

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000702 / Case Ref No: 0114-10093

Appellant Tenant:	Samuel Walsh, Esther Mukami Mwihahi
Respondent Landlord:	William Walsh, Shane McCarthy (Receiver)
Address of Rented Dwelling:	2 Westbury Woods, Greenville, The Moyne, Enniscorthy , Co.Wexford
Tribunal:	Catriona Walsh (Chairperson) Aidan Brennan, Thomas Reilly
Venue:	Conference Room, Department of the Environment, Community & Local Government, Newtown Road, Wexford
Date & time of Hearing:	27 August 2014 at 11:00
Attendees:	Chris Ryan on behalf of Shane McCarthy (Receiver), Respondent Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 28/01/2014 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 07/04/2014. The Adjudicator determined that the Notice of Termination served on the 18th November 2013 by the Receiver, for and on behalf of the Applicant Landlord, on the Respondent Tenants, in respect of the tenancy of the dwelling at 2 Westbury Woods, Greenville Lane, The Moyne, Enniscorthy, Co. Wexford, is valid and the Respondent Tenants, and any other persons residing in the above dwelling, shall vacate and give up possession of the dwelling within 14 days of the date of issue of the Determination Order. The Respondent Tenants shall pay any rent outstanding from the 14th April 2014, at the rate of €450.00 per month and/or €14.79 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month/day or part thereof, until such time as they vacate the above dwelling. The Receiver, for and behalf of the Applicant Landlord, shall refund the entire of the security deposit of €1,300.00 to the Respondent Tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeals were received:

Tenant : received on 23/05/2014. The grounds of the appeal: Rent arrears, Overholding ; approved by the Board on 11/07/2014

The PRTB constituted a Tenancy Tribunal and appointed Catriona Walsh, Aidan Brennan, Thomas Reilly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Catriona Walsh to be the chairperson of the Tribunal ("the Chairperson").

On the 28 day of July 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 27/08/2014 the Tribunal convened a hearing at Conference Room, Department of the Environment, Community & Local Government, Newtown Road, Wexford.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

None

4. Procedure:

The Tribunal hearing was convened to commence at 11.00am. The Agent for the Respondent Landlord was present at the appointed time. The Appellant Tenants did not appear and at 11.45pm the Tribunal was satisfied to proceed.

The Chairperson asked the party present to identify himself and to identify in what capacity he was attending the Tribunal. It was noted that a written nomination form was provided previously from Shane McCarthy Receiver authorizing Chris Ryan to attend on his behalf. The Chairperson confirmed with the party that he had received the relevant papers from the PRTB in relation to the case and that he had received the PRTB document entitled "Tribunal Procedures".

The Chairperson explained the procedure that would be followed: that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as possible. She indicated that under normal course the Party who had appealed (the Appellant Tenant) would be invited to present their case first. In normal course there would be an opportunity for cross-examination by the Respondent Landlord. The Respondent Landlord would then be invited to present his case and his evidence would be liable to be cross-examined by the Appellant Tenants had they attended. She indicated that members of the Tribunal might also ask questions from time to time.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the stenographer present. She advised the party present that knowingly providing false or misleading information or statements to the Tribunal was an offence punishable by a fine of €4,000.00 or 6 months imprisonment or both.

She also reminded the party present 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 enforced by either of the parties or in some cases by the PRTB at it's discretion. She also advised the party present that the Tribunal process was the final step in the dispute resolution process unless appealed to the High Court on a point of law only, pursuant to Section 123(3) of the Private Residential Tenancies Act 2004 as amended.

She asked the party if he had any queries about the procedure and there were none.

He was then sworn in.

5. Submissions of the Parties:

The Appellant Tenants did not appear.

The Representative of the Respondent Landlord confirmed that the documentation submitted by the Respondent Landlord to the PRTB was correct. In that documentation it was documented that there were arrears of rent. The Respondent Landlord initially requested the payment of the rent both verbally and in writing. Subsequently, a 14 day Notice was served by the Respondent Landlord on the Appellant Tenants and finally a Notice of Termination was served on the 18th November 2013 by the Respondent Landlord on the Appellant Tenants, terminating the tenancy.

