

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000712 / Case Ref No: 0314-10860

Appellant Landlord:	Colette Maguire, David Conroy
Respondent Tenant:	Elaine Corcoran
Address of Rented Dwelling:	28 Bessborough Avenue, North Strand Road , Dublin 3
Tribunal:	John FitzGerald (Chairperson) Orla Coyne, Vincent P. Martin
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	25 August 2014 at 10:30
Attendees:	Colette Maguire - Appellant Landlord David Conroy - Appellant Landlord Elaine Corcoran - Respondent Tenant Paul Harrington – Respondent Tenant Patrick Garvey - Letting Agent Gerard Quinlan - Witness Alan Howley - Witness
In Attendance:	Gwen Malone Stenographers

1. Background:

On 10 March 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 13 May 2014. The Adjudicator determined that:

1. The Applicant Tenants' application under the grounds of standard and maintenance of the dwelling and breach of landlord obligations is upheld in respect of the tenancy of the dwelling at 28 Bessborough Avenue, North Strand, Dublin 3.
2. The Notice of Termination served on the 14 February 2014 by the Respondent Landlord on the Applicant Tenants, in respect of the tenancy of the dwelling at 28 Bessborough Avenue, North Strand, Dublin 3 is invalid.

The Landlord subsequently appealed the decision which was received on 19 June 2014. The grounds of the appeal were standard and maintenance of dwelling, breach of landlord obligations and invalid Notice of Termination. The appeal was approved by the Board at their meeting on 04 July 2014.

The PRTB constituted a Tenancy Tribunal and appointed John FitzGerald, Orla Coyne, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John FitzGerald 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 25 August 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 present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson 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 held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant.

The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson 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 or up to 6 months imprisonment or both. The Chairperson advised that any member of the tribunal could and may from time to time ask questions where appropriate.

The Chairperson also reminded the Parties 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 appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

5. Submissions of the Parties:

Appellant Landlord's Case:

Evidence of Colette Maguire

The Appellant Landlord stated that she accepted that previous notice of termination which was served on 14 February 2014 was invalid, however she stated that she had served a valid notice of termination on 10 June 2014 and which would expire on 3 September 2014. She denied any suggestion which were made regarding her breach of Landlord's obligations and claimed that both herself and her partner responded very quickly to any notification of defects in the dwelling and was not neglecting their responsibilities in this regard. She outlined how in October 2013 she got a call at work regarding a leak from a velux window in the bathroom and she sent along a workman who could not open the window. He advised her that the seals did not work and the velux was glued close and could not be opened without breaking the seals. The matter she stated could not be addressed at that time due to poor weather, however she outlined some other more minor issues were addressed at that time in the dwelling. She went on to state that a new velux window was ordered and how it was their intention to have a neighbour friend take out the damaged velux window and replace it with the new one when he got an opportunity and when weather conditions improved. She said the tenants took delivery of the window on 17 January 2014 and it was stored in the garage.

The Appellant Landlord stated that relations with the Respondent Tenants deteriorated after the Tenants sent an email/letter dated 7 February 2014 advising them about the Tenants taking advice relating to the conditions in the dwelling. She was upset that the tenants contacted the environmental health officer of Dublin City Council to have the dwelling inspected on 5 March 2014 without her knowledge.

The other matter which the tenants had raised related to the flooding of the living area floor. They claimed that two to three inches of water had pooled in the living area. The Appellant Landlord stated that her partner responded immediately to this problem and within twenty four hours the floor was dry. The Appellant Landlord outlined that this water was from the shower fitting which was leaking behind the bath and seeping onto the area concerned. The matter was addressed by her partner who initially presumed that it must have been from street floodwater, given the account of its depth by the tenants the Appellant Landlord outlined how they had attended the dwelling on the evening in question (18 December 2013) and with the help of a friend removed all the linoleum floor covering and placed it in the garage to dry out. The flooding was not from street flood water but from a leaking shower fitting. The Appellant Landlord advised the tenants that it was their intention to relay the linoleum when the water damage to it, had dried out.

The Appellant Landlord stated that the winter of 2013/2014 was one of the worst on record and very little time could be found to attend to the fixing/installing of the velux window and relay the linoleum. It had been their intention to fully remedy the matters and quickly. When questioned by the Tribunal regarding the delay she outlined how they had covered the velux window with tarpaulin as a temporary measure to prevent leakage in the short term.

The Appellant Landlord maintained that no effort was made by the tenants to adequately ventilate the dwelling and were convinced that other areas of mould and mildew were caused by the tenants own habits of not opening windows and this she outlined was demonstrated by how tight the velux window had become over the period which necessitated the breaking of the seals in the velux window to enable it to be opened. She also stated that the Tenants had brought electric heaters into the dwelling without her permission.

The Appellant Landlord insisted that the original Notice of Termination dated 14 February 2014 requiring the Tenants to vacate the property was solely to do with a family member wishing to reside there and the fact that relations had deteriorated between the Tenants and herself had nothing to do with the matter. She stated that her sister was experiencing personal and financial difficulty at this time.

The Appellant Landlord summed up by stating that it had never been her intention to have a difficult relationship with her tenants. She outlined how she was disappointed with them involving Threshold, the Environmental Health Officer of Dublin City Council and the PRTB in her affairs. She contended that this was an unnecessary course of action, however was pleased that the Dublin City Council Environmental Officer had given the dwelling a clean bill of health following their second inspection once the new velux window was fitted and the linoleum refitted. She had sought advice from Des Kelly Carpets who advised that it was quite common to relay good quality linoleum once fully dry. She went on to make the point that the dwelling had been totally refurbished in 2006 and posed the question as to why if it was so bad the tenants appear reluctant to leave'. She concluded her evidence by stating that she wanted her good name as a Landlord maintained and her reputation as a reasonable person kept in tact.

