

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0614-000699 / Case Ref No: 0314-11084**

<b>Appellant Tenant:</b>	Chris Marais
<b>Respondent Landlord:</b>	Paul Keegan
<b>Address of Rented Dwelling:</b>	212 Glebemount, Wicklow Town , Wicklow
<b>Tribunal:</b>	John FitzGerald (Chairperson) Orla Coyne, Aidan Brennan
<b>Venue:</b>	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	11 August 2014 at 2:30
<b>Attendees:</b>	Paul Keegan, Tribunal Respondent, Landlord, Geraldine Keegan, Tribunal Respondent, Landlord, Fred Jameson (Appellant Tenant's representative)
<b>In Attendance:</b>	Gwen Malone Stenographers

**1. Background:**

On 20 March 2014 the Landlord made an application to the Private Residential Tenancies Board ("the PRTB") pursuant to Section 78 of the Act. The matter was referred to an Adjudication which took place on 21 May 2014. The Adjudicator determined that:

The Respondent Tenant shall pay the total sum of €1,623.52 to the Applicant Landlord within 28 days of the date of issue of the Order, being €223.52 rent arrears; plus €2,000 damages for breach of his obligations pursuant to Section 16(f) of the Act in causing damage in excess of fair wear and tear; plus €250 damages for breach of his obligations pursuant to Section 16(l) in altering the dwelling without the prior written consent of the Applicant Landlord, having allowed for the justifiably retained security deposit of €850.

The Tenant subsequently appealed the matter which was received on 11 June 2014. The grounds of the appeal were standards and maintenance of dwelling, breach of landlord obligations. The appeal was approved by the Board at their meeting on 13 June 2014.

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

The Parties were notified of the constitution of the Tribunal and provided with details of the date, time and venue set for the hearing.

On 11 August 2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, 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:**

1. Photographs from the Appellant Tenant's Agent (taken prior to commencement of tenancy).
2. The Lease agreement.
3. Paperwork (7 pages) various correspondence regarding lease and an invoice dated September 2013 for €90.08 for work to the central heating burner handed in by the Appellant Tenants Agent.

## **4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case and that they had received the PRTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant.

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

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 or up to 6 months imprisonment or both. The Chairperson advised both parties that any member of the Tribunal may ask questions during the proceedings from time to time.

The Chairperson also reminded the Parties that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

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

Appellant Tenant's Case:

Evidence of Fred Jameson (Appellant Tenant's Agent)

The Appellant Tenant's Representative stated that the Appellant Tenant had agreed with the Respondent Landlord to rent the dwelling from 10 December 2011. He was given a rent free period prior to the official commencement of the tenancy on 10 January 2012. However he was allowed to store items in the dwelling and was given a set of keys to

enable him to gain access to it. The Appellant Tenant did not take up occupancy until 27 January 2012 due to matters which had arisen with regard to the condition of the dwelling. Accordingly he stated the tenancy commenced officially from 27 January 2012. The issues which were at issue related to cleaning, the replacement of the dishwasher, the lack of certain kitchen utensils and he went on to give evidence that a sofa and arm chairs were unclean and not suitable for immediate usage. He referred the Tribunal to a photograph which had been handed in at the beginning of the hearing showing an armchair at the commencement of the tenancy.

The Appellant Tenant's Representative expressed the view that the Appellant Tenant found it hard to get the Respondent Landlord to do various works to the dwelling and the Appellant Tenant carried on regardless doing some of the improvements himself, such as replacing the sofa and washing machine purchasing them himself. He explained how the Appellant Tenant's marital situation had changed and how he wished to live in this locality due to his daughter's attendance at a local school. He went on to outline how there had been on going problems with the heating system and how it had been necessary to pay plumbers to do routine maintenance for various breakdowns in the system. When asked by the Tribunal as to why he had not notified the Respondent Landlord of any defects he stated that any such requests would be met by a response of 'if they are not happy why don't they move out' or a loose threat that notice to quit would be given. The Appellant Tenant's Agent stated that the Appellant Tenant overlooked the alleged poor management in order to avail of the convenience of the dwelling. He stated how the heating system had been an on going problem and it was in this regard the Appellant Tenant had attempted over the period to repair the boiler and replace the burner himself in order to heat the dwelling satisfactorily. He also explained how prior to termination the Appellant Tenant had put back in the oil burner which was broken in the boiler which he accepted was unworkable and removed the oil burner unit which he paid for himself and brought it away with him when he left the dwelling.

The Appellant Tenant's agent summed up by saying that once the notice of termination was served the Appellant Tenant was under enormous pressure to move on and had he alleged no time to fully clear out household waste which had built up over the period. He expressed the view that the Respondent Landlord was aware of the condition of the property before the Appellant Tenant took up occupancy by referring the Tribunal to a sentence of a letter from the Respondent Landlord to his agent dated 1 February 2012 which was on the PRTB case file, which acknowledged issues regarding the condition of the dwelling and furnishings.

