of the photographs supplied by the Respondent Landlord in the third case file were submitted upon direction of the Tribunal to the Respondent Landlord and the Appellant Tenant. This followed the Appellant Tenant indicating his refusal to return the Respondent Landlords' photographs which they had made available for solely for inspection at the Tribunal.

## **4. Procedure:**

The Chairperson asked the Parties to identify themselves and to identify in what capacity they were attending the Tribunal.

The Chairperson asked the Parties to confirm 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 Tenant in this case) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent Landlords; that the Respondent Landlords would then be invited to present his case, and that there would be an opportunity for cross-examination by the Appellant Tenant. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission. She clarified that albeit the Tribunal could have regard to the Adjudicator's report, it was not bound by it and that the Tribunal was a re-hearing of the matter.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present and she 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 reminded the parties of the civil nature of the Tribunal relating to tenancy matters only and asked that all parties refrain from incendiary language implying criminality. The Chairperson was obliged to repeatedly remind the Appellant Tenant of the requirement to maintain a civil tone. The Tribunal further ensured that the Appellant Tenant was aware of the monetary jurisdiction of the tenancy Tribunal (€20,000 for tenant claims of damages) and that any appeal to the High Court would not operate to extend the monetary jurisdiction of the Act.

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 (pursuant to section 123(3) of the Residential Tenancies Act, 2004, hereafter referred to as the Act).

The Chairperson also informed the parties that if it seemed that they might be able to resolve their dispute by agreement, the Tribunal would facilitate any such negotiations.

The Parties intended to give evidence on the first day were then sworn in. A witness subpoenaed to appear on the second day was sworn at the commencement of the hearing on that day.

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

At the outset of the hearing, the chairperson outlined the matters in issue, as arising from the papers. These comprised:

- (a) Whether there was an overpayment of rent or rent arrears, which would have justified the retention of the deposit;
- (b) Whether the Respondent Landlords were in breach of their obligations in respect of the standard and maintenance of the dwelling;
- (c) Whether the tenancy was validly terminated and when it was terminated;
- (d) Whether the Respondent Landlords had retained the Appellant Tenant's goods unlawfully; and

(e) Whether the Appellant Tenant damaged the dwelling in excess of normal wear and tear.

The parties' evidence and submissions is set out below according to this framework. However, three procedural issues arose upon which the Tribunal ruled during the course of the hearing.

The first related to the Respondent Landlords' request to submit documentation from a different case's adjudication. This request was denied on the basis that the confidential nature of adjudications rendered documents obtained solely through the adjudication process unusable in any other context by the parties who had received them in that manner.

The second issue related to the correct identity of the Respondent Landlords. The Appellant Tenant wished to adduce evidence from the land registry to illustrate that further people were responsible for the dwelling as landlords. The Tribunal queried whether such was possible given that it was precluded from drawing the title of any lands into question in proceedings under section 110 of the Act. The Respondent Landlords stated that they were at all times the correct persons to be identified as the landlords in respect of the dwelling. The Tribunal accepted this position and refrained from determining any issue that linked directly to drawing into question the title of the lands.

Thirdly, the Appellant Tenant made an application that the Tribunal Members should inspect the dwelling pursuant to their powers under section 111 of the Act. He submitted that this would provide evidence on the condition of the dwelling and any items belonging to the Appellant Tenant which might remain at the dwelling. The Respondent Landlords' representative stated that the dwelling had been re-let in the intervening period and other tenants were now living there. The Tribunal declined to exercise its powers to inspect the dwelling for reasons of proportionality and due to the weakness of any evidence which might be gained from such a visit at this stage, which reasons are set out further below.

(a) Whether there was an overpayment of rent or rent arrears, which would have justified the retention of the deposit;

The Appellant Tenant stated that the monthly rent for the dwelling was €525 per month, as set out in the lease document which was no longer in his possession but which he alleged was retained by the Respondent Landlords who came into control of his goods. He said that the Respondent Landlords' agent, Mr Swaine, accepted that the rent would be in line with the social welfare limit of €525 per month and it was not €725 being the crossed-through sum on the lease. He said that he gave the agent a cheque to cover the first month's rent and deposit, and referred to a cheque on the case file to this effect. This cheque was in the sum of €1490.80.

The Appellant Tenant contended that the amount of rent due for the course of the lease was €6,300, being from 18 October 2011 until 17 October 2012. The Appellant Tenant premised this view on the dates set out on the fixed term tenancy agreement (which he contended had falsified figures in it, but that it set out the correct dates of the tenancy).

The Appellant Tenant said that the total sums in rent he paid were €1490.80, being the deposit and first month's rent plus €1,825.80 by way of a cheque from his credit union, plus €200 paid during the tenancy for which he no longer had the receipt due to the Respondent Landlords' alleged retention of his goods; plus €3,804.80 which was paid on his behalf by the Department of Social Protection up to 28 July 2012. He said that the rent

paid at the time of his arrest, on 28 July 2012 was therefore €7,321.40 and he was thus not in arrears.

The Appellant Tenant said that at time the overpayment was not important as he may have taken the lease forward, but that in fact at the termination of the lease there was no agreement to carry it on at all. The Appellant Tenant stated that in any event the lease was invalid as the Respondent Landlords or their agent had changed the rental figures on its face. He further rejected the authenticity of letters which the Respondent Landlord had stated were from him, setting out the calculation of rental payments comprising the sum payable by the HSE and a further figure payable by him, which equated to a €725 monthly rent.

Upon questioning, the Appellant Tenant refuted that the first payment, being in the sum of €1,490, was more likely to reflect a deposit in the sum of €725 and a monthly rental payment in that sum also. It was put to him that these sums did not indicate a rent of €525. The Appellant Tenant stated that the first cheque was from the Department of Social Protection and was in excess of the monthly rental payment and the deposit, but this was simply reflected the sum the Department had made the cheque out in.

