

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0614-000714 / Case Ref No: 0314-10777**

<b>Appellant Tenant:</b>	Jacinta Glynn, John Glynn
<b>Respondent Landlord:</b>	Jeremy Kelly, Garvan Walsh
<b>Address of Rented Dwelling:</b>	5 Cairnbrook, Glenamuck Road, Carrickmines, Dublin 18
<b>Tribunal:</b>	Thomas Reilly (Chairperson) Aidan Brennan, Vincent P. Martin
<b>Venue:</b>	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	08 September 2014 at 2:30
<b>Attendees:</b>	Jacinta Glynn - Tribunal Appellant Tenant John Glynn and Company Solicitors - Tribunal Representative John Glynn - Tribunal Appellant Tenant Morrison Estates - Tribunal Representative Emmet Carty BL Michael Clare Lisa Doyle – Respondent Landlord's Representative
<b>In Attendance:</b>	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 14/05/2014. The Adjudicator determined that

1. The Notice of Termination dated 5th February 2014 is not valid.
2. The Applicant Tenants application under the grounds of standard and maintenance of the Dwelling and breach of the Respondent Landlords' obligations under s.12 of the Act is upheld.
3. The Respondent Landlords shall pay the sum of €500.00 to the Applicant Tenants, within 28 days of the date of issue of the Order, being damages for breach of the Landlords' obligations under s.12 of the Act in respect of the tenancy of the Dwelling at 5 Cairnsbrook, Carrickmines, Dublin 18.

Subsequently, an appeal was received from the tenant.

The grounds of the appeal were; Breach of landlord obligations, Invalid Notice of termination.

The appeal was approved by the Board.

The PRTB constituted a Tenancy Tribunal and appointed Thomas Reilly, Aidan Brennan, Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Thomas Reilly 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 08/09/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2, Dublin.

**2. Documents Submitted Prior to the Hearing Included:**

PRTB File

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

None.

**4. Procedure:**

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Tenants against a determination made following an adjudication held on 14 May, 2014 in the case of a dispute between the Tenants and the Respondent Landlords in respect of a tenancy at 5 Cairnbrook, Glenamuck Road, Carrickmines, Dublin 18. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witness to identify themselves and to state the capacity in which they were attending the Tribunal hearing. 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 and understood the PRTB document entitled "Tribunal Procedures". Both Parties confirmed that they had done so. The Chairman said that he would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson then explained that the Tribunal hearing, as stated in its procedures, was not intended to be very formal, but that the Parties must follow any instructions given by the Chair, that evidence would be given under Oath or Affirmation, would be recorded by the stenographer present, and that based on that recording a transcript could be made available to the Tribunal if necessary, to assist it in preparing its report on the dispute. The parties confirmed that they had no objection to the arrangements for recording the proceedings. The Chairperson also stated that it was against the law for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide materially false or misleading information to the Tribunal. He pointed out that an offence may be prosecuted by the PRTB through the courts and a successful conviction could result in a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson added that the first-named Appellant Tenant would be invited first to present the case for the Appellant Tenants; this would be followed by an opportunity for

cross-examination by the Respondent Landlords' representative; that the Respondent Landlords' representative would then be invited to present the case for the Respondent Landlords, followed by an opportunity for cross-examination by the first-named Appellant Tenant. He said that members of the Tribunal would ask questions of both Parties from time to time. He also directed that neither Party should interrupt the other when direct evidence was being given.

The Chairperson also said that at the end of the hearing, the first-named Appellant Tenant and the Respondent Landlord's representative would be given the opportunity make a final submission should they so wish.

The Chairperson reminded the Parties that that the Determination Order of the PRTB, based on the report of the hearing, would decide the issue between the parties and could be appealed to the High Court on a point of law only cf. Section 123.

All persons giving evidence to the Tribunal were then sworn in.

## **5. Submissions of the Parties:**

Appellant Tenants Case:

