

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0614-000709 / Case Ref No: 0114-09697**

<b>Appellant Tenant:</b>	Segun Fasanya
<b>Respondent Landlord:</b>	Denise Foley
<b>Address of Rented Dwelling:</b>	34 Baron's Hall, Rise, Balbriggan , Dublin,
<b>Tribunal:</b>	Gareth Robinson (Chairperson) Gene Feighery, Tim Ryan
<b>Venue:</b>	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	01 September 2014 at 2:30
<b>Attendees:</b>	Segun Fasanya - Appellant Tenant Denise Foley - Respondent Landlord Marion Donohoe - For Appellant Landlord Victoria Clarke - Witness for Appellant Landlord
<b>In Attendance:</b>	Gwen Malone Stenographers

**1. Background:**

On 08/01/2014 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 08/05/2014. The Adjudicator determined that;

1. The Applicant Tenants application regarding illegal eviction in respect of the tenancy of the dwelling at 34 Barons Hall Rise, Balbriggan, Dublin is not upheld.

2. The Applicant Tenants application regarding breach of Landlord obligations to allow the Tenant of the dwelling to enjoy peaceful and exclusive occupation of the dwelling pursuant to Section 12 (1) (a) of the Residential Tenancies Act 2004 is not upheld

3. The Applicant Tenant shall pay the total sum of €344.73 to the Respondent Landlord within 28 days of the issue of the Order being the sum agreed by the parties as being the balance owing on foot of Determination Order dated 26th November 2013 reference DR0813-07317/DR0813-07150.

Subsequently an appeal was received from the tenant. The grounds of the appeal were; Unlawful termination of tenancy (Illegal eviction) The appeal was approved by the Board on 20/06/2014.

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").

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 01/09/2014 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:**

PRTB File

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

None

**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 Tenant) would be invited to present his 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 her 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 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 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:**

Appellant Tenant's Case

Evidence of Segun Fasanya;

The Appellant Tenant opened the case and referred to a previous application which had been made to the PRTB which had ordered him to pay rent arrears in the sum of €2,156.41 to the Respondent Landlord within 56 days of the date of issue of the order and further ordered him to vacate and give up possession of the dwelling.

He stated that the reason he was in rent arrears was that he had received a letter from the Department of Social Welfare confirming that his rent assistance payment had been reduced from €550 to €520 per calendar month. This amount represented a shortfall of €30 on his rental payment to the Respondent Landlord. He said he sought permission from the Respondent Landlord to reduce his rental payment during which time he would appeal to the Department of Social Welfare. He stated that he was entitled to additional allowances because he had child custody for his child who occasionally stayed with him in the dwelling. He asked the Respondent Landlord if he could remain in the dwelling, but the Respondent Landlord refused his request.

He said that he appealed the decision to a Tribunal citing rent above market rate and he attempted to negotiate with the Respondent Landlord. He said he withdrew his appeal while negotiations were taking place. However he said that the Respondent Landlord would not enter into any agreement until all of the arrears of rent were discharged. He said that he attempted to sort out the dispute with the Department of Social Welfare who gave him back rent and that he cleared his arrears for October and he continued to pay rent up to December 2013. He was hopeful of getting a further six month extension of his tenancy, however as soon as the Respondent Landlord received the order from the PRTB he said the Respondent Landlord withdrew her agreement and he was told to vacate the dwelling.

He said contrary to what was stated in the case file, he was not on holiday in Nigeria over Christmas but was in Waterford attending a family law case and also he was sitting exams over the Christmas period. He said that on his return to the apartment on the 20th December 2013 he found that the lock had been changed.

The Appellant Tenant attempted to contact the Landlord's Agent from outside the door. He did not manage this so he attended at the Garda Station and told the Gardai that the locks had been changed. He gave the Gardai the number of the Respondent Landlord's agent and they phoned her.

It was arranged between the parties that they would meet the following day, which was the 21st of December 2013. On arriving at the property, the Appellant Tenant was asked to stay outside by the Respondent Landlord's agent and maintenance man. He asked the man to call the Gardai and the Gardai arrived. The Gardai said that, based on the Order that was issued, the Appellant Tenant should have moved out. The Appellant Tenant was told to come back to the property on the 2nd of January, 2014.

The Appellant Tenant gave evidence that it was not possible to deal with the matters on the 2nd of January 2014, and the date of the 8th of January 2014 was agreed. The Appellant Tenant gave evidence that there was Christmas shopping and medicines which he did not have access to over the entirety of the Christmas period. The Appellant Tenant further submitted that he should have had the whole of the 20th of December 2013 to move out going by the Determination Order.

The Appellant Tenant accepted that on the 20th of December 2013 he owed the sum of €894.73, but that the Landlord still held a deposit of €550. The previous arrears had been reduced significantly by payments made by way of rent allowance from the Department of Social Protection between the 30th October, 2013 and the 20th of December, 2013.

Respondent Landlord's case:

Evidence of Victoria Clarke;

The Agent on behalf of the Respondent Landlord gave evidence that rental payments of €550 were set for the Appellant Tenant's fixed term tenancy. The reason the Respondent Tenant was chosen over other tenants was that he was a single person with custody of a child, which allowed him higher allowances to that of a single individual. In some circumstances Tenant's with custody can be allowed up to €650 in allowances. She said that they do not accept €520 allowance single person allowance.