When they were put to him, the Appellant Tenant denied knowledge of letters of November 2011 in which rental arrangements seemed to be suggested by him, with his signature. The Appellant Tenant characterised these as falsifications. He denied that his signature featured on these letters. He agreed with the Tribunal's view that the signature looked a little like his, but stated that computers could generate close copies.

The Respondent Landlords' Agent stated that he had advertised the dwelling for the sum of €750 and in negotiation with the Appellant Tenant it had been agreed that this would be reduced to €725. He said that the monthly rent of €725 had been agreed with the Appellant Tenant, who however requested that the application be made to the Department of Social Protection reflecting a monthly rent of €525 in order that the Appellant Tenant could draw down a rent allowance payment. The Respondent Landlords' Agent stated that he had altered the lease document to again reflect the rent reserved at €725 and he had initialled it in the Appellant Tenant's presence. He said that in retrospect he should have also required the Appellant Tenant to initial this change.

The Respondent Landlords' Counsel submitted that correspondence from the Appellant Tenant (the authenticity of which the Appellant Tenant rejected) illustrated that the monthly rent was €725 per month. He highlighted correspondence on file from November 2011 in which he said the Appellant Tenant had set out what sum would be payable by the HSE and what sum the Appellant Tenant would make in 'top up' to amount to the sum of €725. The Appellant Tenant rejected that he had been involved in a submission to the Department of Social Protection which did not reflect the correct rental position: he asserted that he would never commit a crime against the State with a stranger.

The Respondent Landlords submitted that the total rental payments they received on behalf of the Appellant Tenant in respect of the tenancy were €8,421. Their Counsel submitted that this sum was in excess of the rental payments the Appellant Tenant had given evidence of, but that the Respondent Landlords were satisfied from their records that this represented the sums paid. However they claimed that rent was payable for the duration of the time which the Appellant Tenant had use of the dwelling, which they claimed was to the end of February 2013. They therefore submitted that during the course of the fixed term tenancy, the Appellant Tenant was €278.60 in arrears of rent,

thus reducing the deposit held at that point to €446.40. However they said that further rent was owed to cover the duration of the Appellant Tenant's use of the dwelling, being from 14 October 2012 until the end of February 2013. They submitted that this represented a further €3,320.97 (calculating the remainder of the rent of October 2012 at €420.97). They therefore claimed that the total rental arrears were €3320.

The Respondent Landlords stated that they became aware that regular payments from the HSE were not going into their account in around July or August 2012 and that they did nothing initially, as it was a common holiday period.

The Appellant Tenant questioned the Second Named Respondent Landlord as to why he claimed for rent to the end of February 2013 when he had retaken possession of it in November 2012. The Second Named Respondent Landlord said that the Appellant Tenant's goods were still in the apartment and he said under questioning that the repossession of the dwelling took place in late February or March 2013.

(b) Whether the Respondent Landlords were in breach of their obligations in respect of the standard and maintenance of the dwelling;

The Appellant Tenant said that issues arose with the standard and maintenance of the dwelling from the start of the tenancy. He said that the heater in the bedroom was not working and that in the kitchen, a broken/missing window pane had been concealed. He said, under questioning, that albeit this pane of glass had been fixed, it was improper to allow the broken pane to be in situ at the commencement of the tenancy.

He said that the dwelling's roof leaked persistently from various locations and the last time he took a photograph of a leak was on 14 June 2012: the Appellant Tenant referred to this picture on the case file. He further said that the wind came through the fireplace, albeit this issue was remedied: the tenant referred to a photograph of the sealed up fireplace. The Appellant Tenant also raised issue with leaky windows and said that the condition of the dwelling caused him stress and irritation. He argued that the condition of the dwelling warranted a 25% reduction in the rent for the period until he said the Respondent Landlords entered the dwelling, being 3 September 2013. He therefore argued for a revised monthly run of rent at €393, which represented a 25% reduction. He said that he had been duped into entering a lease for a substandard dwelling, and that a tenant could not be expected to complete a full structural inspection of the dwelling including the roof of a dwelling in order to establish if it would leak prior to taking up occupation under a tenancy.

The Second Named Respondent Landlord stated that when issues arose with the standard and maintenance of the dwelling they were remedied within good time. He said that there were no complaints initially, but that broken window pane was the inside pane of a double glazed panel of the upper section of a window was repaired within a week of it being notified to him. He submitted that a heater was replaced two days after the commencement of the tenancy. On questioning in relation to a photograph of a damp patch in the dwelling, which the Appellant Tenant said showed a repair but no repainting, the Second Named Respondent Landlord said that he had not been able to obtain access to remedy this at the relevant time.

The Respondent Landlords' Agent stated that at the commencement of the tenancy the dwelling was in very good condition. The First Named Respondent Landlord stated that the problem with the leak in the roof had to be investigated and its cause determined prior to it being fixed. She said that a handyman called Mick had attended at the dwelling on a

number of occasions for this purpose and referred to handwritten letters he had supplied for the Tribunal file (the Appellant Tenant questioned the validity of this evidence in the absence of the letters' author). The Respondent Landlords gave evidence that the leak had appeared at a time of extreme weather in Dublin and that its source had taken some time to isolate, but that it was fixed when it had been found.

(c) Whether the tenancy was validly terminated and when it was terminated;

The Appellant Tenant said that after he was arrested and incarcerated on 28 July 2012, the agent acting for him was from Sheehan solicitors, not Tanya Moeller as contended by the Respondent Landlords. He referred to a letter from Sheehan's solicitors dated 25 April 2013 which stated that the Appellant Tenant was their client and that he had been released from prison on 7 February 2013. The Tribunal asked the Appellant Tenant the basis upon which he believed that Sheehan's were communicating with his landlord during his period of incarceration. The Appellant Tenant said that Mr Young had told him that he was and he had an email to that effect on his computer. He conceded that he could not prove that Mr Young had in fact communicated with the Respondent Landlords. He said that he had told Mr Young to convey to the Respondent Landlords that he would be released in February, but that he gave no instructions as to rental payments. He said that he was restricted in contacting people while in custody, but that when released he contacted the Respondent Landlord and his agent immediately.