Mr. Carty on opening the case for the Appellant Tenants stated that he would address the matter of the Notice of Termination served on the Appellants on 20 September 2013 first. He contended that this notice was invalid and grounded his assertion on the fact that it was not in compliance with s 34. of the Act. The Notice of Termination did not provide the details of the proposed new occupants and their relationship to the Respondent Landlords. Such failure was referred to in correspondence from the Appellant Tenants to the Respondent Landlords on 3 October 2013. The concerns of the Appellant Tenants as regards breach of Landlords obligations were also addressed in this communication with specific reference being drawn to light bulbs and the problem re the flushing of a toilet. Counsel for the Appellant Tenants referred to a communication from the agents of the Landlords stating a delay had occurred with their plans subsequent to the delivery of the Notice of Termination of 20 September 2013 and offering a month to month arrangement. Counsel for the Appellant Tenant suggested that this proposal was inappropriate as this was a Part 4 tenancy and the Respondents were in a position to provide reasons for seeking termination and for a delay they state is now necessary. By letter dated 11 October 2013 the Appellant Tenants advised the Respondents representative of outstanding complaints relating to Landlords obligations and their proposal to engage contractors to carry out the works required at the Landlords expense. This correspondence made reference to the withdrawal of the Notice of Termination dated 20 September 2013 and confirmed the Appellant Tenants understanding of their rights under the RTA 2004 and stating that should they wish to vacate they would do so pursuant to the provisions of the Act.

Due to the ongoing issues and uncertainties relating to lack of attention to defects in the dwelling and the concerns about the attempts to terminate the tenancy, Counsel for the Appellant Tenants submitted that there is a breach of Peaceful enjoyment of the Dwelling.

On 8 January 2014 the agents for the Respondent Landlords issued notice of a rent review to the Tenants and proposed the monthly rent move from €3500.00 to €4500.00 and provided examples of similar dwellings in the area and the rents prevailing. The Appellant Tenants in their response by letter of 23 January 2014 rebutted this attempt to

increase the rent and supported their contention by the provision of examples of dwellings in the area of similar character renting for lesser sums, they suggested that their dwelling should have a rent decrease as the current rent is excessive having regard to their understanding of market rents and the featured defects in the dwelling. Once again the areas in need of attention were drawn to the attention of the Respondent Landlords as follows; the externals of the dwelling need painting. The boiler is inadequate to meet the heating needs of the dwelling. Light sockets need to be replaced. A handle on the master bedroom door requires replacement. The hall door requires repair.

Much discomfort was caused at Christmas when the boiler stopped working and the Appellants had to purchase electric heaters to keep their home warm while awaiting a part of the said boiler to be supplied. The Appellants stated that four days rent should be paid to them resulting from this incident and nominated a figure of €460 to cover same. The Appellant Tenants also expressed the view that a sum to cover the cost of the heaters should also be paid to them.

On 5 February 2014 a further Notice of Termination was delivered to the Respondents. It was contended by Counsel for the Appellant Tenants that the issue of a second Notice in such a short time post the delivery of the first Notice of Termination makes it less than credible that the Landlords wished to use the dwelling for their own use that being one of the requirements in the Termination of a Part 4 tenancy. It was suggested that the issue of the Termination Notice may have resulted from the rejection of the rent increase which was proposed earlier by the Respondent Landlords. On the matter of the Termination Notice itself, Counsel for the Appellant Tenants stated that it was similar to the one issued in September 2013, and was not in compliance with the Act and was therefore invalid. He submitted that certain areas of the dwelling that were out of bounds for the Appellant Tenants due to the need to repair or refurbish were the Lounge, Bathrooms/ensuite. Much of this inconvenience resulted from leaking water from the upstairs bathrooms resulting in water dropping to the floor below causing dampness in the Lounge ceiling and sagging as a result of water retention. The leaking water was being collected in vessels placed on the ground floor below. While the dwelling was a well proportioned property with spacious accommodation much inconvenience was caused in trying to facilitate family and friends over the Christmas period and family holidays. It was submitted that the Lounge which contains a piano and was used for singing practice was unusable by Mrs Glynn who is a member of a choir. This, it was contended was unacceptable having regard to the monthly rental of €3500.00 that was being paid and the negative affect it had on the peaceful enjoyment of the dwelling by the residents. In an attempt to minimise damage to personal property, for example, items of furniture were moved into the kitchen area causing clutter and further reducing the enjoyment of the dwelling. Counsel further submitted that evidence of dampness was drawn to the attention of the Respondent Landlords from the very outset of the tenancy in late 2011 or early 2012 , but submitted that no remedial works were carried out by the Landlords or their agents.

The first named Appellant Tenant, Mrs. Jacinta Glynn, in evidence stated that in or around June 2011 when she first inspected the dwelling she noticed a damp patch on the lounge ceiling and drew the attention of Morrissons; the Landlords agents to it. She stated that the agents confirmed they would attend to it and arranged for the damp area to be painted over. However this merely masked the problem and did nothing to address the underlying cause. In March 2013 Mr. Michael Clare on behalf of the agents attended the dwelling and checked out the bathroom area for leaks subsequent to the room having

been used by a guest for some nights previously and the leaks becoming more noticeable. Mr. Clare advised the Tenants that the problem was substantial and the tiles had become loose due to water ingress and that he would report back to Morrissons, however no action was taken at this time. In August 2013 the Appellant Tenant was confronted with water now leaking into her living room at which point the agents were requested to address the matter. A plumber arrived, confirmed the magnitude of the problem and advised that the main bathroom was not to be used.

