

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0614-000718 / Case Ref No: 1113-08849**

<b>Appellant Landlord:</b>	Deirdre Bennett
<b>Respondent Tenant:</b>	Elnur Halamati
<b>Address of Rented Dwelling:</b>	21 Waterville Terrace, Blanchardstown , Dublin 15
<b>Tribunal:</b>	Finian Matthews (Chairperson) Vincent P. Martin, John Tiernan
<b>Venue:</b>	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	28 August 2014 at 10:30
<b>Attendees:</b>	Elnur Halamati - Tribunal Respondent Tenant Cathal McKiernan - Landlord's representative
<b>In Attendance:</b>	Gwen Malone, Stenographers

**1. Background:**

On 12/11/2013 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 30/04/2014. The Adjudicator determined that; The Respondent Landlord shall pay the total sum of €342.00 to the Applicant Tenant, within 7 days of the date of issue of the Order, being the unjustifiably retained portion of the security deposit having deducted the sum of €300.00 for damages in excess of ordinary wear and tear in respect of the tenancy of the dwelling 21 Waterville Terrace, Blanchardstown, Dublin 15.

Subsequently the following appeals were received:

Landlord : received on 23/06/2014. The grounds of the appeal: Deposit retention ; approved by the Board on 18/07/2014

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, Vincent P. Martin, John Tiernan 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 6th August 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 28/08/2014 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:**

Photographs were submitted at the Tribunal by the Respondent Tenant and shown to the Appellant Landlord's representative, who had no objection to their being entered in evidence.

A print-out showing the result of a Google search in relation to the company employed by the Appellant Landlord to paint the dwelling was also submitted at the Tribunal by the Respondent Tenant and shown to the Appellant Landlord's representative, who had no objection to this document's being entered in evidence.

### **4. Procedure:**

Opening the Tribunal the Chairperson stated that it had been established to hear an appeal by the Appellant Landlord against a determination made following an adjudication held on 30 April, 2014 in the case of a dispute between the Landlord and the Respondent Tenant in respect of a tenancy at 21 Waterville Terrace, Blanchardstown, Dublin 15.

He introduced the members of the Tribunal to the parties.

He asked the Parties present 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 €4,000.00 or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Landlord's representative would be invited first to present her case; this would be followed by an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case, followed by an opportunity for cross-examination by the Appellant Landlord's representative. 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.

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

The Chairperson reminded the Parties 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.

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

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

Appellant Landlords Case:

The Appellant Landlord's representative said he was from SATIS Property, the Appellant Landlord's letting agent. He referred to the Moving-Out Check List in the lease agreement between the Appellant Landlord and the Respondent Tenant under which the Respondent Tenant before moving out was required to empty and clean the kitchen units, clean the stove top, microwave and oven, clean dry and put away all dishes, pots, cutlery etc, empty, clean and defrost fridge, clean all bathroom fixtures, walls and tiles, clean all pipes, vacuum furniture, mattresses and bed base, wipe all walls, clean windows and take all refuse and unwanted items to nearest garbage collection area or local charity shop. He said that the purpose of all this was to achieve a smooth transition from one tenancy to the next. He confirmed that the dwelling had not been inspected during the course of the tenancy.

The Appellant Landlord's representative said that the Respondent Tenant had failed to return the dwelling in the required condition and as a result contract cleaners had to be employed to carry out the necessary cleaning works as listed in an invoice from a company which carried out cleaning work at a cost of €108.00. He said that in his experience engagement of contract cleaners is only necessary in respect of approximately 5% of tenancy vacations. He said that a further €96.00 for the supply and fitting of three mattress and valance sheets should not have been included on the contract cleaner's invoice and that the Appellant Landlord was not now claiming for the cost of these items. The Appellant Landlord's representative also referred the Tribunal to photographs taken in the dwelling after the tenancy ended, which allegedly demonstrated the Respondent Tenant's failure to clean the dwelling thoroughly as required. He added that his agency did not automatically engage contract cleaners at the end of a tenancy; this was only done where a dwelling was not in a lettable condition when it was handed back.

In relation to painting, the Appellant Landlord's representative said that there were a number of marks on the walls of the dwelling from childrens' scribbling and it had been found necessary to get the dwelling ready for new tenants by painting the interior throughout at a cost of €900.00 as shown in an invoice in the case file before the Tribunal. He said that the Appellant Landlord was happy to pay part of this bill, but was of the view that the Respondent Tenant should be required to pay half i.e. €450. He also referred the Tribunal to photographs allegedly showing markings on the walls of the dwelling and to photographs showing decals affixed on to certain walls by the Respondent Tenant. He was of the view that the walls could be damaged considerably in the course of removing these.