The Appellant Tenant said that after 18 October 2012, when the lease was at an end, his only concern was his belongings and that he had no further interest in the tenancy itself. On the first day of the hearing, he denied that any of the correspondence from Ms Moeller was properly before the Tribunal and characterised it as a 'falsification'. He said that while he knew Ms Moeller, that she was a secretary in a solicitor's practice and that she had never acted on his behalf.

On the second day of the hearing, in response to Ms Moeller's testimony, he said that he had never given Ms Moeller authority to represent him in tenancy matters. He argued that as no written authority had been given she had no authority to represent him in these matters.

The Appellant Tenant argued that the end of the tenancy was on 3 September 2012, being when he claimed the Respondent Landlords had entered the dwelling without his consent. He argued that this entry onto the dwelling was without consent or authority and submitted that a warrant or court authority was required in order to enter onto the dwelling without consent when no emergency pertained. The Appellant Tenant argued that this represented a severe interference with his peaceful and exclusive occupation of his dwelling, the inviolability of which was protected by the Constitution, and as such that the tenancy effectively terminated at the point that the Respondent Landlords had effected what he characterised as wrongful access.

The Tribunal put to the Appellant Tenant that in circumstances of rent arrears, a landlord may, where they believe a dwelling has been abandoned, have to enter to ascertain whether it is inhabited or not. The Appellant Tenant countered that this situation did not arise as he was not, he contended, in rent arrears at the time of what he characterised as an unauthorised entry.

The Appellant Tenant said that the last date that he was in the dwelling was 18 July 2012 and that he had not gained entry to it after that date. He explained that after his release in February 2013 the Respondents had changed the locks of the dwelling so he could not

gain entry to it. He said both the locks to the entrance to the apartments had been changed; the Respondent Landlords contended only the door to his dwelling had been changed. The Appellant Tenant argued that the date of the changing of the locks, being 3 September 2012, was the date that the tenancy terminated.

The Respondent Landlords both gave evidence that upon noting that rent was not being paid into their account in around July 2012 and that they attended the premises but got no answer from the Appellant Tenant. They said that on the advice of their Agent they initially did nothing as it was the summer period and he may have been absent. However they said that after time elapsed they had gone to Sundrive Road Garda Station, in around August 2012 in order to report a missing person. A week or so later they said that they returned to the dwelling and noticed a smell emanating from the dwelling. They said they attempted to contact the Appellant Tenant and had left a note on the door asking him to phone him in around August 2012 but that he had received no response. The Second Named Respondent Landlord said that a solicitor friend of his told him that it may be worth his while having a look inside the dwelling.

The Second Named Respondent Landlord said that they eventually decided they had to look inside the dwelling to see what was going on. They noticed that a back window was open and a few days later the Second Named Respondent Landlord said he returned with a ladder and placed it so that he could see inside the dwelling. He said that through the window he could see into the bedroom and there was what appeared to be a lump on the bed. He said that there was a smell coming from the dwelling also, and as such he believed that something was wrong and he decided to gain entry to the dwelling. He said that upon gaining entry it was clear that the smell was rotting fruit and rubbish and that the lump on the bed transpired to be a pile of bedclothes. He said that only he, not the person assisting him, gained entry to the dwelling. He said he exited again via the window.

The Second Named Respondent Landlord stated that some days later he returned to the dwelling and changed the locks, which had been changed without his consent. He said that he left a note on the door stating that the locks had been changed and directing the Appellant Tenant to phone them. He said that this was in order that he could gain entry on his return.

The Second Named Respondent Landlord said that he repeatedly tried to contact the Appellant Tenant to no avail. He said that he also tried to contact the Appellant Tenant's referee, Ms Moller-Keane, but that he did not get through to her on the phone. He said that he then asked his agent to make these contacts, who succeeded in setting up a dialogue.

The Respondent Landlords' Agent said that he was contacted because the Respondent Landlords were not able to contact the Appellant Tenant, who was in arrears of rent. He said that his first advice was to wait as it was the summer period. He said that he attended the dwelling and left notes for the Appellant Tenant to contact him, which he left under the door. He said he eventually found the original referee's details on file and contacted her through a solicitor's office.

The Respondent Landlords' Agent highlighted email correspondence with Ms Moeller of 25 October 2012. This email stated that while Ms Moeller did not act for the Appellant Tenant in tenancy matters, "in the course of consulting with Mr Stralkowski recently, he instructed us that we are to write to you to communicate a message from him in



circumstances in which he is currently being detained in Mountjoy Prison and unfortunately in those circumstances he has no direct means of directly contacting you. He wishes us to write to you to let you know same, that he is aware that his tenancy ended recently and that he requests that he can keep his current apartment until his impending release, or alternatively, that you store his belongings and possessions in such a way that they are protected from harm and theft.” The email goes on to ask for a reply such that it can be communicated to the Appellant Tenant.

The Respondent Landlords’ Agent highlighted further email correspondence from November 2012 in which he expressed the reluctance of the Respondent Landlords to keep the dwelling indefinitely or arrange storage in the absence of payment; and a reply of 8 November 2012 in which Ms Moeller said that the Appellant Tenant had told her to convey that he had sufficient funds to pay the rent going forward, that he was anxious to keep the dwelling, and that he would be released later that month. The Appellant Agent returned an email on 16 November 2012 setting out a breakdown of costs to date (rent, changed locks and damage to the couch) and setting out that the Respondent Landlords were “happy to work with Tomas on this issue as long as the outstanding monies are paid”. An email from Ms Moeller of 21 November 2012 assured the Respondent Landlords’ Agent that the Appellant Tenant was attempting to resolve these issues. The correspondence also made enquiries as to the Appellant Tenant’s release date, which at that time was expressed to be December 2012.

