

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000710 / Case Ref No: 0314-11053

Appellant Landlord: Keith Lowe

Respondent Tenant: Caroline Kenny

Address of Rented Dwelling: 43 Weaver Court, Clondalkin , Dublin 22

Tribunal: Tim Ryan (Chairperson)
Gene Feighery
Patricia Sheehy Skeffington

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

Date & time of Hearing: 06 October 2014 at 2:30

Attendees: Edward Moran, Representative of the Appellant Landlord.
Alan Fitzgerald, Representative of the Appellant Landlord
Caroline Kenny, Respondent Tenant

In Attendance: Gwen Malone Stenographers

1. Background:

On 19/03/2014 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 28/04/2014. The Adjudicator determined that:

1. The Notice of Termination served on 7 February 2014, by the Applicant Landlord on the Respondent Tenant, in respect of the tenancy of the dwelling at 43 Weaver Court, Neilstown Road, Clondalkin, Dublin 22, is invalid.
2. The Respondent Tenant shall pay the total sum of €1316.12 to the Applicant Landlord within 28 days of the date of issue of the Determination Order, being rent arrears of €1116.12 plus €200 damages for failing to pay her rent as it fell due, in respect of the tenancy of the above dwelling.

Subsequently an appeal was received from the Landlord on 17/06/2014. The grounds of the appeal related to the invalidity of the Notice of Termination, rent arrears and over-holding. The application for the appeal was approved by the Board on 11/07/2014.

The PRTB constituted a Tenancy Tribunal and appointed Tim Ryan, Patricia Sheehy Skeffington and Gene Feighery 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 06/10/2014 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:

The first named Representative of the Appellant Landlord submitted a spread sheet containing a schedule of payments of rent up to the date of the Hearing. The Respondent Tenant raised no objection but said she could not confirm if the figures were correct one way or the other.

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 Representatives of the Appellant Landlord) would be invited to present their 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 Representatives of 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. The Determination Order could be appealed to the High Court on a point of law only under Section 123(23) of the Residential Tenancies Act hereafter referred to as the Act of 2004.

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

5. Submissions of the Parties:

Preamble: it was agreed by the parties that there were two items for consideration by the Tribunal, firstly, arrears of rent and secondly, the validity of the Notice of Termination.

Appellant's case:

Evidence of Edward Moran:

The first named Representative of the Appellant Landlord told the Tribunal that the total amount of arrears of rent as of the day of the Hearing was €4,346.22. He said the HSE portion of the rent which was €661.30 per month had not been paid for the last three months but this had only been spotted on the morning of the Tribunal Hearing. He said the Respondent Tenant had been paying her portion of the rent sporadically to the manager of the apartment complex, who collected the rent as a favour to tenants to avoid them the hassle of going to the bank. He said the last payment of €50 by the Respondent Tenant was made on 9 January 2014 and there had been no payment since then. He said he had not been contacted by the Respondent Tenant in relation to payments and the complex manager was available almost every day for the Respondent Tenant to pay her portion of the rent if she so desired.

In respect of the Notice of Termination, he said that he had hand-delivered it to the Respondent Tenant at the dwelling on the date marked on it and, as she was absent, had put it through the door.

Submissions of Alan Fitzgerald:

The second named Representative of the Respondent Landlord told the Tribunal that he believed the Notice of Termination complied in full with all the requirements of Section 62 of the Act of 2004. He said it was signed by the agent, specified the date of service on which it was delivered by the agent in person and gave 28 days notice in the event of an appeal. He said he understood that a sample Notice of Termination was available on the PRTB website but this did not have to be used in order to comply with Section 62 of the Act of 2004.

The second named Representative of the Appellant Landlord said it would have been obvious to the Respondent Tenant that she had 28 days in which to appeal the landlord's right to serve the notice. He said the statement in the Notice of Termination that the right of the landlord to serve it could be appealed within 28 days automatically incorporated any issue as to the validity of the notice. Omitting a few words from the sentence as outlined in Section 62(g) of the Act of 2004 in the Notice of Termination did not, he said, invalidate it in any way.

He said that as Section 62(g) reads that the Notice shall "state that any issue as to the validity of the notice or the right of the landlord or tenant, as appropriate" means that the serving party can select the appropriate clause, being either its validity or the right of the tenant or landlord to serve it.

Respondent Tenant's case:

Evidence of Caroline Kenny:

In her evidence to the Tribunal, the Respondent Tenant said she was not sure how much the arrears were in total but did not disagree with the amount submitted by the first named Representative of the Appellant Landlord. She said she believed the HSE was still paying the rent as she continued to get receipts for the payments.

The Respondent Tenant said she had offered to pay rent at a rate of €100 per week at the Adjudication Hearing but had heard nothing since from the first named Representative of the Appellant Landlord. She said she had tried to call him but had failed to make any contact. She told the Tribunal the man to whom she had been paying the rent in the past had told her it had nothing to do with him anymore.

