

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000719 / Case Ref No: 0214-10647

Appellant Landlord:	Dwyer Brothers Partnership
Respondent Third Parties:	David Morris, Robert Shelley, Lorraine Moore
Address of Rented Dwelling:	19 Dun Emer Glade, Lusk , County Dublin
Tribunal:	Finian Matthews (Chairperson) John Tiernan, Gene Feighery
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	20 August 2014 at 10:30
Attendees:	David Morris, Tribunal Respondent, Third Party, Patricia McClean of McClean Property Agents, Tribunal Representative Edwin O'Dwyer of Dwyer Brothers Partnership, Tribunal Appellant, Landlord Robert Shelley, Tribunal Respondent, Third Party
In Attendance:	Gwen Malone, Stenographers

1. Background:

On 25/02/2014 the Third Party 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 08/05/2014. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of € 1000 to the Applicant Third Party David Morris within 14 days of the date of issue of the Order being damages for the Respondent Landlords breach of duty owed to certain third parties in failing to enforce tenants obligations in respect of the tenancy of the dwelling at 19 Dun Emer Glade, Lusk, Dublin

Subsequently the following appeal was received:

Landlord : received on 25/06/2014. The grounds of the appeal: Breach of landlord obligations ; Approved by the Board on 04/07/2014

The PRTB constituted a Tenancy Tribunal and appointed Finian Matthews, John Tiernan, 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 29/07/2014 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 20/08/2014 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:

A copy of the House Rules for the building in which the dwelling is located were submitted at the Tribunal by the Appellant Landlord and were entered in evidence, the Respondent Third Parties having no objection.

A Petition signed by a number of other residents in the building stating that they never had a problem with the occupants of the dwelling was also submitted at the Tribunal by the Appellant Landlord and was entered in evidence, the Respondent Third Parties having no objection.

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 8 May, 2014 in the case of a dispute between the Landlord and the Respondent Third Parties in respect of a tenancy at 19, Dun Emer Glade, Lusk, Co. Dublin. He introduced the members of the Tribunal to the parties.

He asked the Parties present and any witnesses 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 Appellant Landlord would be invited first to present his case; this would be followed by an opportunity for cross-examination by the Respondent Third Parties; that the Respondent Third Parties would then be invited to present their

case, followed by an opportunity for cross-examination by the Appellant Landlord. 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 and the Respondent Third Parties 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.

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

5. Submissions of the Parties:

Appellant Landlord's Case:

Evidence of Mr. Edwin O'Dwyer:

The representative of the Appellant Landlord (hereinafter referred to as the 'Appellant Landlord') said that his appeal was a simple one, in that the Landlord was of the view that a monetary award to a Third Party was not appropriate. He said that at the time of the Adjudication the position about house rules was unclear but these had now been issued to all landlords and tenants in the building.

Referring to the Findings of Fact made by the previous Adjudicator the Appellant Landlord said that the only finding against the Landlord was that the holding of parties on certain dates in 2013 and 2014 amounted to anti-social behaviour and this finding related to both 19 and 21 Dun Emer Glade. He was of the view that there were contradictory views as to the nature of the parties, particularly on New Year's Eve, 2013 and the Landlord was caught in the middle. He said that the Landlord's agent called to the dwelling from which the alleged anti-social behaviour was emanating anytime they received a complaint. He added that it was incorrect for the adjudicator to have found that the Landlord had not at any time notified the tenants (alleged to have engaged in anti-social behaviour) that he was entitled to terminate the tenancy if the tenants failed to comply with their obligations. He also said that the tenants were not given a 28 day notice or a warning letter but were informed that the complaints about their behaviour were being taken seriously. He said, however, that when the landlord's agents visited the tenants and showed them copies of the e-mails the Landlord had received, they denied the complaints being made against them and said that they should be allowed peaceful occupation of their own dwellings.

The Appellant Landlord said that to show that the complaints were being taken seriously his agents went to the bother of getting the other residents living in the block to sign a petition stating that they had never had a problem with the occupancy of the two dwellings from which the alleged anti-social behaviour was occurring. He confirmed that this document had emanated from his letting agent. He said that the purpose of the petition was to prove whether the alleged anti-social behaviour was affecting others in the building or if any other residents had any issues with the tenants against whom the allegations were directed. He also said that part of the purpose of the petition was to have something from other residents in the building for the purposes of the adjudication hearing.