The Second Named Respondent Landlord stated that during the course of the dialogue with Ms Moeller on the Appellant Tenant’s behalf, he was of the opinion that the idea was to come to an agreement or understanding of what was to happen with the dwelling and its contents. He said that coming up to Christmas 2012, when he was still receiving no rental income from the Appellant Tenant, he asked his agent to contact the Appellant Tenant saying that they needed payment or they would have to re-take the dwelling. The Second Named Respondent Landlord said that he did not consider the tenancy terminated at this point, that he believed that the rent would be paid and it would continue. However, he said that in response to his request for payment of the arrears, his agent received a handwritten letter from the Appellant Tenant on 20 December 2012, which was submitted prior to the second day of the Tribunal hearing. This letter reads:

“I wish to inform you that your former tenant Mr Thomas Stralkowski of [the dwelling’s address] will not be released before 7 February 2013.... If the Landlord Mr Jack O’Reilly wish to remove the property items and clothes Mr Stralkowski left in the above flat since his arrest, he will be responsible for completeness and damage, store his belongings in a safe and clean place, because he will collect and demand it back”.

The letter was signed in what appeared to be the Appellant Tenant’s handwriting (the same handwriting as the body of the letter was in), however the Appellant Tenant denied on the first day of the hearing that he had written a letter to be transmitted to the Respondent Landlords through Ms Moeller.

In response to this, the Respondent Landlords’ Agent highlighted the next email of 15 January 2013 which he sent to Ms Moeller. This email referred to previous correspondence and the changed position perceived on behalf of the Appellant Tenant, who now seemed to want to end the tenancy and for his goods to be stored. The email went on to say that his possessions were now in storage and could be collected within 7 days of his release, on the payment of €2,658.44 in rent arrears, repair costs of €1,300 and storage costs of €800.

In her evidence, Ms Moeller said that she was not the referee of the original tenancy agreement, drawing the Tribunal's attention to the different spellings of the names Mollar and Moeller, which she said made a significant difference in German. She said that she was a solicitor but not retained by the Appellant Tenant in tenancy matters, albeit she had agreed to be a conduit of his communications during consultations on other matters. She stated that the emails and scanned letters were composed and sent following what the Appellant Tenant had requested her to convey and pointed out that it is difficult to communicate fully with a person who is incarcerated. She confirmed the authenticity of the emails and letters which had been sent through and by her. She said that it was possible that, given the short amount of time for consultation with the Appellant Tenant in Mountjoy and other matters to discuss, the rental amounts in earlier emails were not thoroughly explored.

The Second Named Respondent Landlord said that when the Appellant Tenant was released in February 2013, he did not ask to return to the dwelling. He said that rather, a demand was made for his possessions to be returned to him.

The Respondent Landlords argued that they were entitled to consider the tenancy to have lasted for the duration of the time at which they had allowed the Appellant Tenant to maintain his goods in the dwelling. The Respondent Landlords refuted the contention that they had interfered with the Appellant Tenant's peaceful and exclusive occupation of the dwelling. They agreed that they had no Court order to enter the dwelling in September 2012, however both Respondent Landlords reiterated their attempts to contact the Appellant Tenant and their concern for him. The Appellant Tenant queried the veracity of this and also queried how the Respondent Landlord or their agent had obtained Ms Moeller's contact details if they had not been through his possessions, given that she said that she was not the same person who had originally given a reference to him.

Under cross examination from the Appellant Tenant, the Second Named Respondent Landlord stated that he re-took possession of the dwelling at the end of February or in March 2013. He refuted that he had 'broken in' to the dwelling (although on one occasion, under repeated questioning he repeated back that terminology to the Appellant Tenant). He said that from the time he had first entered to the time he had cleared the possessions into boxes, he was inside the dwelling approximately six times.

(d) Whether the Respondent Landlords retained the Appellant Tenant's goods unlawfully.

During both days of the hearing, issues around the value of the goods claimed were ventilated as a procedural point between the Tribunal and the Appellant Tenant. The Tribunal re-iterated its monetary jurisdiction on a number of occasions. On the first day of the hearing the Appellant Tenant said that he did not want the Tribunal to adjudicate on the value of the missing items as such, as these would form the basis of a separate claim elsewhere, but that he required adjudication on the termination of the tenancy, the peaceful and exclusive occupation of the dwelling and other related matters, but that he did not wish or require the Tribunal to adjudicate at all on the value of any lost items. On the second day of the hearing the matter arose again and the Tribunal sought clarity from the Appellant Tenant as to whether he wished the Tribunal to deal with the questions relating to his possessions, given the jurisdictional issues that this may involve. The Appellant Tenant stated that if this involved the withholding of goods and what he characterised as 'theft' that the Tribunal had to deal with this issue. The Chair reiterated

on many occasions the civil nature of the Tribunal, which the Appellant indicated he understood.

The Appellant Tenant drew the Tribunal's attention to texts and correspondence in February 2013 in which he sought the return of his belongings. The Appellant Tenant said that he received no response to this correspondence. He drew the Tribunal's attention to an email to the Respondent Landlords' agent dated 8 February 2013. This email, stated to be 'in response to your email to my solicitor of January 15 2013...' set a deadline of 14 February 2013 for the return of his possessions from the dwelling, failing which he would take High Court action for compensation for their loss. The Tribunal asked why court proceedings were threatened at this point: the Appellant Tenant stated that this was because of the previous problems he had encountered with the repair of the roof. Under questioning, the Appellant Tenant stated that he did not have insurance for these goods.

The Tribunal asked what responsibility or care he opined the Respondent Landlords should have afforded his possessions during this time: he said that they had had no discussion about costs of storage. He would not be drawn on who he believed reasonably should incur this cost.