Other areas of deficiency were addressed at this point and Counsel for the Appellants submitted that a significant defect was the boiler for the central heating. The system was incapable of meeting the needs of the dwelling and it gave difficulty from the outset of the tenancy. The Appellant Tenants requested Stillorgan Heating to review the operation of the boiler following which the heating company stated that it was not fit for purpose, being incapable of heating a dwelling of this size. It was submitted that exterior painting of the dwelling was also in need of attention as featured in the correspondence of 23 January 2014. It was submitted that due to the height of the ceilings it was not possible for the Appellant Tenants to access such a height safely for the purpose of changing bulbs all of which were recessed into the ceiling and they hold the view that the Landlords should facilitate this matter as referenced in the Lease agreement under Landlords covenants.

An incident of a crow coming down the chimney was cited as justifying the placement of a chimney cowl on the chimney to prevent the birds nesting in the chimney and eliminate the risk of a bird entering the room containing the fireplace. The photographic evidence showing the crow in the room was persuasive in this respect. Note was taken of the fire in the room being a gas fire which on the evidence of the Appellant tenant was in working order and if the chimney flu was blocked by nesting material could pose a health hazard. The Respondent Landlords did not agree to carry out this task but did confirm their willingness to allow the tenants do so.

Counsel for the Appellants stated that on 11 July 2014 the dwelling was reviewed for areas requiring attention/repair by Morrissons the agents however no works have been carried out since and specific items such as the pressurised water system or the defrosting mechanism in the freezer have not been attended to.

#### Respondent Landlords case:

The Respondent Landlords' representative, Ms Lisa Doyle stated that she was representing Mr James Morrison the agent of the Respondent Landlords. She apologised for his absence which she stated was as a result of his participation on a charity cycle from Malin to Mizen and the dates clashed. Ms. Doyle stated that the Respondents were in agreement with the Determination of the adjudicator made on 14 May 2014 and acted immediately to comply. She went on to say that there were one or two matters she wished to address, namely, the notice re the rent review. On being challenged by the Appellant Tenants it was decided to leave the rent as it was despite it being below market value in their opinion. Ms. Doyle confirmed at this juncture that she was not going to cross question the evidence of the Appellant Tenants.

Ms. Doyle wished it to be recorded that at all times Morrissons and the Landlords fully cooperated with the PRTB. She also stated that a family member of one of the

Respondent Landlords wished to move into the dwelling but due to the delays involved had procured alternative accommodation elsewhere. With regard to the boiler Ms. Doyle said she spoke with Stillorgan Heating about it and also requested Mr. Clare whom she said was a qualified RGI for his opinion. Mr. Clare confirmed that the boiler was functioning adequately, however he stated that when it was put in to the dwelling there were no regulations on matters such as energy output and that the model in question, while functional could have deficiencies when viewed in the context of the improvements in present day models.

With reference to the leaks Mr. Clare stated that he could not find issue with what had been presented already by the Appellant Tenants. He confirmed meeting with Mrs. Glynn while out shopping in March 2013 and his inspection of the problem area afterwards. Noted in the inspection was the constant dripping, the blackened area of dampness which is featured in the photographic evidence and the fact that this was a pressurised system. Following this visit he prepared a report for Morrisons. Any works to be carried out required the authorisation of the agents. Mr. Clare went on to say that the next problem was in August 2013 when family guests were in residence including children. With the extra use of the dwelling the leaking increased and Mr. Clare opened the area around the fittings in the two bathrooms. Such was the problem that he declared them out of bounds for use until they had dried out and he had identified the leaks and remedied the matter.

The process whereby the problems as alleged were handled was outlined by Ms. Doyle and she confirmed the holding of a record book to log and track progress.

Mr. Carty on behalf of the Appellant Tenants stated his claim as follows, breach of Landlords obligations with particular reference to the area of the dwelling that was off limits due to non compliance €7,500.00

Lack of peaceful enjoyment of the dwelling over a period of twelve months being the period of time following service of the first Notice of Termination €21,000.

If with serving what he submitted was an invalid Notice of Termination was confirmed by the Tribunal €5,000.

The Tribunal were also requested to consider the matter of costs as Mr. Carty considered the circumstances exceptional. For example an offer to the Landlords was refused and they demonstrated a lack of willingness to engage in the achievement of a negotiated agreement.