#### Respondent Landlord's Case:

##### Evidence of Paul Keegan & Geraldine Keegan

The Respondent Landlord initially objected to the photographs which were handed in at the Tribunal by the Appellant Tenant's Agent but subsequently agreed to allow them into evidence. The Respondent Landlord stated that the photos had been taken during the 'rent free period' prior to the cleaning of the dwelling. He went on to state that they had paid contract cleaners to fully clean the dwelling prior to the official commencement date and had replaced the dishwasher. The Respondent Landlord outlined that he reluctantly agreed to a small dog being kept at the dwelling and not the Doberman which the Appellant Tenant had as a pet. The Respondent Landlord outlined the poor state of the

dwelling when the Appellant Tenant left and how they had to arrange to remove large amounts of rubbish and some medical waste which had been put in plastic tubs in the shed. The tubs contained sharps and other used medical material which became a worry to the Respondent Landlords and they had moved the rubbish back to their own dwelling for safe disposal.

The Respondent Landlord went on to outline how he was qualified as a serviceman for oil heating systems. He showed with the aid of photographs the damage caused to the boiler and burner by the Appellant Tenant who had he claimed allowed oil to run out and cause severe damage to the system by overheating. He outlined that he would have been more than happy to look at the boiler if requested throughout the tenancy. He could not understand the need of replacing part or all of the system as had been claimed by the Appellant Tenant and that the boiler had been used beyond its capacity for long periods and this had caused damage to the baffles and burner. He stated that he had repaired it himself and incurred expenditure in the sum of €255 for a new burner, €60 on new baffles and €23.69 on a new oil line and associated items. He also went to outline other outlays incurred during the refurbishment of the dwelling including €69 for rubbish removal, €200 to a carpenter to replace the frame of the bath and €100 for missing crockery and kitchen utensils. He stated that the Appellant Tenant had altered the shed door to accommodate a dog flap, he accepted that this had not been changed in the meantime by himself and was not proposing to seek compensation for this alteration. He expressed his annoyance that the Appellant Tenant had not turned up personally at the Tribunal hearing. He was also disappointed by the way he had been treated by the Appellant Tenant in circumstances where he had asked the Tenant not to approach him in his workplace as they had worked in the same hospital location.

In conclusion the Respondent Landlord stated €223.52 rent was also outstanding at termination for an extra week's occupation of the dwelling by the Appellant Tenant. He confirmed that his agent was still in possession of €850 security deposit.

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

The following matters were agreed between the Parties.

1. The rent paid was €850 per month.
2. The security deposit was €850.
3. The tenancy commenced 10 February 2012.
4. The tenancy ended 11 February 2014.

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

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

7.1 Finding: The Tribunal finds that the Appellant Tenant failed to deal with his obligations under section 16(f) of the Act by not removing rubbish and harmful material from the dwelling at a cost of €69.00 rubbish and €26.00 for bin charge.

Reasons:

1. The Tribunal accepts that the Appellant Tenant was obliged to remove waste at the dwelling prior to termination, especially to dispose of medical waste and to use the wheelie bins regularly as is required for maintenance of the dwelling and awards the sum of €95.00 to the Respondent Landlord in damages for same.

7.2 Finding: The Tribunal finds that the Appellant Tenant caused damage to the dwelling in excess of normal wear and tear in the sum of €300.00.

Reasons:

1.The Tribunal accepts that work to the bath fitting cost €200, the replacement of crockery and utensils €100 and awards the Respondent Landlord these amounts for this breach of tenants obligations.

7.3 Finding: The Tribunal finds that the damage caused to the boiler and burner and the excessive use of the system caused its ultimate malfunction.

Reasons:

1.The Tribunal accepts that costs in the sum of €255 burner, €60 baffles, €23.69 oil line were expended by the Landlord and awards payment of these amounts.

7.4 Finding: The Tribunal finds that there were rent arrears in the sum of €223.52 in breach of the Tenant's obligations under section 16 of the Act.

Reasons:

1. The Tribunal accepts the evidence of the Landlord that the rent was paid up to 10 March 2014 and the Tenant left the dwelling on 18 March 2014 an extra week rent was due to be paid to the Landlord.

## **8. Determination:**

**Tribunal Reference TR0614-000699**

**In the matter of Chris Marais (Tenant) and Paul Keegan (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Tenant shall pay the total sum of €2,357.21 to the Respondent Landlord within 28 days of the date of the issue of the order being €223.52 rent arrears, €733.69 for the cost to repair the burner, rubbish removal, and carpentry costs plus €250 damages for breach of tenants obligations under section 16(1) unapproved alterations to the dwelling, €2,000 damages for breach of the tenant obligations under section 16(f) of the Act having caused damage in excess of normal wear and tear having allowed for the sum of €850 security deposit justifiably retained by the Respondent Landlord's Agent, in respect of the tenancy of the dwelling at 212 Glebemount, Wicklow Town, Co. Wicklow.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 27/08/2014.

A handwritten signature in blue ink that reads "John FitzGerald". The signature is stylized with a large initial 'J' and a long horizontal line extending from the end of the name.

**Signed:**

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**John FitzGerald Chairperson**

For and on behalf of the Tribunal.