The Appellant Tenant said that, subsequent to an interim adjudication order, he received partial return of his possessions on 26 November 2013 at an agreed car park location, which goods were returned by three of four men who he did not know. He said that there was no control over these people who could have taken certain items of his possessions. He said that neither the Respondent Landlords nor their agent were present when the goods were handed over. The Appellant Tenant said that these people returned a quarter of his belongings but that 75% of them were still missing.

The Appellant Tenant referred to a seven-page list of items which he said remained missing and which he had listed extensively on the case file. Items marked as outstanding included a pair of binoculars, engagement rings, an ipod/station, a power cable for a television, six red wine glasses missing, files, a charger, a bucket containing UK and US currency, an iron, a hairclipper, DVDs worth €2,500, CDs worth €6,250, books in German worth €6,250, books in English worth €3,125, valuable plants, court files valued at €250,000, an Armani suit worth €1,500, German passport worth €5,000, a stamp collection, and a great number of other costly items. A number of household items were also claimed as missing, such as five toothbrushes valued at €17.50, various kitchen items (bread machine at €175, sandwich toaster at €75, five baking tins with a value of €250). Further items included materials, such as partially installed laminate flooring, which he said that Respondent Landlords used without his permission to renovate the dwelling. He said this flooring clicked together and could be removed and returned. The list also claimed that some returned items, such as a laptop, were damaged. The Appellant Tenant proffered that the items which were not returned had a total value of €469,217. The Appellant Tenant derived most of this value from court papers which he said were missing and now prevented him taking a claim against the Irish State which he said was of significant value.

Supplied alongside this list was an inventory of items which were returned. This comprised approximately 27 boxes and a number of bags of items.

The Appellant Tenant referred to pictures of many of the missing items, to which the Tribunal queried whether it was strange to have photographs taken only for the reason to display items which then went missing. The Appellant Tenant stated that this precaution

was taken after a road traffic incident in which some items had been broken: he took the precaution to take photographs to prove what he owned. The Tribunal queried why a road traffic incident would require photographs including multiple packets of batteries and shampoos which were on the Tribunal file: the Appellant Tenant said that this was for insurance purposes.

The Appellant Tenant said that he held the Respondent Landlord responsible for the missing items on the basis that whoever had taken them, it was the Respondent Landlords who had broken the lock to the dwelling and who had allowed the four men to take control of them. He said that the computer upon which the photographs were stored was also damaged during this episode, but that he had been able to retrieve them.

It was put to the Appellant Tenant that the extensive list of goods he claimed could not fit into a one-bedroom flat. The Appellant Tenant rejected this contention. He said that he had compiled the list of possessions from memory when he was in prison. He rejected the contention that his list of belongings was not entirely accurate.

The Appellant Tenant held the Respondent Landlords responsible for the holding of the goods as, he said, they had taken possession of the flat. He rejected the contention that if the Second Named Respondent Landlord could have got through the window of the dwelling, a third party may have done so also.

Upon questioning from the Appellant Tenant, the Second Named Respondent Landlord said that he did not return contact with the Appellant Tenant in February 2013 because of what he perceived to be threats in the communications received. He further said that he retained the goods until November 2013 because he was hoping that the Appellant Tenant would pay the money he owed the Respondent Landlords.

The Second Named Respondent Landlord stated that he relied on the correspondence that went between his agent and Ms Moeller, who was channelling communications from the Appellant Tenant while in prison. He said that in January an email had arrived asking for him to keep the goods until mid February 2013 (this email was on file) such that the Appellant Tenant could collect his possessions.

The Second Named Respondent Landlord stated that this culminated in what he perceived to be a threatening text from the Appellant Tenant on his release from prison, which demanded the return of his goods. This text was sent on 7 February 2013. The Second Named Respondent Landlord stated that upon receipt of this text, he started packing up the Appellant Tenant's goods. He referred to pictures of how the goods were stored in boxes, and stated that they were stored in a warehouse under his control, which was dry and secure. He said that there were approximately 46 - 47 boxes of goods. He said that everything other than food was packed away. He said that a bicycle lock had to be cut to remove a bike locked to upper banisters. He said that he remembered the pilot bag mentioned by the Appellant Tenant; that it had papers in it but that he did not look at it. He said it was broken which was how he knew generally what was in it.

The Respondent landlord also stated that he recalled packing away two watches among the goods, plus a couple of cameras and some binoculars. He refuted the suggestion that he had taken any of these goods. He said that the quantity of goods claimed by the Appellant Tenant would not have fitted into the dwelling.

The Second Named Respondent Landlord said that he was observing as the goods were returned to the Appellant Tenant in a car park in November 2013. He said that the

persons effecting the return were well known to him and trusted, and included his son-in-law.

On questioning, the Second Named Respondent Landlord said that he did not respond to the text of 7 February 2013 demanding the goods back because he perceived it to be threatening. He further said that he had not been paid the rent and storage fees owed to him for it. He said that he perceived a threat in the raising of High Court proceedings at that juncture.

Upon further questioning about lengths of laminate flooring which the Appellant Tenant said were left in the dwelling, the Second Named Respondent Landlord said that it had been used to finish off the hall of the dwelling. He accepted that he did not have the Appellant Tenant's permission to use these materials, which he said were left in the dwelling.

The Second Named Respondent Tenant said that he had put the locks taken from the door into boxes. He agreed that he had not had the Appellant Tenant's permission to take them, explaining that he was not around.

The Appellant Tenant put it to the Second Named Respondent Landlord that he had wrongfully retained the goods for ransom, specifically asking why he had not replied to a text demanding their return of 7 February 2013 and a solicitor's letter the same effect of 3 March 2013. The Second Named Respondent Landlord stated that he felt threatened by these letters and he had not been paid rent or storage for the items. He said that he retained the goods until November 2013 because he was hoping that the Appellant Tenant would pay what he owed.

