

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000704 / Case Ref No: 0314-10769

Appellant Landlord: Patrick Eastwood

Respondent Tenant: Joanna Whelan

Address of Rented Dwelling: 6 Tyrells Place, Fitzgibbon Street , Dublin 1

Tribunal: Tim Ryan (Chairperson)
Gene Feighery, John Tiernan

Venue: Tribunal Room, PRTB, Floor 2, O'Connell Bridge
House, D'Olier Street, Dublin 2

Date & time of Hearing: 14 August 2014 at 2:30

Attendees: Patrick Eastwood, Appellant Landlord
Stephen Eastwood, Witness for Appellant Landlord
Brendan Walsh, Christopher B. Walsh Solicitors,
Solicitor for Appellant Landlord
Joanna Whelan, Respondent Tenant

In Attendance: Gwen Malone Stenographers

1. Background:

On 04/03/2014 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 12/05/2014. The Adjudicator determined that:

1. The Respondent Landlord shall pay the sum of € 3,640 to the Applicant Tenant within 28 days of the date of issue of the Order being damages in the sum of € 5,000 for the landlord's failure to comply with his obligations under the Housing (Standards for Rented Houses) Regulations, 2008 and for the unlawful termination of the tenancy of the dwelling at 6 Tyrells Place, Fitzgerald Street, Dublin 1 less the sum of € 1,360 rent arrears. The sum of damages of € 5,000 is inclusive of a sum of € 300 in respect of the loan to the Applicant Tenant from her father to cover painting and decorating costs, the inconvenience and discomfort she suffered living in the premises, the loss of personal belongings, and for the distress and upset she suffered as a result of the unlawful termination.
2. The Respondent Landlord shall pay the further sum of € 800 to the Applicant Tenant, within 28 days of the date of issue of the Order, being the entire of the unjustifiably retained security deposit of €800 in respect of the above tenancy.

3. The Applicant Tenant will deliver up to the Respondent Landlord the keys she holds to the property at the above tenancy within 14 days of the date of issue of the Order if she has not done so already.

Subsequently an appeal was received from the Landlord on 16/06/2014. The grounds of the appeal were the standard and maintenance of the dwelling, unlawful termination of the tenancy (illegal eviction) and deposit retention. The appeal was approved the Board on 04/07/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Gene Feighery, John Tiernan 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 14/08/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin.

2. Documents Submitted Prior to the Hearing Included:

1. PRTB File

3. Documents Submitted at the Hearing Included:

The Landlord circulated additional photographs of the interior of the dwelling on the eve of the Tribunal Hearing which were not seen by the Respondent. The Respondent Tenant objected on the grounds that they should have been submitted at the adjudication. In the interest of justice the Tribunal admitted the photographs in to evidence on the grounds that they may be of assistance to the Tribunal in interpreting the evidence and on the grounds that the 10 day requirement as advised by the PRTB for the submission of evidence in advance of a Tribunal hearing is not inflexible and may be waived with the consent of the Tribunal.

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 Landlord) would be invited to present his case first, that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case and that there would be an opportunity for cross-examination by the Appellant Landlord.

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 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 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 posted on the PRTB website. It could be appealed to the High Court on a point of law only in accordance with Section 123(3) of the Residential Tenancies Act 2004, hereafter referred to as the RTA.

The Parties giving evidence were then sworn in and the hearing commenced.

5. Submissions of the Parties:

Appellant's case:

At the commencement of the Tribunal, the Representative for the Appellant Landlord said he wished to withdraw the three grounds of appeal, firstly that the dwelling did not comply with the Housing (Standards for Rented Houses) Regulations 2008; secondly, that the tenancy was unlawfully terminated and thirdly, that the deposit of €800 was unjustifiably retained. He said the only issue the Appellant Landlord wished to appeal was the level of damages awarded by the adjudicator. It was agreed by both parties that there were rent arrears of €1,360.00.

The Representative of the Appellant Landlord said that the Landlord was aged 86 and was not au fait with the Residential Tenancies Act (RTA) or the Housing (Standards for Rented Houses) Regulations 2008. He said that the Respondent Tenant had been most anxious to take up the tenancy even though the dwelling was in a poor state. He stated that since the Respondent Tenant vacated the dwelling, it had remained vacant and it was not planned to re-let it as the cost of refurbishment required was prohibitive.

The Witness for the Appellant Landlord, who also acted as his agent, said that a rent backlog had built up because he could not get in touch with the Respondent Tenant to collect rent as she never appeared to be in the dwelling after Christmas 2013. The Witness for the Appellant Landlord said that he finally made contact with the Respondent Tenant on 8 February 2014 and that he gave her one month's verbal notice to terminate the tenancy which, he said, she readily accepted. He said that he was unable to serve a written Notice of Termination as he was unable to meet the Respondent Tenant. He confirmed that he had visited the dwelling on 23 February 2014 and took some photographs of the condition of the rooms to bring to the Appellant Landlord who was his uncle and who was unable to visit himself due to his age. He vehemently denied that he, or anyone on the Appellant Landlord's behalf, had removed any belongings of the Respondent Tenant. He said that he only received the keys back from the Respondent Tenant in the days following the issuing of adjudicator's report. He said the dwelling remained untouched since then and there were a lot of assorted items belonging to the Respondent Tenant still in the Dwelling for which he produced photographs, some of which were dated 11 August 2014.