The Respondent Tenant said she was anxious to vacate the dwelling as it was too close to her family but so far the local authority had not come up with any offers for her. She said she was very much caught up with looking after her young child and was in and out of hospital a lot of the time.

6. Matters Agreed Between the Parties

1. A fixed 12 month lease commenced on 21 January 2011.
2. The tenancy reverted to a Part Four tenancy after 21 January 2012.
3. The rent was €800 per month.
4. A deposit of €800 was paid and is retained by the landlord.
5. A Notice of Termination was served on the Tenant by the Landlord on 7 February 2014.

7. Findings and Reasons:

Finding:

The Respondent is in breach of her obligation to pay rent.

Reasons:

Section 16(a) of the Act of 2004 requires that a tenant shall pay rent on the day it falls due for payment. While the Respondent offered some explanations as to her reasons for not paying rent, the Tribunal finds that she did not make sufficient effort to pay any rent arrears since 9 January 2014.

The first named Representative of the Appellant Landlord said the HSE had not paid its portion of the rent for the last three months. However, this fact only came to light on the morning of the Tribunal Hearing and the Respondent Tenant had not been offered an opportunity to check with the HSE. In fact, she claimed she was still receiving receipts of payments from the HSE. The first named Representative of the Appellant Landlord had not contacted the HSE either to find out the reason for the alleged ending of the payments nor discussed the matter with the Respondent Tenant with a view to finding out a possible reason. Accordingly, the Tribunal finds rent arrears owing in the total sum of €2,362.32 being the arrears due at the last payment by the HSE plus three months balance due by the Respondent Tenant (€1,946.22 plus €416.10 - 3 x €138.70). The Tribunal expressly declines to make a finding on the rental sums which may or may not have been paid by the HSE since 24/07/2014.

Finding:

The Notice of Termination served by the Appellant Landlord on the Respondent Tenant on 7 February 2014 is invalid.

Section 62 of the Act of 2004 sets out the requirements for a Notice of Termination to be valid. Section 62(1)(g) states that the Notice must state “ that any issue as to the validity of the notice or the right of the landlord or tenant, as appropriate, to serve it must be referred to the Board under Part 6 within 28 days from the date of receipt of it.”

The final sentence in the Notice of Termination served by the Appellant Landlord on the Respondent Tenant, dated 7 February 2014 reads: “The right of the landlord to serve the notice may be referred to the Residential Tenancies Board within 28 days of receipt of this notice.” The Tribunal finds that this sentence only addresses the second part of the requirement of Section 62(1)(g) i.e. the right of the landlord to serve it, and entirely omits the reference to any issue as to the validity of the notice being capable of being referred to the Board. The Tribunal finds that both clauses must be included in the Notice of Termination for it to impart the meaning the statute requires. Accordingly, the Notice did not satisfy the full requirements of Section 62 of the Act of 2004 and, therefore, did not validly terminate the tenancy.

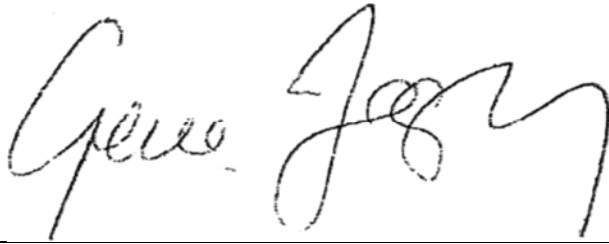
8. Determination:

Tribunal Reference TR0614-000710

In the matter of Keith Lowe (Landlord) and Caroline Kenny (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

1. The Notice of Termination served by the Appellant Landlord on the Respondent Tenant on 7 February 2014 in respect of the tenancy of the dwelling at 43 Waver Court, Neilstown Road, Clondalkin, Dublin 22, is invalid.
2. The Respondent Tenant shall pay the total sum of €2,362.32 to the Appellant Tenant in 23 monthly instalments of €100.00 followed by a final instalment of €62.32 commencing on the 28th day of the month after the issue of this Order by the Board in respect of the tenancy of the above dwelling. The total sum of €2,362.32 represents the arrears of rent accrued between 21/01/2011 and 01/10/2014, no finding having been made on any contribution towards rent made by the HSE on behalf of the Appellant Tenant between 24/07/2014 and 01/10/2014.
3. The enforcement of the Order for such payment will be deferred and the total sum will be reduced by the number of monthly instalments made to the Appellant Landlord on each due date until the sum of €2,362.32 has been paid in full.
4. For the avoidance of doubt any default in payment of the monthly instalment shall act to cancel any further referral and the balance due at the date of default shall immediately become due and owing to the Appellant Landlord in full.
5. The Appellant tenant shall also pay any further rent outstanding from 6 October 2014 (the date of the hearing) at the rate of €800 per month, unless lawfully varied, and any other charge as set out in the terms of the tenancy agreement for each month or part thereof, until such time as she vacates the above dwelling.

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

A handwritten signature in black ink, appearing to read 'Gene Feighery', written over a horizontal line.

Signed:

Gene Feighery Chairperson

For and on behalf of the Tribunal.