The Appellant Tenant enquired as to a list of items which was alluded to in correspondence with his solicitor, asking why he had not received it. The Second Named Respondent Landlord was not able to shed any light on this.

(e) Whether the Appellant Tenant damaged the dwelling in excess of normal wear and tear.

The Respondent Landlords said that the Appellant Tenant had changed the locks of the dwelling without their consent and as such, they had changed the locks in September 2012 but had left a message for the Appellant to contact them so that he could regain access at that point. The Appellant Tenant said that he had changed the locks because he said that the First Named Respondent Landlord had gained access to the dwelling without his consent at Christmas 2011. He said that entry had been sought for a handyman. The First Named Respondent Landlord said she did not gain entry to the dwelling at Christmas of 2011.

The Respondent Landlords gave evidence that the Appellant Tenant had made alterations to the dwelling without their consent. These comprised removing a shower door and removing wooden doors, stripping paint and skirting boards. The Appellant Tenant stated that this comprised an ongoing renovation. The Appellant Tenant said that the Respondent Landlords and their agent had observed the progress of this work when they had arrived in order to remedy defects in the dwelling and that they had not complained about it.

The Second Named Respondent Tenant stated that in order to return the dwelling to a let-able state, he had to fix the doors, move and clean and paint. He said it was probable that the painting would have had to have been done anyway, but said that the time

involved and getting somebody to hang the doors cost in the region of €3,500. He said however that any excess of what he was owed in respect of this tenancy was being waived as he wanted the end of the matter.

The Appellant Tenant questioned the Second Named Respondent Landlord as to why he was charging him for the paint work when this had been necessitated after the remedial work due to the ingress of water. The Second Named Respondent Landlord said this ingress caused minor damage and the work he was enumerating was for the doors which had been taken off their frames and had been stripped of paint.

The Second Named Respondent Landlord agreed that he had to do some of painting of walls due to work done to fix the leak, but in any event any excess awarded in rent arrears or costs he did not want to pursue as he wanted an end of the matter.

The Second Named Respondent Landlord asserted that a couch had been in good condition when the Appellant Tenant moved in, but was damaged such that cushions required reupholstering when he moved out. The Appellant Tenant said it had always been in bad condition.

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

1. The tenancy commenced on 14 October 2011.
2. A deposit in the sum of €765 was paid by the Appellant Tenant which was retained by the Respondent Landlords.
3. No utility bills were outstanding.

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

### **FINDING 1.**

The Landlords of this tenancy and for the purposes of this dispute are Jack and Catherine Reilly.

Reasons:

1. While the Appellant Tenant attempted to rely on a land registry document stating that other persons were registered as owners of the dwelling, the title of lands must not be drawn into question in any proceeding in front of the PRTB: section 110 of the Act.
2. Further, ownership of an interest in a property is not determinative of the identity of a landlord, which is defined under section 5 of the Act as the person for the time being entitled to receive the rent paid in respect of a dwelling by the Tenant. The evidence in this case was that Jack and Catherine Reilly were the people so entitled and thus the landlords for the purpose of the PRTB dispute resolution process.

### **FINDING 2.**

The monthly rent for the duration of the tenancy was €525.

Reasons:

1. The figure which both parties presented to the Department of Social Protection was €525 per month for rent.

2. The Tribunal notes that the deleted monthly sum on the face of the contract was €525, only one party initialled its alteration to €725 per month. While the Tribunal accepts that unofficially the parties had agreed a higher rent of €725 per month, they did so in order to make an inaccurate declaration of the applicable rental sum to the Department of Social Protection. The Tribunal accepts that, on the evidence, this was done at the behest of the Appellant Tenant: in particular it accepts the correspondence submitted by the Respondent Landlords setting out the Appellant Tenant's calculations of the provenance and accumulation of rent which illustrates HSE payments and top-up payments from the Appellant Tenant. However the Tribunal declines to enforce the rental sums in excess of those lawfully declared by both parties as the true rental charge to the Department of Social Protection .

#### FINDING 3.

The rent paid on or on behalf of the Appellant Tenant during the tenancy was €7,656.40.

#### Reasons

1. The total sums paid on or on behalf of the Appellant Tenant during the tenancy period on his account was €7,321.40. On the Respondent Landlord's account, the total sums paid by or on behalf of the Appellant Tenant was €8,421.40. The Tribunal found the Respondent Landlords' evidence consistent and as they had no reason to set out a greater rental payment than that received, accept the higher figure as the total sums received.

2. The parties agreed that a deposit of €765 was paid by the Appellant Tenant at the commencement of the tenancy. Deducting this from the sums paid, the total rent paid in respect of the tenancy equals €7,656.40.

#### FINDING 4.

Emails and correspondence from Tanya Moeller to David Swaine between October 2012 and February 2013 were made on behalf of the Appellant Tenant.

#### Reasons:

1. The Appellant Tenant first denied the authenticity of the emails from Ms Moeller and then argued that he had not given her any written authority to represent him in tenancy matters. However Ms Moeller gave clear evidence, which the Tribunal accepts, that she was acting as a go-between to convey messages from the Appellant Tenant to the Respondent Landlords' agent and that her emails reflected the communications which the Appellant Tenant requested her to convey.

2. The Tribunal observes that one does not have to give written authority to ask or allow a person to pass a message to another person, which that second person might then rely upon.

3. The Tribunal further notes that the Appellant Tenant questioned the authenticity of a reference written from the email of another Ms Tanya Mueller-Keane. While his argument that Ms Moeller made the first contact to the Respondent Landlords in October 2012 may be correct, nothing turns on this as it is irrelevant who contacted whom first.

#### FINDING 5.

The Tenancy is deemed to have been terminated by the Appellant Tenant on 11 January 2013 under section 37 (2) of the Act.