The Chairperson thanked both parties for attending and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the PRTB of that Determination.

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

Before inviting the parties to make their submissions the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

- The tenancy commenced on 1 June, 2011

- A Part 4 tenancy was in existence.
- The tenants continue in occupation of the dwelling
- The rent was €3,500 per month
- The Respondent Tenants paid a deposit of €3,500
- The deposit has been retained by the Respondent Landlords.

Both parties accepted that they were in agreement in relation to the foregoing matters.

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

**Finding:** The Tribunal finds that the Respondent Landlords issued an invalid Notice of Termination on 5 February 2014.

**Reason:** The notice served upon the Appellant Tenants was deficient in that it did not meet the requirements of s 34. 4 of the Act. The requirement of this part of the Act is that. The Landlord requires the dwelling or the property containing the dwelling for his or her own occupation or for occupation by a member of his or her family and the notice of termination ( the “notice” ) contains or is accompanied, in writing by a statement-

(a) specifying -

1. the intended occupants identity and ( if not the Landlord ) his or her relationship to the Landlord, and

2. the expected duration of that occupation and

(b) That the Landlord, by virtue of the notice , is required to offer to the tenant a tenancy of the dwelling if the contact details requirement is complied with and the following conditions are satisfied.

1.the dwelling is vacated by the person referred to in subparagraph (a) within the period of six months from expiry of the period of notice required to be given by the notice or, if a dispute in relation to the validity of the notice was referred to the Board under Part 6 for resolution , the final determination of the dispute, and

2. the tenancy to which the notice related had not otherwise been validly terminated by virtue of the citation in the notice of the ground specified in paragraph 1,2,3 or 6 of this table.

**Finding:** The Tribunal finds that the Landlords were in breach of their obligations under s 12 of the Act as regards the standard and maintenance of the dwelling. While action by the Landlords agent was forthcoming when requested, significant delays occurred in remedying the defects leading to disruption in the management of daily living activities in the dwelling.

**Reason:** The dwelling featured leaking water pipes and toilet fixtures and fittings over a prolonged period of time. The evidence featured stained and damaged ceilings, collection vessels on the floor of the drawing room/sitting room collecting water from leaks. Furniture was being stored in the kitchen and other areas for the protection of the furniture. Due to damage caused, bathrooms were out of bounds for use as was the drawing room /sitting room.

Finding: The Tribunal finds that the Appellant Tenants were deprived of the peaceful enjoyment of the dwelling as a result of the ongoing concerns of being made homeless resulting from the issue of Notices of Termination which was further aggravated by the ongoing issues relating to repairs and maintenance not being addressed in the dwelling.

Reason: The Appellant Tenants were without the use of a significant portion of their dwelling for a number of months resulting from the Respondent Landlords breach of their obligations under s12 (1)(b) in that essential repairs were not carried out in a timely fashion resulting in ongoing inconvenience and lack of peaceful enjoyment of the dwelling. The heating boiler, while functional did not have the capacity to adequately meet the requirements of the dwelling, Other areas of the dwelling where the lack of enjoyment of the facilities were denied to the Appellant Tenants extended to, no chimney cowl and where the absence of same resulted in a crow entering the dwelling via the chimney, difficulty in accessing ceiling lights due to their height from the ground and being recessed into the ceiling and a fridge which was not working satisfactorily. Taking into account the proportion of the dwelling that was not available for habitation for a lengthy period of time the Tribunal awards damages in the sum of €10,500.00 for this breach of Landlords obligations.


Finding: The Tribunal finds that an award of legal costs in favour of the Appellant Tenant is not warranted under the circumstances of this case.

Reason: Having regard to the provisions of sub section (4) of Section 5 of the Act the Tribunal is of the opinion that the exceptional circumstances envisaged therein do not arise in the case of this dispute and has decided that its determination of the dispute shall not include costs referred to in sub section (3) of section (5) of the said Act.

#### **8. Determination:**

**In the matter of Jacinta Glynn, John Glynn (Appellant Tenants) and Jeremy Kelly, Garvan Walsh (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Respondent Landlords shall pay the total sum of €10,500 to the Appellant Tenants within 28 days of the date of issue of the Order, being damages for denial of peaceful enjoyment of the dwelling over a prolonged period of time, disappointment, inconvenience, upset and distress caused by the Landlords' breach of their obligations under the Act in not addressing essential repairs and maintenance in a timely manner in respect of the tenancy of the dwelling at 5 Cairnbrook, Glenamuck Road, Carrickmines, Dublin 18.



**Signed:**

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**Thomas Reilly Chairperson**

For and on behalf of the Tribunal.