

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000696 / Case Ref No: 0713-07060

Appellant Tenant:	Gráinne Ní Dhubhghaill
Respondent Landlords:	Mark Canning, Cecilia Canning
Address of Rented Dwelling:	Cherry Lodge, 50 Belgrave Square North , Dublin 6
Tribunal:	Tim Ryan (Chairperson) Gareth Robinson, Gene Feighery
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	23 July 2014 at 10:30
Attendees:	Gráinne Ní Dhubhghaill, Appellant Tenant Simon Stokes, Representative of the Respondent Landlords
In Attendance:	Gwen Malone Stenographers

1. Background:

On 31/07/2013 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 27/03/2014. The Adjudicator determined that:

In the matter of Gráinne Ní Dhubhghaill, Applicant Tenant and Mark Canning and Cecilia Canning, Respondent Landlords it is determined that the Respondent Landlords shall pay the total sum of €38.10 to the Applicant Tenant within 14 days of the date of issue of the Order by the Board being the unjustifiably retained portion of the security deposit of €2,700.00 in respect of the tenancy of the dwelling at Cherry Lodge, 50 Belgrave Square North, Dublin 6.

Subsequently an appeal was received from the tenant on 09/06/2014. The grounds of the appeal were deposit retention. The appeal was approved by the Board on 13/06/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Gareth Robinson, 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 23/07/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

The Representative of the Respondent Landlords submitted a copy of the electricity bill for the period May to June 2013. There was no objection from the Appellant 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 Tenant) would be invited to present her case first, that there would be an opportunity for cross-examination by the Representative of the Respondent Landlords; that the Representative of 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.

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 six 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:

Issues to be decided:

The Representative of the Respondent Landlords told the Tribunal he was withdrawing claims for costs in relation to the removal of a child's bicycle and a potted plant. The only two issues before the Tribunal were the early vacation of the dwelling by the Appellant Tenant and the electricity bill for the period after she vacated until the expiry of the Notice of Termination period.

Appellant's case:

Evidence of Gráinne Ní Dhubhghaill:

The Appellant Tenant told the Tribunal she wished to query a number of statements in the Adjudicator's report. She said she had been living in the dwelling since 2010 and the most recent year-long tenancy lease was due to expire on 24 March 2013. For most of the tenancy she had been dealing with North's Property, acting as agent for the Respondent Landlord but in November 2012 this changed to Stokes Property Consultants Limited.

The Appellant Tenant told the Tribunal that on 9 January 2013 she received an email from Simon Stokes of Stokes Property Consultants informing her that her lease would not be renewed once it expired on 24 March as the Landlords, who lived abroad, wished to return to live in the dwelling. She had replied to Mr Stokes on 11 January 2013 expressing her disappointment and seeking flexibility as she had exams coming up in March when she thought she would have to vacate. She also had a young daughter who was attending a local school which was located close to the dwelling. She started to look around for a suitable property and found there was a distinct lack of suitable houses in the Dublin 6 area.

As she had received no response to her request to Stokes Property, the Appellant Tenant said she began to investigate her rights and realised she could claim Part 4 rights under the RTA which entitled her to 84 days notice from the 25 March, the correct date of the expiry of the lease. On 15 February 2013, she emailed Stokes Property Consultants to this effect. On 19 February 2013 she received a letter from Simon Stokes saying he was surprised at her email of 15 February 2013. She said she never received any Notice of Termination allegedly sent by Mr Stokes on 17 January 2013 terminating the tenancy within 56 days of the issue of the notice under the RTA. The letter also allegedly stated that the Respondent Landlords were applying to the PRTB for a resolution of the dispute.

The Appellant Tenant said she replied to Mr Stokes' letter pointing out that under the terms of the RTA a valid Notice of Termination could only be served on 26 March 2013 and should specify 84 days as she would then have been in occupation of the dwelling for three years. She said that on 26 March 2013 she received a new Notice of Termination by hand from David Soden, solicitor for the Respondent Landlord, which specified a new date of Thursday, 20 June 2013 as the end of the notice period. She said she believed this Notice of Termination to be valid and in compliance with the RTA. On 15 April 2013, she received an email from the solicitor for the Respondent Tenant confirming that the planned PRTB Adjudication for 24 April 2013 had been withdrawn.

The Appellant Tenant said she continued her search for suitable accommodation as she was very aware that the 20th of June was imminent. At one point so desperate was she said that she considered booking hotel accommodation in the former Jury's Hotel in Ballsbridge. She said she finally found a property which was located in Dublin 8, further removed from her daughter's school. However, she decided under the circumstances to take it.

The Appellant Tenant said on 25 April she emailed Simon Stokes to say she was in the process of agreeing terms for another property and that she wished to vacate the dwelling on 16 May 2013. She sought confirmation from the Respondent Landlords that this was in order. Mr Stokes replied on the same day to say he would contact the Respondent Landlords who were overseas. When she received no further correspondence from Mr

Stokes, on 3 May 2013, the Appellant Tenant wrote to him saying that as she had heard nothing back, she assumed it was in order for her to vacate on 19 May 2013, and not 16 May 2013 as she had stated in previous correspondence. She said she had paid the rent due until 19 May 2013, the day she planned to vacate the dwelling.

On 8 May 2013, the Appellant Tenant said, a full two weeks after sending her email request, she received a response from Simon Stokes saying the Respondent Landlords were not consenting to a shorter notice period than that of 20 June and that she was obliged to comply with this under Section 69 of the RTA. The Appellant Tenant said that given the Respondent Landlords and their family had been anxious to move back into the dwelling in the first place, she now believed there were punitive reasons for trying to compel her to remain in the dwelling until 20 June 2013 given she had now found suitable alternative accommodation.