Reasons:

1. While the Appellant Tenant argued that the tenancy terminated on 3 September 2012, when he said the Respondent Landlord entered the dwelling without his consent during his incarceration, it is clear from communications channelled through Ms Moeller to Respondent Landlords that he required the dwelling to be held for him or for his belongings to be stored by the Respondent Landlords through October and November of 2012.
2. The Tribunal does not find that the Respondent Landlords' entry into the dwelling on 3 September 2012 and subsequent changing of the locks constituted acts of repossession of the dwelling in circumstances whereby the correspondence between their agent and the solicitor acting as messenger to the Appellant Tenant clearly shows that after that event, both parties contemplated the continuation of the tenancy. The Tribunal further accepts that the Respondent Landlords at this time were willing to provide the Appellant Tenant with a key to the changed locks. In any event, re-entry expressly excluded from the means by which a tenancy can be terminated under section 58 of the Act.
3. The Tribunal thereby finds that when the written lease expired on 13 October 2012, the tenancy (having lasted for more than six months) continued under all the same terms on a month-to-month basis, being a Part Four Tenancy under section 28 of the Act. The Tribunal finds that the continuation of the lease was requested in the communication from the Appellant Tenant via Ms Moeller to the Respondent Landlords' agent on 25 October 2012, and again on 8 November 2012 in which he asserted he had sufficient funds to pay any rent going forward.
4. However, in what the Tribunal accepts was his own handwritten letter conveyed by Ms Moeller to the Respondent Landlords on 20 December 2012, the Appellant Tenant refers to himself as the 'former tenant' of the dwelling and refers to provision for storage of his belongings. It is further clear from the Respondent Landlords' agent's email of 15 January 2013 that by that date the Appellant Tenant's personal belongings were in storage.
5. The Tribunal finds that the communication of 20 December 2012 did not constitute a Notice of Termination from the Appellant Tenant, but rather evidences that the Appellant Tenant considered himself as no longer resident at the dwelling at that point and considered that his belongings could be moved from it. He was neither physically resident in the dwelling nor was he claiming a tenancy over it. From 20 December onwards, the Respondent Landlords were entitled to come to the conclusion that the Appellant Tenant had vacated the dwelling.
6. Where a tenant has vacated the dwelling and rent arrears have persisted for 28 days or more, the tenancy may be deemed terminated by the tenant pursuant to section 37(2) of the Act. In this case, the rent fell due on 14 December 2012 for what would have been the 15th month of the tenancy, which was only partially covered by the monies already paid. Thus rent arrears (in the sum of €218.60, calculated as  $15 \times 525 = €7,875$  being the rent owed for the period, minus €7,656.40 being the rent paid) had persisted for 28 days on 11 January 2013.
7. The Tribunal is fortified in its view that both parties had deemed the tenancy terminated at this point by the email from the Respondent Landlords' agent of 15 January 2013 which stated that the Appellant Tenant's personal belongings were in storage.



#### FINDING 6.

The Respondent Landlords lawfully entered the dwelling on 3 September 2012 and thereafter and any entry into the dwelling was not an incursion into the Appellant Tenant's peaceful exclusive occupation of the dwelling.

Reasons:

1. The Tribunal accepts the Respondent Landlords' evidence that they first entered the dwelling in order to establish whether it had been vacated after having made reasonable attempts to contact the Appellant Tenant. The Tribunal accepts that the Respondent Landlords entry on 3 September 2012 was in response to a smell emanating from the dwelling and having seen a shape slumped on the bed in the dwelling and having failed to establish contact with the Appellant Tenant through all normal channels.
2. Tenants' obligations include allowing landlords reasonable access for inspection (section 16(c)) and for allowing the landlord to carry out any works required (section 16(e)). While no express permission for an inspection occurred on 3 September 2012, the Tribunal finds that it was reasonable in the circumstances that the Respondent Landlords inspected the dwelling.
3. Alternatively, the Tribunal finds that the Respondent Landlords had a bona fide belief that the Appellant Tenant was in rent arrears and were entitled to enter to determine whether the dwelling had been vacated.
4. The Tribunal finds that the Appellant Tenant did not adduce any convincing evidence of the manner in which his peaceful and exclusive occupation of the dwelling was impinged in circumstances whereby he had no knowledge of the time and date of any entry onto the dwelling and he did not respond to any of the communications from the Respondent Landlords seeking to contact him. In this regard, the Tribunal accepts the Respondent Landlords' evidence that their entry onto the dwelling prior to the tenancy's termination was for limited purpose and effect.
5. The Tribunal further accepts that the Respondent Landlord was entitled to change the locks back to ones which they were able to secure, given that section 16(j) precludes a tenant altering or improving a dwelling without the landlord's written consent, and section 17(1)(a) which expressly provides that such alteration or improvement includes alterations to the locking system of the door. The Tribunal accepts the Respondent Landlords' evidence that a note was secured to the door in order that the Appellant Tenant could obtain a copy of the key upon his return and thus entry was not denied at this point. The Tribunal rejects the relevance of the Appellant Tenant's evidence that he could not gain entry to the main door of the building in which the dwelling was situated in February 2012 as the tenancy had terminated at that point.

#### FINDING 7.

The Appellant Tenant accrued €425.28 in rent arrears.

Reasons:

1. As set out above, the Appellant Tenant fell into rent arrears on 14 December 2012 in the sum of €218.60 for the rental period 14 December 2011 - 13 January 2013. However the Tribunal found that the tenancy terminated on 11 January 2013.
2. Where a tenancy is deemed terminated by the tenant under section 37, s/he remains liable for the rent for the period that would have elapsed had a notice of termination giving

the required period of notice been served by him or her: section 37(4) of the Act. Thus, had the Appellant Tenant served a valid Notice on 20 December 2011, the date upon which he communicated that as a 'former tenant' of the dwelling, he would have needed to provide 42 days' notice, pursuant to Table 2 to section 66 of the Act. As such he remained liable for the payment of rent to 25 January 2013, which is 12 days more than for which the arrears have already been calculated. The daily rate is €17.26 (€525 x 12, divided by 365) thus the extra 12 days' liability amounts to €207.12. The total arrears are therefore €425.28.

