

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0614-000701 / Case Ref No: 0413-05357**

<b>Appellant Landlord:</b>	Declan Gorman
<b>Respondent Tenant:</b>	Dzeina Dambe, Intars Balans
<b>Address of Rented Dwelling:</b>	Apartment 15, Georges Court, Georges Hill, Balbriggan , Dublin
<b>Tribunal:</b>	Gareth Robinson (Chairperson) Gene Feighery, Tim Ryan
<b>Venue:</b>	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	23 July 2014 at 2:30
<b>Attendees:</b>	Intars Balans, Tribunal Respondent, Tenant, Declan Gorman, Tribunal Appellant, Landlord, Dzeina Dambe, Tribunal Respondent, Tenant,
<b>In Attendance:</b>	Gwen Malone - Stenographer

**1. Background:**

On 09/04/2013 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 08/05/2014. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €450.00 to the Applicant Tenants within 28 days of the date of issue of this Order, the unjustifiably retained portion of the security deposit of €650.00, having deducted €200.00 for damage in excess of ordinary wear and tear in respect of the tenancy of the Dwelling at Apartment 15, George's Court, Balbriggan, County Dublin.

Subsequently the following appeal was received:

Landlord : received on 11/06/2014. The grounds of the appeal: Deposit retention, Standard and maintenance of dwelling, Damage in excess of normal wear and tear, Breach of tenant obligations ; Approved by the Board on 13/06/2014

The PRTB constituted a Tenancy Tribunal and appointed Gareth Robinson, Gene Feighery, Tim Ryan as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Gareth Robinson to be the chairperson of the Tribunal ("the Chairperson").

On 27/06/2014 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:**

N/A

## **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 Tenants) would be invited to present their case first, that there would be an opportunity for cross-examination by the Respondent Landlord; that the Respondent Landlord 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 or by way of affirmation and be recorded by the official stenographer present and he reminded the parties that to knowingly provide false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 and/or up to 6 months imprisonment or both.

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

The Chairperson also reminded the parties that, as a result of the Hearing that they would submit their findings to the Board who would make a legally binding Determination Order which would be issued to the parties and could be appealed to the High Court on a point of law only.

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

The Appellant Landlords evidence;-

The Landlord gave evidence that the Tenants moved into the Dwelling on 20 May 2011 on a 12 month fixed term lease agreement. A copy of the signed lease between the parties was adduced in evidence to the Tribunal. At the expiry of this one year period, the Landlord said he agreed that the Tenants could remain in the property on a periodic basis and on the same terms as the original signed lease. The Landlord stated that the Dwelling was freshly painted and the locks all fully functioned prior to the commencement of the tenancy. He said he took great pride in the care and maintenance of the Dwelling

and that the letting Agency carried out an inspection, took photographs for advertising and everything was working in the property as far as he was concerned.

He stated that initially there were not problems with the tenancy, however rental payments became routinely late, however he sympathised with the predicament of the young couple with children who were trying to get on their feet and he allowed the late payment situation to run.

The Landlord gave evidence that as a result of a breakdown in the Tenants' relationship, the second named respondent left the Dwelling and the first named respondent tenant remained on in the dwelling.

The Landlord gave further evidence that on or about 28th September 2012 he was contacted by the first named respondent tenant who stated that the washing machine in the Dwelling was broken. The Landlord said that he discovered a series of coins and other material in the filter cup at the bottom of the washing machine and that the first named respondent Tenant accepted that the items belonged to her, or perhaps to some of the children. The Landlord agreed with the first named respondent tenant that a repairman would be required to take a look at it. She suggested a repairman known to her and the Landlord accepted this. It appears as if this person exacerbated the problem in relation to the washing machine.

He said that in November 2012 the first named respondent tenant issued him with two days verbal notice indicating that she was terminating the tenancy and vacating on 20 November 2012, however she remained in the dwelling until until 23rd November 2012.

Upon inspecting the Dwelling, the Landlord stated that he discovered that the lid to the toilet cistern lid in the bathroom was missing. He also discovered that the washing machine was completely broken.

A repairman retained by the Landlord said the washing machine would cost more to repair than to replace it.

The Landlord also gave evidence that a drawer in the fridge and the thermostat had been broken . He also stated that there were a number of holes in the plasterwork around the Dwelling that had been badly filled with plaster (including around a curtain rail that appeared to have come away from the wall in the main bedroom). Photographic evidence of the filled holes and repaired plasterwork was adduced in evidence to the Tribunal in support of this claim. Furthermore, the Landlord alleged that a set of curtains had been thrown out by the Tenants without his permission.

In the aftermath of the Tenants moving out, the Landlord also submitted that he had received a series of threatening phone calls from the second named respondent tenant seeking the return of the security deposit. He gave evidence that on one of these occasions in particular the second named respondent tenant allegedly phoned him purporting to be from the Citizens Advice Bureau.

The Landlord also gave evidence that he was unable to change the electricity bill back into his name because of Data Protection restrictions.