Respondent Tenant's case:

The Respondent Tenant said that at the commencement of the tenancy she had signed the lease and thought that the Respondent Landlord would help with furnishings and materials that would render the Dwelling more properly habitable. When this was refused she said that she borrowed €300 from her father for painting and the purchase of materials in order to carry out improvements on a 'do it yourself' basis. She gave evidence that amongst other things the washing machine was broken, there was no hot water, the shower didn't work, the roof leaked, the rooms were damp, there were draughts under ill fitting doors, there were electricity cables hanging from the walls and there was no heating, She said that she received some assistance from the St Vincent de Paul organisation. Photographic evidence of the condition of the Dwelling was submitted that supported her assertions.

In her evidence, the Respondent Tenant said she and her six year old daughter had to move back to her mother's house at Christmas 2013 due to the poor condition of the dwelling. She said both her daughter and herself were regularly picking up infections due to the constant draughts, coldness and dampness. She said she agreed to the one month's verbal Notice of Termination from the agent of the Appellant Landlord on 8 February and believed she had until 8 March 2014 to move her belongings. However, the Respondent Tenant said that on 23 February 2014 she was shocked when she arrived at the dwelling to find that all her belongings had been removed and all that remained were the items belonging to the Appellant Landlord. Included among her missing belongings were items of jewellery of sentimental value, clothes, shoes and her daughter's toys.

She denied being unavailable to pay the rent and said that the reason was that she was unable to make contact with the Appellant Landlord's agent. In relation to the keys she said she was unable to contact anyone to whom to hand them back but finally managed to do so in the days after receipt of the adjudication report.

6. Matters Agreed Between the Parties

The tenancy commenced on 30 March 2013.

A deposit of €800 was paid.

The rent was €200 per week paid in advance.

There are agreed arrears of rent of €1,360.00.

The tenant vacated the dwelling on 23 March 2014.

The landlord still retains the deposit.

7. Findings and Reasons:

Finding:

The Appellant Landlord is in breach of his obligations in relation to the Housing (Standards for Rented Houses) Regulations 2008.

Reasons:

While the Appellant Landlord withdrew three of his grounds of appeal, he appealed the level of damages awarded by the adjudicator. The award centred on the failure to comply with the Housing (Standards of Rented Houses) Regulations 2008 and on unlawful

termination of the tenancy. While the Appellant Landlord admitted that the dwelling had never complied in many ways with the said Regulations and that the Respondent Tenant was initially very anxious to take up the tenancy, he is nevertheless obliged under Section 12 of the Act of 2004 to maintain the dwelling in a habitable condition. While he did carry out some repairs at the request of the Respondent Tenant, he seriously failed to make any real effort to comply with the regulations. The Tribunal awards damages of €2,000 in respect of the inconvenience and discomfort suffered by both the Respondent Tenant and her daughter as it finds the non-compliance rate at the higher end of the spectrum. The Respondent Tenant suffered distress and losses as a result of the Appellant Landlord's failures including the loss of €300 which she found necessary to expend on works that she requested the Appellant Landlord to carry out and he had refused. The Tribunal finds that in conjunction with the damages referred to above having regard to Section 12(g)(i) & (ii)(II) of the Act of 2004 the Respondent Tenant should receive reimbursement of the monies she expended on the said repairs,

Finding:

The Landlord did not effect an unlawful termination of the tenancy.

Section 34 of the Act of 2004 sets out the methods by which a landlord may terminate a tenancy. However, it also allows for landlords and tenants to agree to lesser terms of notice as long as both sides are committed. The Tribunal finds that, in this case, the Respondent Tenant readily agreed to one month's notice of termination given orally by the agent of the Appellant Landlord. In addition, the Respondent did not return the keys at the end of the expiry of the notice of termination on 8 March 2014 and did not in fact return the keys until a date in May 2014 after the issuing of the adjudicator's report. At all times up to then she had free access to the dwelling. The Appellant Landlord did not move to change the locks at any time nor hinder her access to the dwelling in any way.

There was conflicting evidence as to who removed selected items from the belongings of the Respondent Tenant which she discovered missing on 28 February 2014. While the Respondent Tenant said she believed the Appellant Landlord, or someone acting on his behalf, had taken them she failed to provide the Tribunal with any convincing supporting evidence of this.

8. Determination:

Tribunal Reference TR0614-000704

In the matter of Patrick Eastwood (Landlord) and Joanna Whelan (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 €1,740.00 to the Respondent Tenant within 14 days of the date of issue of this Order by the Board, being damages in the sum of €2,000 in respect of the inconvenience and discomfort suffered by the Respondent Tenant and her daughter plus reimbursement of the sum of €300 in respect of monies expended by the Respondent Tenant in carrying out repairs to the interior of the Dwelling for which the Appellant Landlord was responsible plus the whole of the unjustifiably retained security deposit of €800, having deducted rent arrears in the sum of €1,360.00 in respect of the tenancy of the dwelling at 6 Tyrells Place, Fitzgibbon Street, Dublin 1.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/08/2014.

A handwritten signature in black ink, appearing to read 'Tim Ryan', is positioned above a horizontal line.

Signed:

Tim Ryan Chairperson

For and on behalf of the Tribunal.