The Appellant Tenant said she vacated the dwelling on 19 or 20 May and heard nothing further until, prompted by a letter from her solicitors, she received a cheque for the sum of €414.69 which Simon Stokes said in an accompanying letter was the balance from the deposit of €2,700 less 26 days' rent from 19 May to 20 June, calculated at €2,179.73; a final electricity bill of €35.68 plus €68.10 for the removal of "tenant contents". The latter item was not pursued by the Representative of the Respondent Landlords at the Tribunal Hearing.

In all her actions, the Appellant Tenant said she had been influenced by the original application by the Respondent Landlords to the PRTB for dispute resolution and the fact that she understood that they were on their way back to Dublin, or perhaps were already back and wished to move into the dwelling as soon as possible.

The Appellant Tenant said there is an implied obligation under law to respond "within a reasonable period" where legislation is silent as to a response period and she felt a two week delay - from 25 April to 8 May - in replying to her request to vacate the dwelling on 19 May was excessive in the circumstances. She said she felt there were punitive reasons for deducting 26 days rent from her deposit along with the electricity bill and she wished to have these monies returned to her.

Respondent Landlords' case:

Evidence of Simon Stokes:

In his evidence, the Representative of the Respondent Landlords said in no way was anybody trying to keep the Appellant Tenant in the dwelling as a sort of hostage. She was free to vacate at any time she wished. All the Respondent Landlords wished was that the Appellant Tenant pay rent until the Notice of Termination expired on 20 June 2013 along with any utility bills incurred during that period.

As the agent managing the dwelling, the Representative of the Respondent Landlords said he could not unilaterally decide to allow the Appellant Tenant vacate on 19 May and pay no further rent. This was entirely a matter for the Respondent Landlords who had not consented to this request.

In regard to the two week delay regarding the Appellant Tenant's request to vacate the dwelling early, he said he had difficulty in contacting the Respondent Landlords who, at the time, were on a boating holiday around the island of Sumatra in western Indonesia where the internet service was poor and sporadic. He believed a two week response period was reasonable in those circumstances.

The Representative of the Respondent Landlord said nobody occupied the house between 19 May and 20 June 2013 other than he himself making a few security checks. No electricity was used by anybody and the bill consisted largely of the standing charge for the period.

Cross-examined by the Appellant Tenant, the Representative of the Respondent Landlords said he could not provide supporting evidence of the boating holiday and was unable to have the Respondent Landlords present at the Hearing as they were away on holiday.

6. Matters Agreed Between the Parties

A one-year written tenancy agreement commenced on 26 March 2010.

Further one year written agreements were entered into in March 2011 and March 2012.

A deposit of €2,700 was paid.

The original monthly rent was €2,700 per calendar reduced twice subsequently to €2,650.00 and €2,550 respectively.

The tenant vacated the dwelling on 19 May 2013.

A deposit refund of €416.49 was returned to the tenant.

7. Findings and Reasons:

Finding:

The Appellant Tenant's appeal relating to the alleged unjustified deposit retention by the Respondent Landlords is not upheld. The Respondent Landlords are not in breach of their obligation to return the entire of the deposit to the Appellant Tenant.

Reasons:

Section 12 of the RTA obliges a landlord to return the deposit to a tenant at the termination of a tenancy other than in one of two situations, firstly where a tenant is in arrears of rent equal to or greater than the deposit (12(4)(a)(i)) or where the cost of restoring the dwelling to the condition it was in prior to the tenancy, apart from normal wear and tear, is equal to or greater than the deposit (12(4)(a)(ii)).

The Representative of the Respondent Landlord claimed to have served a 56 day Notice of Termination on the Appellant Tenant on 17 January 2013 which the latter claimed never to have received. This notice was never pursued and was invalid in any event as there was a fixed tenancy which was not due to expire until 25 March 2013.

Section 66 of the RTA sets out the periods of notice required by a landlord to give to a tenant. Where a tenancy is three or more years, the notice period required is 84 days. As the tenancy at issue was exactly three years in length on 25 March 2013, the notice period required was 84 days. Therefore, the Notice of Termination served on the Appellant Tenant on 26 March 2013 is valid.

Section 69 of the RTA allows for a landlord or tenant to agree to a lesser period of notice being given than that required by Section 66. In this case the Respondent Landlords did not agree to such a request and they were entirely within their rights to so decline. Therefore, the Tribunal finds that the Appellant Tenant is liable for rent from 19 May 2013

to 20 June 2013 in the sum of €2,179.73 calculated as follows - €2,550 x 12 = €30,600/365 = €83.83 x 26 = €2,179.73.

Finding:

The Appellant Tenants is liable for the electricity bill in the sum of €35.68 covering the period 19 May to 20 June 2013.

Reason:

Section 16(a)(ii) of the RTA obliges a tenant to pay any charges or taxes that fall due under a tenancy agreement. While the dwelling was vacant for the duration of the period in question, the Appellant Tenant is liable for any standing charges or use of electricity until the period of notice expired.

8. Determination:

Tribunal Reference TR0614-000696

In the matter of Gráinne Ní Dhubhghaill (Tenant) and Mark Canning, Cecilia Canning (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Respondent Landlords shall pay the total sum of €69.90 to the Appellant Tenant within 14 days of the issue of this Order by the Board being the unjustifiably retained portion of the security deposit of €2,700.00, having deducted rent arrears in the sum of €2,179.73 plus the sum of €35.68 for the outstanding electricity bill less the sum of €414.69 already repaid to the Appellant Tenant in respect of the tenancy of the dwelling at Cherry Lodge, 50 Belgrave Square North, Dublin 6.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 29/07/2014.

Signed:



Tim Ryan Chairperson

For and on behalf of the Tribunal.