In response to questions, the Appellant Landlord said it was more than likely that the petition had been prepared as a result of the case being taken to the PRTB seeking back-up to support the Landlord's case. He also accepted that it was his responsibility as a Landlord to be aware of the house rules for the building and to pass them on to any new tenant moving in. However, he said he could not do so in this case because he had never received the house rules. He also said that he now had a copy of the house rules on his I-phone at which point the Tribunal requested him to forward these to the PRTB. The Appellant Landlord agreed that the house rules did not prevent the holding of parties but did specify that no noise should be audible from an apartment between 10 p.m. and 8 a.m. The Appellant Landlord also outlined the procedure he followed when he received complaints in terms of passing these on to his agent and the follow up action then taken by his agent. He explained also that the agent was not paid a fee for managing the development, but he was available as a personal friend of the Landlord to follow-up on complaints.

In response to other questions from the Tribunal he said he was satisfied with the procedures he had in place for dealing with complaints; that he had to be fair to his own tenants as well and that is why the e-mail complaints he received were shown to them and the tenants were told that if the complaints were correct the behaviour complained of would have to stop. He added that it was not in his interest as a Landlord to incite any conflict between the different parties. He also agreed that the house rules for the building should contain procedures for dealing with anti-social behaviour but was unable to say if that was the case in this instance. He was also of the view that there had been an improvement in behaviour since the house rules had been issued to his tenants. He also agreed that at the time the apartments were purchased his solicitor may have been given a copy of the house rules but said he had never seen a copy.

The Appellant Landlord confirmed that O'Dwyer Brothers owned 6 apartments in the overall development comprising 83 apartment units. In response to a query from the Tribunal he replied that he had not attended meetings of the management company for the development.

Respondent Third Parties' case

Evidence of Mr. David Morris

The first-named Respondent Third Party said that his complaint had never been about money. What he was seeking was an end to 3 years of tenants being put above his own dwelling who caused constant noise all day and all night. He said that this started 3 years ago when the apartment above his own owner-occupied apartment was let to a woman known to Gardai. He said that there were serious altercations in the apartment above his. He made many complaints to the Appellant Landlord's letting agent and eventually that tenant's tenancy was terminated by the Appellant Landlord in this case after a period of some 8 or 9 months,, but not before she had made serious threats against his wife, whom she blamed for her eviction. He said that this tenant caused flood damage in his apartment, through water ingress from above into his bedrooms. He also said that the tenant was only in occupation for a relatively short period in 2012. The Tribunal pointed out to the Respondent Third Party that events relating to a previous tenancy are not material to this present case.

The Respondent Third Party said that when a subsequent tenant first moved into the apartment above his there was no anti-social behaviour as such, but there was a lot of

dragging of furniture around, running up and down stairs at unsociable hours etc. After about 3 weeks he called up to the apartment, asked if the noise could be kept to a minimum and offered the tenant some Velcro stickers for his furniture to reduce the sound of dragging. When it was put to him by the Tribunal he agreed that the tenant would probably have taken umbrage at this but he said that the tenant took them and this helped to reduce the noise levels initially.

However, the Respondent Third Party said that the noise soon escalated, that his wife was at home all day with their daughter and there was constant noise all day of children running and jumping from the stairs to the hallway. He said that his wife asked the tenants to keep the noise down but it continued. He said that the most troubling incident of anti-social behaviour was an altercation involving knives and an argument that took place on New Year's Eve 2013, in relation to which the Landlord's agent said that the children in the apartment had been playing with toy knives. He said that things had quietened down in the last few weeks but not before other examples he instanced of loud music from the apartment in the early hours of the morning. He said he had been approached by a number of the tenants from the apartment above to ask him if he had been complaining and he also described a number of other incidents in which threats had been directed against his wife. He also said that all of his e-mails were brought directly to the tenants in the apartment above by the Landlord's agent or his secretary and he felt this was a breach of confidentiality. On the suggestion that he was harassing the tenants he said that the opposite was the case and that he was subject to constant and serious harassment from them.

In relation to the findings that the Adjudicator made in the case the Respondent Third Party said that he agreed that the holding of four parties in the period 2013/2014 amounted to anti-social behaviour; he also agreed that there was insufficient evidence of music being audible from the apartment above his other than at the times of the above referenced parties and that the activity of children in and around that apartment during afternoons did not constitute anti-social behaviour. He also said that a problem over bicycles, bits of bicycles and a scooter being left around the common areas had been resolved.

Evidence of Mr. Shelley

The second-named Respondent Third Party told the Tribunal that he was the owner of 20 Dun Emer Glade and that when new tenants moved into that apartment in February of this year he had a complaint from them within a week to the effect that when they arrived home around 10 o'clock one evening there was a lot of noise coming from the apartment upstairs, in the form of loud music, shouting and banging. His tenants left matters for a while but they phoned the Gardai around 1.00 a.m. and when they arrived the noise stopped. He said he received a further complaint around St. Patrick's Day in the early hours of 18 March to the effect that there was a violent argument in an apartment above that of his own tenants. He said he has had two further complaints since then but his tenants wouldn't e-mail these to him because they do not want their e-mails being passed on the tenants being complained about. He also described other incidents, said that he was waiting for a phone call to say his tenants were moving out and would be unable to get replacement tenants if his current tenants leave. He confirmed that his tenants had not themselves submitted any claim to the PRTB nor had they at this stage made any intimation of an intention to move out. .