The Landlord stated that the costs of repairs estimated to be €1,000 outweighed the security deposit of €650, however he was prepared to accept the security deposit in full and final settlement of repairs. He stated that the problems he had encountered with the Tenant's were a source of great stress to him and that he has not, and will not re-let the

dwelling again as a result. He said the dwelling has remained vacant since the Tenant's left and it has been up for same for the past 6 months.

He also gave a list of the items he received quotes for:

a) Hotpoint Washing Machine 1200 spin	€650
b) Repair of plasterwork and painting	€200
c) Toilet cistern assembly and fitting	€150
d) Fridge door and thermostat	€ 80
e) Three days rent at €25 per day.	€ 75
f) Sink Unit Door replacement	€ 50
g) Balcony Door curtains	€ 75
h) Missing oil paintings pictures	€ 60
i) Key fob for Garage Door	€ 50

Total	€ 1,040
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The Landlord further gave evidence that no alterations or repairs were actually carried out.

The Respondent Tenants case:

Evidence of Dzeina Dambe:

The first named respondent tenant gave evidence that she considered the matters raised by the Landlord to come within the scope of ordinary wear and tear, having regard to the nature of the property and the length of the Tenants' occupation.

She further gave evidence that the plasterwork had been filled in by the Tenants where necessary and amounted to normal wear and tear. The curtain rail, in particular, was falling off the wall and therefore had to be repaired. She gave evidence that she pointed this out to the Landlord on a number of occasions.

In relation to the washing machine, the Tenant gave evidence that same worked after it was fixed by the repair man.

The Tenants had attempted to replace the broken cistern lid, but could not find an identical lid. The Landlord had accepted that the Tenant acknowledged that she was responsible for this.

The Tenant gave evidence that she threw out the curtains because of the condition they were in.

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

1. Address of Dwelling: Apartment 15, Georges Court, George's Hill, Balbriggan, Co. Dublin
2. Tenancy commenced: 20th May, 2011
3. Deposit: €650 paid on commencement
4. Monthly rent: €650 p.m.

**7. Findings and Reasons:**

## Finding 1:

The Tribunal finds that the tenants are in breach of their obligations under Section 16 (f) of the Act by reason of their failure to maintain the dwelling and by causing damage in excess of normal wear and tear. Section 16(f) states:

A tenant of a dwelling shall not do any act that would cause a deterioration in the condition the dwelling was in at the commencement of the tenancy, but there shall be disregarded, in determining whether this obligation has been complied with at a particular time, any deterioration in that condition owing to normal wear and tear, that is to say wear and tear that is normal having regard to:

- (i) the time that has elapsed from the commencement of the tenancy,
- (ii) the extent of occupation of the dwelling the landlord must have reasonably foreseen would occur since that commencement, and
- (iii) any other relevant matters.

## Reason:

1. Damage to the washing machine and fridge / freezer does not come within the meaning of normal wear and tear, having regard to the fact that the attempts made by the Tenant to retain a repairman to fix the washing machine exacerbated the problem.

On the basis that the Respondent Tenants accepted that they were responsible for a number of holes in the plasterwork, (with the exception of two holes resulting from door handles), and based on the photographic evidence adduced to the Tribunal, it is clear that considerable damage to the walls existed. This damage was exacerbated by the unprofessional attempts by the Tenants to repair and plaster the holes in the wall and reinstate of the curtain rail.

2 The Tenants removed the curtains without the permission of the Landlord.

## Finding 2:

The Tribunal finds that the Appellant Landlord is in breach of his obligations under Section 12 (1) (d) of the Act by unjustifiably retaining a portion of the security deposit in the sum of €236. Section 12(1)(d) states:

A landlord of a dwelling shall, return or repay promptly any deposit paid by the tenant to the landlord on entering into the agreement for the tenancy or lease.

However, under Section 16(g) of the Act a Landlord may take such steps as reasonably required for the purposes of restoring the dwelling to the condition the dwelling was at the commencement of the tenancy or to defray any costs incurred by the landlord when taking such steps as are reasonable for that purpose and the Tribunal calculates the amount owed to the Respondent Tenants as follows:

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|--|------|
| a) Hotpoint Washing Machine 1200 spin  | € 0  |
| b) Repair of plasterwork and painting  | € 50 |
| c) Toilet cistern assembly and fitting | €150 |

d) Fridge door and thermostat	€ 0
e) Three days rent at €25 per day.	€ 25 one day
f) Sink Unit Door replacement	€ 0
g) Balcony Door curtains	€ 75
h) Missing oil paintings pictures	€ 0
i) Key fob for Garage Door	€ 15
	€315.00

#### 8. Determination:

**Tribunal Reference TR0614-000701**

**In the matter of Declan Gorman (Landlord) and Dzeina Dambe, Intars Balans (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord shall pay the total sum of €335.00 to the Respondent Tenants within 28 days of the date of issue of this Order, being the unjustifiably retained portion of the security deposit in the sum of €650.00, less the sum of €315.00 relating to damage in excess of ordinary wear to the dwelling in respect of the tenancy of the Dwelling at Apartment 15, George's Court, Georges Hill, Balbriggan, County Dublin, the said sum being the balance of the validly held security deposit.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 14/08/2014.

**Signed:**




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**Gareth Robinson Chairperson**

For and on behalf of the Tribunal.