The Appellant Landlord's representative said that he did not know when the interior of the dwelling had been painted previously, nor did he know if the Respondent Tenant had been given an opportunity to remedy any damage to the dwelling beyond normal wear and tear.

## Respondent Tenants case

The Respondent Tenant said that she paid €2,000.00 to the Appellant Landlord's agent in June, 2012 and moved into the dwelling on 2 July, 2012, along with her two children aged 3 and 5. She said that she got the key to the dwelling from the previous tenant whom she knew personally, the Appellant Landlord's agent having agreed that she could move in on this basis. The Respondent Tenant said that the dwelling was quite dirty when she moved in and that it was apparent that the interior had not been painted for a number of years. She also said that the balcony had been frequented by pigeons and was in a very poor condition.

The Respondent Tenant adduced in evidence a number of photographs she had taken in the interior of the dwelling a few months before the end of the tenancy which she said showed how well she was maintaining the Dwelling.

In relation to the condition of the dwelling at the end of the tenancy, the Respondent Tenant suggested that the photographs supplied by the Appellant Landlord zoomed in on small issues which were not of major consequence. She said she cleaned the dwelling throughout before she left, but accepted that there were some markings on the walls. She added that she never got receipts for cleaning or painting from the Appellant Landlord until she saw these in the PRTB papers for the case. She was of the view that €108.00 was too much for the cleaning. She also accepted that there were some decals on the walls which she said she had forgotten to take away with her, but she did not believe that removing these would damage the walls.

The Respondent Tenant said that the Appellant Landlord's agents had told her that there was no time for a check out at the end of the tenancy because other tenants were moving into the Dwelling at 5.30 p.m. on the day she left. She said that the agents simply asked her to drop the key into their office after she left.

The Respondent Tenant said that she had previously been willing to make some contribution towards the costs of cleaning and painting but her position now was that she is entitled to the repayment of her deposit in full.

In other evidence the Respondent Tenant said she had googled the company employed to paint the dwelling and she questioned on the basis of the results whether the company was genuine or not.

## Conclusion

The Chair 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 July, 2012
- The term of the tenancy specified in the letting agreement was 12 months

- The tenancy terminated on 1 July, 2013
- The rent was €1000.00 per month
- There were no rent arrears
- The Respondent Tenants paid a deposit of €1000.00
- A portion of the deposit in the amount of €654.00 has been retained by the Appellant Landlord.
- The balance of the deposit in the amount of €346.00 has been repaid to the Respondent Tenant.

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

## **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 therefor are set out hereunder.

### **Finding 1:**

The Respondent Tenant was, to the extent set out hereunder, in breach of the provisions of section 16(f) of the Act in having caused some deterioration in the condition of the dwelling.

Reasons: Under sub-section (f) of section 16 of the Act, a tenant must not do any act that would cause deterioration in the condition a dwelling was in at the commencement of a tenancy. In determining whether or not the Respondent Tenant was in breach of this obligation the Tribunal was required to disregard any deterioration in the condition of the dwelling owing to normal wear and tear, having regard to the time that had elapsed since the commencement of the tenancy, the extent of occupation of the dwelling and any other relevant matters.

There was little or no evidence before the Tribunal to establish the condition the dwelling was in at the commencement of the tenancy. The arrangement whereby the keys were handed over by the previous tenant to the Respondent Tenant with out any check-out or check-in arrangements on the part of the Appellant Landlord's agent was unsatisfactory, in that there was no opportunity, for example, for the parties to note and agree on any pre-existing defects or damage in the dwelling.

On the question of whether the occupants of the dwelling caused deterioration in the condition the dwelling was in at the commencement of the tenancy, the Tribunal firstly accepts the evidence of the Respondent Tenant that she made substantial efforts to clean the dwelling before she left at the end of the tenancy. In relation to the contract cleaning works carried out subsequently the Appellant Landlord's representative was unable to distinguish between which of these may have related to works arising from normal wear and tear and which may have related to deterioration above normal wear and tear. In those circumstances the Respondent Tenant cannot be held liable for the full cleaning bill of €108.00.