In response to questions from the Appellant Landlord, the second-named Respondent Third Party said he accepted that his complaints were being passed on to the tenants allegedly engaging in anti-social behaviour but his view was that the complaints were not being dealt with and that he had only ever been contacted once by the Landlord or his agent.

Evidence of Patricia McClean

The witness on behalf of the Respondent Third Parties said that her company was the managing agency for the 88 dwellings at Dun Emer and had been getting complaints about anti-social behaviour in the property where 19 Dun Emer Glade was located since 2011. She said that on numerous occasions she had requested a meeting with either the Appellant Landlord or his letting agent about this but no meetings had ever taken place. She said that the letting agent indicated that he did not manage the properties and that she should contact the Appellant Landlord directly. At the same time she said there was no communication from the Appellant Landlord, but she agreed that she had some contact with members of staff in the Appellant Landlord's company office. She outlined the basis on which her agency interacted with the management company for the development and its directors. She said that there around 45 owners of the 88 units in Dun Emer, with the Appellant Landlord owning a majority of those units (She later accepted that the Appellant Landlord only owned 6 units and that the majority of the others were held by individual owners, but she could not put a precise figure on the overall number of owners of the 88 units).

The witness also outlined the procedures that would be applicable in cases where she had to deal with alleged anti-social behaviour in relation to tenants in dwellings for which her company was also the letting and management agent. She said she had received the complaints in relation to Nos. 19 and 21 Dun Emer, but could not intervene because in that case her company were only the managing agents for the Dun Emer Management Company and were not agents for the Appellant Landlord in his capacity as Landlord. She said she regretted, as a representative of the two Respondent Third Parties present and also as a representative of the Appellant Landlord as owner of the dwellings the subject of complaints that the anti-social behaviour issues could not have been dealt with over the previous 3 years.

The Chair thanked all 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

None

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 Tribunal finds that the Appellant Landlord failed to fulfil his duty to the first-named Respondent Third Party, David Morris, to enforce the obligations of the tenants of 19 Dun Emer Glade, Lusk, Co.Dublin not to behave within that dwelling or in its vicinity in a way that was anti-social or not to allow other occupiers or visitors to the dwelling to behave within the dwelling or in its vicinity in such a way.

Reasons: Under section 15(1) of the Act a landlord of a dwelling, in this case the Appellant Landlord, owes to each person who could potentially be affected a duty to enforce the obligations of the tenant under the tenancy.

The Tribunal is satisfied on the evidence before it that the tenants of No.19 Dun Emer Glade, Rush, Co. Dublin, in holding a number of late night parties which led to unacceptable behaviour within and in the vicinity of that dwelling behaved within No. 19 and in the vicinity of that dwelling in a way that was anti-social within the meaning of section 17(1)(c) of the Act. In that regard the Tribunal also accepts the uncontested averments of the Appellant Third Parties that the tenants of No. 19 directed abusive and unacceptable comments on a number of occasions at the tenants of No.18 Dun Emer Glade, i.e. Mr. Morris and his family. Section 17(1)(c) of the Act provides, inter alia, that to behave in a way that is anti-social means to engage persistently in behaviour that prevents or interferes with the peaceful occupation by any person residing in a neighbourhood dwelling in the vicinity of the dwelling or the property containing the dwelling concerned of that neighbourhood dwelling. The Tribunal accepts on the evidence before it that the persistent anti-social behaviour on the part of the tenants and visitors to No. 19 Dun Emer Glade interfered with the peaceful occupation of Mr. Morris and his family of No. 18 Dun Emer Glade, which is directly under No. 19.

The Tribunal is further of the view that the measures taken by the Appellant Landlord through his Letting Agent to fulfil his duty to ensure that the tenants of or visitors to No. 19 Dun Emer Glade did not behave in a way that was anti-social were of a cursory nature only, consisting as they did of little more than calling to the tenants at No. 19 and showing them the e-mails received from the first-named Respondent Third Party. It is noteworthy that the Appellant Landlord failed to take any other steps, up to and including written warnings to his tenants that their tenancy could be terminated if they failed to fulfil their obligations, to ensure that the anti-social behaviour was brought to an end.

The Tribunal is also satisfied that the Respondent Third Party, David Morris, took all reasonable steps in accordance with the provisions of section 77 of the Act to resolve the complaint that he was directly and adversely affected by the alleged breach of duty on the part of the Appellant Landlord, by communicating with the relevant parties to the tenancy before referring the matter to the PRTB.