The Agent for the Respondent Landlord was asked if he wished to comment on the grounds of Appeal as set out by the Appellant Tenant and he said he had no comment to make on same.

The representative of the Respondent Landlord was asked if there was further rent outstanding since the Adjudication hearing and he indicated that there was. He gave evidence that no further rent had been paid since the last payment on the 31st March 2014 which paid in part the arrears of rent to the 14th April 2014. Rent arrears were therefore outstanding from the 14th April 2014 to date. The representative of the Respondent Landlord was seeking payment of the rent due.

The representative of the Respondent Landlord was asked about the deposit, and he indicated that the Letting Agreement indicated that a deposit of €1,300.00 had been paid by the Appellant Tenants to William Walsh.

6. Matters Agreed Between the Parties

None as the Appellant Tenants did not appear.

7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence given by the representative of the Respondent Landlord and the non-appearance of the Appellant Tenants to pursue their Appeal, the Tribunal's findings and reasons therefor are set out hereunder;

Finding 1;

The Notice of Termination served by the Respondent Landlord on the Appellant Tenants dated the 18th November 2013 in respect of the tenancy at 2 Westbury Woods, Greenville Lane, The Moyne, Enniscorthy, County Wexford is valid.

Reasons

The representative of the Respondent Landlord confirmed that the documentation submitted by the Respondent Landlord to the PRTB was correct. In that it was found that

there were arrears of rent and thereby a breach of the Appellant Tenants obligations. The Respondent Landlord initially requested the payment of the rent both verbally and in writing. The 14 day Notice was served by the Respondent Landlord on the Appellant Tenants and complies with Section 67(3) of the Residential Tenancies Act 2004 as amended. The Notice of Termination served on the 18th November 2013 by the Respondent Landlord on the Appellant Tenants is in accordance with Section 62 of the Residential Tenancies Act 2004 as amended.

Finding 2;

The Appellant Tenants and any persons residing in the above dwelling shall vacate and give up possession of the dwelling within 14 days of the issue of the Determination Order.

Reasons

It has been found that the Notice of Termination served on the 18th November 2013 is valid, and the representative of the Respondent Landlord indicated that the Appellant Tenants remain in possession and are therefore overholding.

Finding 3;

There are further arrears of rent from the 14th April 2014 to date and the Tribunal finds that the Appellant Tenants are in breach of their obligations for non-payment of rent and awards the sum of €500.00 to the Respondent Landlord in respect of same.

Reasons

The representative of the Respondent Landlord confirmed in evidence that no further payment of rent had been made since the adjudication hearing and that rent was due from the 14th April 2014 to date. The representative of the Respondent Landlord confirmed that the account had been checked that morning and no further payment of rent had been received. There were previous substantial arrears of rent which had been dealt with separately under a previous Adjudication and do not form part of this Appeal.

8. Determination:

Tribunal Reference TR0614-000702

In the matter of Samuel Walsh, Esther Mukami Mwihahi (Appellant Tenant) and William Walsh – in receivership (Appellant Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Notice of Termination served by the Respondent Landlord on the Appellant Tenants dated the 18th November 2013 in respect of the tenancy at 2 Westbury Woods, Greenville Lane, The Moyne, Enniscorthy, County Wexford is valid.

The Appellant Tenants and any persons residing in the above dwelling shall vacate and give up possession of the dwelling within 14 days of the issue of the Determination Order.

The Appellant Tenants shall pay the total sum of €2,525.00 to the Respondent Landlord being €2,025.00 rent outstanding from the 14th April 2014 to the date of the Appeal together with the sum of €500.00 for breach of Appellant Tenant obligations for non payment of rent, within 56 days of the date of issue of the Determination Order, in respect of the above dwelling.

The Appellant Tenants shall also pay any further rent outstanding from 1st September 2014 at the rate of €450.00 per month and/or €14.79 per day, 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 they vacate and give up possession of the above dwelling.

The Respondent Landlord shall refund the entire of the security deposit of €1,300.00 to the Respondent Tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 23/09/2014.



Signed:

Catriona Walsh Chairperson

For and on behalf of the Tribunal.