

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000715 / Case Ref No: 1213-09366

Appellant Tenants:	Ross O'Neill, Loren Steacy
Respondent Landlord:	Daniel Griffin
Address of Rented Dwelling:	19 Cherry Lodge, Farmleigh Woods, Castleknock , Dublin 15
Tribunal:	Finian Matthews (Chairperson) Orla Coyne, Gene Feighery
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	18 August 2014 at 10:30
Attendees:	Daniel Griffin, Tribunal Respondent, Landlord,
In Attendance:	Gwen Malone Stenographers

1. Background:

On 10/12/2013 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 09/05/2014. The Adjudicator determined that:

1. The Respondent / Applicant Tenants shall pay the sum of EUR646.57 to the Applicant / Respondent Landlord within 28 days of the date of issue of the Order, being damages for the unlawful termination of the tenancy by the Respondent / Applicant Tenants during the fixed period.
2. The Respondent / Applicant Tenants' application regarding deposit retention under s. 12(1)(d) of the Act is not upheld.

Subsequently the following appeal was received:

Tenant : received on 20/06/2014. The grounds of the appeal: Invalid Notice of termination ; Approved by the Board on 04/07/2014

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, Orla Coyne, Gene Feighery as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Finian Matthews to be the chairperson of the Tribunal ("the Chairperson").

On 15/07/2014 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 18/08/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

2. Documents Submitted Prior to the Hearing Included:

1. 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 9 May, 2014 in the case of a dispute between the Tenant and the Respondent Landlord in respect of a tenancy at 19 Cherry Lodge, Farmleigh Woods, Castleknock, Dublin 15. He introduced the members of the Tribunal to the attending Party. He also pointed out that there was a stenographer present to record the evidence to be given to the Tribunal, 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.

He asked the attending party to identify himself and to state the capacity in which he was attending the Tribunal hearing.

The Chairperson then stated that at 9.13 a.m. just over an hour before the Tribunal was scheduled to start, an e-mail was sent members of the Tribunal from the offices of the PRTB in which the official concerned stated that she had just received a call from the first-named Appellant Tenant stating that 'we would have to postpone today's Tribunal, as he cannot make it due to a vomiting bug'. The Tenant said he would follow this up with a Doctor's note. Asked if the second-named Appellant Tenant would be attending the first-named Appellant Tenant said no, that he was dealing with it. The PRTB official undertook to pass the foregoing message to the Tribunal panel.

The Chairperson advised the Respondent Landlord that the Tribunal proposed to consider the request that the hearing be adjourned, but that before making a decision in the matter the Tribunal would consider any submission the Respondent Landlord wished to make in relation to the adjournment request.

The Respondent Landlord was then sworn in.

5. Submissions of the Parties:

In relation to the request from the first-named Appellant Tenant for an adjournment of the hearing, the Respondent Landlord said that he sympathised with the Tenant's difficulty, but he pointed out that the Tenant could have sent a representative to the hearing, and that in any event there were two tenants in the tenancy either of whom could have attended representing both of the tenants. No reason had been given as to why the second-named Appellant Tenant could not attend. He also said that he had invested considerable time and money in attending the hearing and was of the view that the hearing should go ahead.

The hearing was adjourned to enable the Tribunal to further consider the adjournment request.

On resumption, the Chairperson said that the Tribunal was minded to grant an adjournment, pointing out that were the hearing to proceed in the absence of the Appellant to pursue their appeal, the only option open to the Tribunal would be to uphold the determination of the adjudicator as set out in her report of the hearing held on 9 May, 2014. It was pointed out to the Landlord that although he had indicated in his written submissions in relation to the appeal that there were further matters he wished to pursue, it would not be open to him to do so if the hearing proceeded, since he himself had not submitted any appeal against the Adjudicator's determination. The Respondent Landlord then indicated that he agreed to have the matter decided on the basis of the Adjudicator's determination and that he wished to drop the additional matters he has indicated he wished to raise in the context of the appeal.

After another adjournment to consider the matter further the Tribunal advised the Respondent Landlord that it proposed, in the absence of both Appellant Tenants, to uphold the determination of the Adjudicator as set in her report of the hearing held on 9 May, 2014. The Respondent Landlord said that he noted the position.

In making its decision not to grant the adjournment requested by the first-named Appellant Tenant the Tribunal had regard to the following:

1. The terms of the written lease agreement between the Appellant Tenants and the Respondent Landlord explicitly stated that both of the Appellant Tenants were jointly and severally signing the lease agreement and were jointly and severally responsible therefore for fulfilling the obligations of the tenancy. Both tenants signed the appeal before the Tribunal and it was a matter for both of them to arrange for either or both, or a representative to attend the Tribunal hearing. No reason was supplied for the second-named Appellant Tenant's failure to appear at the hearing or for the tenants' failure to arrange for a representative to attend.
2. The Tribunal Procedures which were supplied to the Appellant Tenants before the hearing state, inter alia, that hearings may in exceptional circumstances be adjourned/put off to another day. Given the options they had to arrange for attendance or representation at the hearing, the Tribunal did not consider the circumstances under which an adjournment of the hearing set for 18 August, 2014 to be exceptional.
3. Under the provisions of sub-section 4(e) of section 104 of the Act, there was an obligation on the Tribunal, unless substantial grounds arose for its deciding to do otherwise, to proceed with the hearing at the date, time and venue of which the parties were on notice, notwithstanding that a party did not attend the hearing. For the reasons already stated the Tribunal was satisfied that substantial grounds for its deciding not to proceed with the hearing set for 10.30 a.m. on 18 August, 2014 at the Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, Dublin 2 did not arise.

6. Matters Agreed Between the Parties

Not applicable

7. Findings and Reasons:

In the absence of the Appellant Tenants, the Tribunal up-holds the determination of the Adjudicator as set out in her report of the Adjudication Hearing held on 9 May, 2014.

8. Determination:

Tribunal Reference TR0614-000715

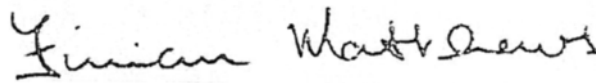
**In the matter of Ross O'Neill, Loren Steacy (Tenant) and Daniel Griffin (Landlord)
the Tribunal in accordance with section 108(1) of the Residential Tenancies Act
2004, determines that:**

The Determination of the Adjudicator is affirmed in that:

1. The Appellant Tenants shall pay the sum of €646.57 to the Respondent Landlord within 28 days of the date of issue of the Order, being damages for the unlawful termination of the tenancy by the Appellant Tenants during the fixed period, in respect of the tenancy of the dwelling at 19 Cherry Lodge, Farmleigh Woods, Castleknock, Dublin 15.
2. The Appellant Tenants application regarding deposit retention under s.12(1)(d) of the Act in respect of the above dwelling, is not upheld.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 22/08/2014.

Signed:



Finian Matthews Chairperson

For and on behalf of the Tribunal.