Finding 2: The Tribunal finds that the first-named Respondent Third Party, David Morris is entitled to damages in the amount of €1,500 in respect of the failure of the Appellant Landlord to fulfil his duty to that Respondent to enforce the obligations of the tenants of 19 Dun Emer Glade, Lusk, Co.Dublin not to behave within that dwelling or in its vicinity in a way that was anti-social or not to allow other occupiers or visitors to the dwelling to behave within the dwelling or in its vicinity in such a way.

Reasons: The Tribunal is satisfied, on the evidence before it, that the Respondent Third Party and his family have serious distress, anxiety and inconvenience over a prolonged period as a result of the failure of the Appellant Landlord to fulfil his duty to the first-

named Respondent Third Party, David Morris, to enforce the obligations of the tenants of 19 Dun Emer Glade, Lusk, Co.Dublin not to behave within that dwelling or in its vicinity in a way that was anti-social or not to allow other occupiers or visitors to the dwelling to behave within the dwelling or in its vicinity in such a way.

The Tribunal, having taken into account the over-all circumstances considers that the appropriate quantum of damages to award in the circumstances of this case is €1,500.

In exercise of its powers, therefore, under section sub-section (2)(d) of section 115 of the Act the Tribunal directs that damages in respect of the third party application in the amount of €1,500 shall be paid by the Appellant Landlord to the Respondent Tenants.

Finding 3: The Tribunal finds that the second-named Respondent Third Party, Robert Shelley is not a person who could be potentially affected by a failure of the Appellant Landlord to fulfil his duty to enforce the obligations of the tenants of 19 Dun Emer Glade, Lusk, Co.Dublin not to behave within that dwelling or in its vicinity in a way that was anti-social or not to allow other occupiers or visitors to the dwelling to behave within the dwelling or in its vicinity in such a way.

Reasons: Under section 15(2) of the Act a 'person who could be potentially affected' means a person who, it is reasonably foreseeable, would be directly and adversely affected by a failure to enforce an obligation of the tenant were such failure to occur.

While Mr. Shelley is the owner of 20 Dun Emer Glade, he lives elsewhere, No.20 being occupied by tenants procured by Mr. Shelley. It is clear that the tenants of that dwelling could potentially be directly and adversely affected by a failure on the part of the Appellant Landlord to enforce the obligation of the tenants in occupation of No.19 Dun Emer Glade not to engage in anti-social behaviour. However, it is the Tribunal's view that since Mr. Shelley does not live in or in the vicinity of the building in which the dwelling the subject of the complaints of anti-social behaviour is located he cannot be regarded as a person who could potentially be affected by a failure of the Appellant Landlord to fulfil his duty to enforce the obligations of the tenants of 19 Dun Emer Glade, because he is not a person who, it is reasonably foreseeable would be directly and adversely affected by such failure. Any potential effect such as the loss of his own tenants, which has not occurred, could only be deemed to be of an indirect nature.

Finding 4: The Tribunal finds that there was no evidence of the extent, if any, to which the third-named Respondent Third Party, Lorraine Moore, was affected by a failure to exercise the duty of the Appellant Landlord to enforce the obligations of the tenants of 19 Dun Emer Glade, Lusk, Co.Dublin not to behave within that dwelling or in its vicinity in a way that was anti-social or not to allow other occupiers or visitors to the dwelling to behave within the dwelling or in its vicinity in such a way.

Reason: The Tribunal was advised that Ms. Moore had sold her apartment and was no longer a party to the proceedings. She did not in any event attend the Tribunal hearing to present evidence, nor did she make any written submissions in relation to the extent, if any, to which she was affected by any failure of the Appellant Landlord to enforce the obligations of the tenants of 19 Dun Emer Glade, Lusk, Co.Dublin not to behave or to allow other occupiers or visitors to the dwelling to behave in a way that was anti-social.

8. Determination:

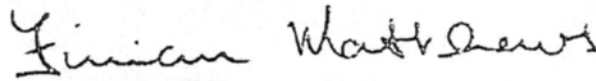
Tribunal Reference TR0614-000719

In the matter of Dwyer Brothers Partnership (Landlord) and David Morris, Robert Shelley, Lorraine Moore (Third Party) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

The Appellant Landlord shall pay the total sum of €1500 to the Respondent Third Party, David Morris within 14 days of the date of issue of the Order being damages for the consequences of the Appellant Landlord's breach of duty owed to certain third parties in failing to enforce tenants obligations in respect of the tenancy of the dwelling at 19 Dun Emer Glade, Lusk, Co.Dublin

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08/09/2014.

Signed:

A handwritten signature in dark ink, appearing to read 'Finian Matthews', is written over a horizontal line.

Finian Matthews Chairperson

For and on behalf of the Tribunal.