She said that Department of Social Welfare paid €390 in rent supplement to the Appellant Tenant and that it was his responsibility to top up this sum by €160 as per the signed contract, however one month into the tenancy he missed his first payment. He wanted to use his deposit for rent.

She stated that the Department of Social Welfare paid the Appellant Tenant's rent supplement directly to the Agency and that he was issued a receipt, however following the reduction in payments the Appellant Tenant was told to sort the matter out. She said that he made an appeal to the Department of Social Welfare, however he never paid his top up payments. She said that in April, May, June, July and August, i.e. 6 months no top up was paid. Only the rent allowance of €390 X 6 was paid giving a total sum of rent of €2,340 and not €3,300 as agreed under the contract. She said that the Respondent Tenant made no effort to pay arrears so when the determination order came from the PRTB, they accepted it because at that stage they had exhausted all avenues with the Respondent Tenant.

She stated that on 19 December the keys were returned by the Appellant Tenant to the Agency and that on 20 December the locks were changed

Evidence of Denise Foley:

In her direct sworn testimony to the Tribunal the Respondent Landlord stated that she didn't actually deal directly with the Tenant but rather the Estate Agents had dealt directly with him. She further gave evidence that when the report was received from the PRTB, indicating that the Appellant Tenant was to vacate the dwelling, she was unwilling to negotiate the position. However, she did give evidence that he sought an extension of time.

She made it clear to the Agents that she was not agreeing to the postponement of the date for vacating the dwelling and they confirmed that they had made this clear to the Appellant Tenant. She was unwilling to negotiate with the Appellant Tenant, particularly in light of the fact that there were arrears of rent due and owing. Furthermore, she gave evidence that there was no agreement between the parties that he withdraw his appeal to the PRTB.

The Respondent Landlord gave evidence that it was her understanding that, during the week when the Appellant Tenant was to vacate, he intended going abroad for a period. It was for this reason that he was not going to be available for a joint inspection on the Thursday, December 19th, 2013. The agent had confirmed by email that a key to the

dwelling had been left to her office by the Appellant Tenant. It was the understanding of the Agent that the Appellant Tenant had left when she went to do the final inspection on the 20th of December 2013 and accordingly, the agent then sent an email to him indicating that he had not removed all of his property from the dwelling.

As a result of the telephone call from the Gardai an arrangement was made that the Appellant Tenant was to arrive at the dwelling on Saturday, 21st of December 2013 and to remove all his belongings. The Respondent Landlord disputed the amounts claimed by the Tenant in respect of items left in the property from the 20th of December 2013 to the 8th of January 2014.

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

Address of the property:	34 Baron's Hall, Rise, Balbriggan, Co. Dublin
Rent:	€550.00 per calendar month
Security Deposit:	€550.00
Tenant in occupation:	No
Tenancy commenced:	26th September, 2012
Tenancy Terminated:	20th December, 2013

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

Findings:

Finding 1:

The Applicant Tenant's application regarding illegal eviction in respect of the tenancy of the dwelling is not upheld. Tribunal finds that no illegal eviction occurred in respect of the dwelling.

Reason:

The Appellant Tenant's evidence was that he had received the report from the PRTB and lodged an appeal. He withdrew this appeal and received the Determination Order on the 12th December 2013. The Determination Order required him to vacate the dwelling within 7 days of the issue of the Order. Thus, counting the first day as the 13th December, 2013 the 7th day ended at midnight on the 19th December 2013. The Appellant Tenant was given the full 24 hours to vacate the dwelling. Therefore, any issues which occurred on the 20th or 21st of December are not relevant to these proceedings.

Secondly the Appellant Tenant's evidence was that he attended at the offices of the Agent for the Respondent Landlord on 13th December 2013 and sought more time. Following this meeting, the agent for the Respondent Landlord emailed the Appellant Tenant on the 16th December 2013 confirming that all property was to be removed from the dwelling on Friday 20th December 2013 and that a final inspection was to be carried out on that date. This date was one day after the Appellant Tenant was obliged to leave the premises.

Finding: 2

The Appellant Tenant's application in relation to breach of Landlord's obligations with regard to packing his belongings into black bags and the loss of items of food and clothing is not upheld.

Reason;

The Tribunal is of the view that insufficient evidence was presented in relation to this matter, and feels that the Respondent Landlord took all reasonable steps to deal with the situation on the basis of the Determination Order previously issued.

## **8. Determination:**

**Tribunal Reference TR0614-000709**

**In the matter of Segun Fasanya (Appellant Tenant) and Denise Foley (Respondent Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Appellant Tenant's application regarding illegal eviction in respect of the tenancy of the dwelling at 34 Barons Hall Rise, Balbriggan, Dublin is not upheld.
2. The Appellant Tenant shall pay the total sum of €344.73 to the Respondent Landlord within 28 days of the issue of the Order being the sum agreed by the parties as being the balance owing on foot of a Determination Order, dated 26th November 2013, reference DR0813-07317/DR0813-07150.

**Signed:**

The image shows two handwritten signatures in blue ink. The top signature is 'Gareth' and the bottom signature is 'Robinson'. They are written in a cursive, flowing style.

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**Gareth Robinson Chairperson**

For and on behalf of the Tribunal.