Evidence of Patrick Garvey (Letting Agent)

The Appellant Landlord's Letting Agent made a brief statement outlining how he had attempted to source a flat or apartment for the Appellant Landlord's sister but was unable to get suitable accommodation where they would accept rent supplement. He outlined that the Notices of Termination had been drafted for genuine reasons, previously and in the current case.

Evidence of Alan Howley (Witness)

The Appellant Landlord's witness outlined that he was an electrician by trade and how he had inspected the velux window and the buildup of condensation generally in the dwelling. He also outlined how he regularly attended to routine works on behalf of the Appellant Landlord and was familiar with the dwelling in question over a long period. He stated that he rewired the extractor fan and sorted any other issues which were notified to him as part of the ongoing instruction from the Appellant Landlord. He gave evidence to outline how tight the velux window had become and how it had to be prised open but in doing so the seals had to be broken which necessitated the replacing of the window. He reset the central heating clock but had noticed portable electric heaters in the dwelling which were not good he stated from the point of view of creating condensation. He went on to state how he advised the tenants how cheaper it would be to use the central heating which he checked regularly and was working well.

Respondent Tenant's Case:

Evidence of Elaine Corcoran

The Respondent Tenant stated that the relationship with the Appellant Landlord was poor and while they kept asking for the works to be carried out, no worthwhile responses were forthcoming. She went on to state that they contacted the Environmental Health Office, Dublin City Council. She outlined how they reported a leak in the velux window by telephone and later by email and notified the Appellant Landlord of bad ventilation, mould and mildew in the dwelling. She accepted that when flood alerts were issued for the area

the Appellant Landlord had dropped over sand bags to deal with any flood water which the area is prone to.

She denied that they were not opening the skylight window and stated that it was opened after every use of the bathroom and especially a shower.

Evidence of Paul Harrington

The Respondent Tenant stated how they reported the leak in the velux window in October 2013 and eventually in July 2014 it was fixed. He outlined how plastic had been placed over the velux window as a temporary measure, but had rendered it impossible to ventilate the bathroom as a result. He stated that they had asked the Respondent Landlord to have it professionally dealt with but there was always an excuse, either that due to dark evenings or bad weather not to do so.

He stated that a new velux window was delivered on 17 January 2014, however it remained in the garage for months. He disputed earlier evidence that its installation had to be delayed not because of bad weather but because it did not suit the working hours of their neighbour friend who was to install it and he felt this together with the relaying of the old linoleum which he claimed had been damaged and torn in the flooding on the living area floor was the last straw in their otherwise good previous relationship.

He stated that it was unacceptable to leave the floor uncovered for such a long period, while the old linoleum was drying out in the garage. He always understood he said that new linoleum would be fitted and was not happy with the long delay. He stated that they did use the gas central heating system to heat the dwelling as the bills would prove. He outlined that a previous tenant had left behind a small electric heater, but they did not bring in any heaters into the dwelling. He also stressed that they always opened windows throughout the dwelling unless it was very cold or if there was nobody in the dwelling to ventilate it.

He acknowledged that most requests were dealt with promptly except the velux window and the matter relating to the relaying of the lino. He stated how they wished to continue living in the dwelling as they liked the area and it was convenient to their work.

6. Matters Agreed Between the Parties

The following matters were agreed between the Parties:

1. The monthly rent is €1,200.
2. The security deposit paid was €1,200.
3. The tenancy commenced on 9 December 2010.
4. The Notice of Termination dated 14 February 2014 is invalid.

7. Findings and Reasons:

Having considered all of the documentation before it, and having considered the evidence presented to it by the Parties, the Tribunal's findings and reasons therefore, are set out hereunder.

7.1 Finding: The Tribunal finds that the Appellant Landlords are in breach of their obligations under Section 12(1)(b) of the Act by reason of their failure to effect repairs to an appropriate standard and in a time frame which would be considered reasonable in relation to the standard and maintenance of the dwelling in respect of the tenancy of the dwelling at 28 Bessborough Ave, North Strand, Dublin 3.

Reasons:

1. The Tribunal accepts the tenant's evidence that some undue delay took place between October 2013 and July 2014 in respect of repairs to the velux window and the relaying of linoleum in the living area and awards €300 damages to the tenants for this breach of Landlord obligations in failing to repair same properly and within a reasonable time period.

7.2 Finding: The Tribunal finds that it cannot determine on the Notice of Termination served on 10 June 2014.

Reasons:

1. The Tribunal cannot determine whether the new Notice of Termination served on 10 June 2014 by the Appellant Landlord on the Respondent Tenants in respect of the tenancy of the dwelling at 28 Bessborough Avenue, North Strand, Dublin 3 to be valid or not, because the said Notice of Termination was served during the period while the matter was before the PRTB. This together with the fact that the period of time under the Notice of Termination which was stated to be 3 September 2014 had not expired before the hearing of the dispute on today's date i.e. 25 August 2014.

8. Determination:

Tribunal Reference TR0614-000712

In the matter of Colette Maguire, David Conroy (Landlord) and Elaine Corcoran (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlords shall pay the sum of €300 to the Respondent Tenants within 21 days of the date of the issue of the Determination Order being damages for breach of the Landlords' obligations under section 12 of the Act in relation to the dwelling situated at 22 Bessborough Ave, North Strand Rd, Dublin 3.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08/10/2014.



Signed:

John FitzGerald Chairperson

For and on behalf of the Tribunal.