#### FINDING 8.

The Appellant Tenant caused a deterioration in the condition of the dwelling beyond normal wear and tear, which damage is assessed in the sum of €3,000.

#### Reasons:

1. The Tribunal heard clear evidence that the Appellant Tenant was engaged in various renovations to the dwelling which included removing doors and stripping them of their paint, taking down the shower screen and changing the locks of the dwelling. There was no evidence that the Appellant Tenant had sought written consent of the Respondent Landlords to take on this work, which written consent is required under section 16(l) of the Act.
2. The Tribunal accepts the Respondent Landlords', and their Agents' evidence that no such work was required in the dwelling. The Tribunal further accepts that it took between seven and eight days in order to bring the dwelling to state in which it was possible to rent it again. However, as the Second Named Respondent Landlord conceded, an amount of the repainting would have had to have been done in any event. Thus the Tribunal awards the Respondent Landlords the sum of €2,500 for the damage which was incurred to the dwelling.
3. The Tribunal notes that between 11 January 2013 and 14 February 2013 the Respondent Landlords stored and maintained the Appellant Tenant's possessions either at the dwelling or at another premises, having packed them away first. The Tribunal assesses the costs of removal and storage of the goods for this amount of time at €500.

#### FINDING 9.

The Respondent Landlords were in breach of their obligation to allow the Appellant Tenant to recover his goods between 14 February and 26 November 2013. The breach of this obligation caused the Appellant Tenant inconvenience and distress, for which he is awarded €2,400 in damages.

#### Reasons:

1. A landlord is not entitled to withhold a tenant's goods in lieu of, or as security for, payment of rent arrears: section 19 of the Housing (Miscellaneous Provisions) Act 1992 and the Schedule to the Housing (Rent Books) Regulations, 1993 (as amended). It is noted that the parties' lease made provision, in compliance with the Rent Books Regulations, that the landlord was prohibited from impounding the tenant's goods to secure the recovery of rent.
2. The Appellant Tenant was unable to access his goods due to their being wrongfully impounded by the Respondent Landlords for a period of eight months. It is noted that in this case the goods concerned were the totality of the Appellant Tenant's day-to-day

living effects. While the inconvenience caused was significant, the Tribunal notes that this inconvenience would have been avoided had the Appellant Tenant arranged for the collection of his goods and possessions prior to the end of the tenancy. The Tribunal is cognisant of the practical difficulties faced by the Appellant Tenant while incarcerated, however it notes that he was able to operate through agents and that reasonable arrangements could have been made. The Tribunal therefore finds that the appropriate award in damages due to the Appellant Tenant is the equivalent to €300 per month that his access to his property was denied.

#### FINDING 10.

The Tribunal finds that the Respondent Landlords returned all of the Appellant Tenants' goods removed from the dwelling between January and March 2013 on 26 November 2013.

#### Reasons:

1. The Tribunal found the Respondent Landlords' account of boxing up, storing and returning the items to the Appellant Tenant to be reliable and convincing. It notes that there was some lack of clarity as to when the goods and possessions were packed and stored (in January 2013 according to the Agent's email and between February and March 2013 according to their sworn testimony). However, such inaccuracies did not detract from the overall convincing demeanour of honest witnesses describing events which occurred more than a year previously.
2. On the other hand, the Tribunal found the Appellant Tenant's evidence of his allegedly missing goods weak and lacking credibility. As a witness in general, he would found to be inconsistent and unreliable. The Tribunal noted that the Appellant Tenant did not create the list of possessions while in the dwelling and the prices he attributed a great number of them were excessive. The Appellant Tenant provided insufficient evidence that he had a large number of goods in the dwelling. While certain receipts for the purchase of goods were supplied, the Tribunal notes that some of these goods may well have been traded on after they arrived in the Appellant Tenant's possession.
3. The Tribunal rejects that the Respondent Landlords had any responsibility to return partially used materials for a flooring project which the Respondent Landlords used to complete an unfinished job commenced by the Appellant Tenant.

#### FINDING 11.

The Respondent Landlords were justified in retaining the Appellant Tenant's deposit. No order shall be made in respect of any monies due in excess of that amount.

#### Reasons

1. A landlord is entitled to retain a deposit where there are rent arrears or where there is damage in excess of normal wear and tear: section 12 of the Act.
2. In this case, rent arrears in the sum of €425.28 and the Appellant Tenant caused damage to the dwelling which was in the sum of €3000. These sums exceed the deposit of €765, which the Respondent Landlords were thereby justified in retaining.
3. The total liability of the Appellant Tenant to the Respondent Landlords amounts to €2660.28. Offsetting the Respondent Landlords' liability to the Appellant Tenant in the sum of €2,400, an amount of €260.28 would have remained due and owing from the Appellant Tenant to the Respondent Landlords. However the Respondent Landlords

expressly waived any claim in excess of the sum in which they were liable to the Appellant Tenant.

#### **8. Determination:**

**Tribunal Reference TR0614-000688**

**In the matter of Thomas Stralkowski (Tenant) and Catherine O'Reilly, Jack O'Reilly (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

No sum is owing to either party to the tenancy at 165 Lower Kimmage Road, Kimmage, Dublin 6W as the Respondent Landlords have waived their claim to €260.28, which sum comprised rent arrears in the sum of €425.28 plus damages in excess of normal wear and tear in the sum of €3000, having taken account of the justifiably withheld security deposit of €765 and damages awarded to the Appellant Tenant in the sum of €2,400 for breach of the Respondent Landlords' obligations to return his possessions to him in a timely fashion.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 20/10/2014.

**Signed:**



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**Patricia Sheehy Skeffington Chairperson**

For and on behalf of the Tribunal.