In relation to the painting of the interior of the dwelling the Tribunal finds on the balance of probabilities that it was a number of years since the dwelling had been painted previously and that, having been the subject of at least two tenancies in the intervening period, it

would have required painting before being let again. In those circumstances it would be unfair to require the Respondent Tenant to pay half the cost of the painting as claimed by the Appellant Landlord.

The Tribunal further notes that the Appellant Landlord made no attempt, having regard to the provisions of section 16(g) of the Act to advise the Respondent Tenant of, or to give the Tenant the opportunity, to take any steps she might reasonably require the Tenant to take for the purposes of restoring the dwelling to the condition it was in at the commencement of the tenancy or to defray any costs incurred by the Landlords for that purpose. In this regard the Tribunal accepts the Respondent Tenant's evidence that there was no joint inspection of the dwelling at the end of the tenancy.

Notwithstanding its finding that the Respondent Tenant did not cause a deterioration, beyond normal wear and tear, in the condition the dwelling was in at the commencement of the tenancy to the extent alleged by the Appellant Landlord, the Tribunal nevertheless finds that the Respondent Tenant did cause certain deterioration in the condition of the dwelling, above normal wear and tear, particularly in regard to her failure to remove a number of decals she had placed on the walls of the dwelling and in relation to markings on the walls by the occupants of the dwelling.

#### Finding 2:

The Appellant Landlord is entitled to deduct the sum of €100.00 from the deposit of €1,00.000 paid by the Appellant Tenant.

Reasons: Having found that the Respondent Tenant caused deterioration in certain respects in the condition of the dwelling beyond normal wear and tear, it falls to the Tribunal to assess the costs in that regard that would be incurred by the Appellant Landlord in taking such steps as are reasonable for the purposes of restoring the dwelling to the condition it was in at the commencement of the tenancy. In respect of the deterioration in the condition of the dwelling, above normal wear and tear, accepted by the Tribunal to have been caused by the Respondent Tenant, the Tribunal assesses the amount of costs to be incurred by the Appellant Landlord to be €100.00. In determining this amount the Tribunal has taken into consideration the fact that it was some years since the dwelling had been painted internally and is likely to have in any event required painting at the end of the Respondent Tenant's tenancy. The Tribunal further accepts the Respondent Tenant's evidence in relation to the measures she took at the end of her tenancy to leave the dwelling in a clean condition.

#### Finding 3:

The balance of the deposit not already returned to the Respondent Tenant in the sum of €554.00 has been unjustifiably retained by the Appellant Landlord and must be repaid to the Respondent Tenant.

Reasons: Under sub-section (1)(d) of section 12 of the Act, the Appellant Landlord was obliged, subject to sub-section (4) of section 12, to return or repay promptly the deposit paid to him by the Respondent Tenant on their entering into the Tenancy Agreement.

Sub-section (4) of section 12 of the Act provides, among other things, that where a tenant is in breach of his or her obligations not to cause damage to a dwelling beyond normal wear, a landlord - in cases where the costs to be incurred in restoring the Dwelling to the condition it was in at the commencement of the tenancy are less than the amount of the deposit - is only required to return to the tenant the difference between the amount of

those costs and the amount of the deposit. Having regard to the Tribunal's finding that the Appellant Landlord is entitled to deduct an amount of €100.00 from the Respondent Tenant's deposit in respect of costs that would be incurred in taking steps to restore the dwelling as a result of the deterioration in the condition of the Dwelling above normal wear and tear caused by the Respondent Tenant, the Appellant Landlord must repay the sum of €554.00 to the Appellant Tenant, the sum of €346.00 of the total deposit of €1,000.00 having already been returned to her.

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

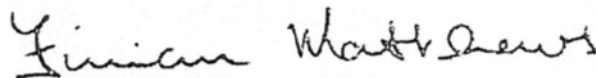
**Tribunal Reference TR0614-000718**

**In the matter of Deirdre Bennett (Landlord) and Elnur Halamati (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord, having repaid the sum of €346.00 to the Respondent Tenant, shall pay the further total sum of €554.00 to the Respondent Tenant, within 7 days of the date of issue of the Order, being the unjustifiably retained portion of the Respondent Tenant's security deposit of €1,000.00 having deducted the sum of €100.00 for costs to be incurred in respect of damage in excess of normal wear and tear in respect of the tenancy of the Dwelling 21 Waterville Terrace, Blanchardstown, Dublin 15.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 13/09/2014.

**Signed:**



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**Finian Matthews Chairperson**

For and on behalf of the Tribunal.