

## **Private Residential Tenancies Board**

### **RESIDENTIAL TENANCIES ACT 2004**

#### **Report of Tribunal Reference No: TR0614-000700 / Case Ref No: 0414-11385**

<b>Appellant Landlord:</b>	Mc Grath Group
<b>Respondent Tenant:</b>	Vytautas Jurksa
<b>Address of Rented Dwelling:</b>	13 Summerhill Place, Summerhill, Dublin 1
<b>Tribunal:</b>	John FitzGerald (Chairperson) Orla Coyne, Vincent P. Martin
<b>Venue:</b>	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	25 August 2014 at 2:30
<b>Attendees:</b>	P.J. McGrath & Mary McGrath - Appellant Landlords Vytautas Jurksa - Respondent Tenant Martin Sadlier - Tribunal Representative
<b>In Attendance:</b>	Gwen Malone Stenographers

#### **1. Background:**

On 03 April 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 20 May 2014. The Adjudicator determined that:

1. The Notice of Termination served on or about 4 March 2014 by the Applicant/Respondent Landlords on the Respondent/Applicant Tenant in respect of the tenancy at 13 Summerhill Place, Summerhill, Dublin 1 is invalid.
2. The Respondent/Applicant Tenant shall pay the total sum of € 2,920 to the Applicant/Respondent Landlords within 56 days of the date of issue of the Order being rent arrears in respect of the tenancy of the above dwelling on the date of the hearing of the adjudication covering the period up and until the last day of May 2014.
3. The Respondent/Applicant Tenant shall also pay any further rent outstanding from 1 June 2014, at the rate of €995 per month, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as the tenancy is validly terminated.
4. The Applicant/Respondent Landlords shall refund the entire of the security deposit of €995 to the Respondent/Applicant Tenant on gaining vacant possession of the above dwelling less any amounts properly withheld in accordance with the provisions of the Act.

The Landlord subsequently appealed the decision which was received on 11 June 2014. The grounds of the appeal were rent arrears and invalid Notice of Termination. 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, Vincent P. Martin 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 25 August 2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2, Dublin.

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

PRTB File

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

The Respondent Tenant handed in a preprinted submission outlining his case.

## **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 her 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 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 Landlord's Case:

Evidence of Mary McGrath (McGrath Group)

The Appellant Landlord stated that they had received no rent since September 2013 from the Respondent Tenant. She did not realise that the figure for rent arrears had to be

stated on the 14 day letter which she served dated 9 January 2014 on the Tenant. She went on to state how she had made numerous calls to the Tenant without any success.

She outlined that the Tenant now owed €3,345.00 up to and including the date of the Tribunal hearing namely 25 August 2014. This figure was not disputed by the Respondent Tenant. She informed the Tribunal that she was aware that the Respondent Tenant had collected amounts of rent from the other tenants in the dwelling but had not passed these rents on to the Appellant Landlord. The Appellant Landlord outlined that the lease has not contained any provision for a sublet of the dwelling but she was aware that up to five people occupied the dwelling. She advised the tribunal that she sought recovery of the rent in the sum of €3,345 and for the termination of the tenancy by all the tenants due to rent arrears. She pointed out in conclusion that they had served a valid notice of termination together dated 30 June 2014 with the 14 day warning letter subsequently and handed in to the tribunal at this point copies of the documentation to support this claim.

#### **Respondent Tenant's Case:**

The Respondent Tenant handed in a preprinted submission outlining his case which I attach to the report.

The Respondent Tenant stated that he had paid a portion of the rent in the sum of €165 in April of this year. He also raised questions regarding ownership of the dwelling which the Tribunal under Section 110 of the Act is not permitted to adjudicate and/or make a finding concerning the proper title or otherwise of a dwelling. Under this Section the Act states the title to any lands or property shall not be drawn into question in any proceedings before a mediator, an adjudicator or the Tribunal under this Part. He submitted the invalid Notices of Termination dated 27 January 2014 and 4 March 2014 and pointed out that the three step process had not been followed. He asked the Tribunal to take account of his low paid circumstances and accepted that he had collected rent from other fellow tenants which had not been passed on to the Appellant Landlord. The Respondent Tenant in summing up acknowledged the existence of a valid Notice of Termination dated 30 June 2014 which he conceded he did not and was not procedurally challenging under the Act. He also accepted that there was the sum of €3,345.00 in rent arrears.

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

The following matters were agreed between the Parties:

1. A deposit of €995 was paid.
2. The rent was €995 per calendar month
3. The property is still occupied by the tenant.
4. The deposit is retained by the Applicant Landlord.

### **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 therefore, are set out hereunder.

7.1 Finding: The Tribunal finds that the sum of €3,345 in rent arrears is outstanding and owing up to 24 August 2014.

Reasons:

1. The primary obligation of a tenant is to pay rent as it falls due : Section 16(a)(i) of the Act and accordingly the Tenant is not entitled to withhold rent and is therefore in breach of his obligation under Section 16(1)(a) of the Act. The Tribunal heard clear evidence from the Landlord and Tenant in this regard and accepts there to be the arrears of rent.

7.2 Finding: The Tribunal finds that a valid Notice of Termination was served dated 30 June 2014.

Reasons:

1. The Tribunal heard evidence from both parties to verify the valid Notice of Termination dated 30 June 2014 which the Tribunal accepts. The Tribunal finds that the said Notice of Termination of 30 June 2014 is valid as it conforms with Section 62(1)(g) of the Act. This together with the serving of the proper 14 day notice on by the Landlord on the Tenant complies with the provisions of the Act

## **8. Determination:**

**Tribunal Reference TR0614-000700**

**In the matter of Mc Grath Group (Landlord) and Vytautas Jurksa (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Notice of Termination dated 30 June 2014 is valid.

The Respondent Tenant shall pay the total sum of €3,345 to the Appellant Landlord within 56 days of the date of the issue of the order being rent arrears in respect of the tenancy of 13 Summerhill Place, Summerhill, Dublin 1.

The Respondent Tenant shall also pay any further rent outstanding from 1 September 2014, unless lawfully varied, at the rate of €57.40 per day.

The Respondent Tenant and all persons residing in the above dwelling shall vacate and give up possession of the dwelling within 21 days of the date of the issue of the order.

The Appellant Landlord shall refund the entire security deposit of €995 to the Respondent Tenant on gaining possession of the above dwelling less any amounts properly withheld in accordance with the provision of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08/10/2014.

A handwritten signature in blue ink, reading "John FitzGerald", with a horizontal line underneath.

**Signed:**

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**John FitzGerald Chairperson**

For and on behalf of the Tribunal.