

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0614-000720 / Case Ref No: 0314-11253**

<b>Appellant Landlord:</b>	Dwyer Nolan Partnerships
<b>Respondent Third Party:</b>	Robert Shelley
<b>Address of Rented Dwelling:</b>	21 Dun Emer Glade, Lusk , Co. Dublin
<b>Tribunal:</b>	Gene Feighery (Chairperson) John Tiernan, Finian Matthews
<b>Venue:</b>	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	20 August 2014 at 2:30
<b>Attendees:</b>	Edwin O'Dwyer (Tribunal Appellant representing the Landlord) Robert Shelley (Tribunal Respondent Third Party) David Morris (Witness) Patricia McClean, Managing Agent (Witness)
<b>In Attendance:</b>	Gwen Malone Stenographers

**1. Background:**

On 27 March, 2014 the then Applicant, now Respondent, Third Party made an application for dispute resolution services to the Private Residential Tenancies Board (referred to as "the PRTB" in this report).

Pursuant to section 93 of the Residential Tenancies Act, 2004 (referred to as "the Act" in this report) the PRTB arranged for the matter to be the subject to an adjudication under section 97 of the Act. The adjudication was held on 8 May, 2014 in the presence of the Respondent Third Party, his witness, the above-named Landlord's representative, a representative of McClean, Property Agents and a Notice Party tenant. The Adjudicator's report including her Findings of Fact and Determination in relation to the dispute was sent to both parties. The Adjudicator determined that the Appellant Landlord shall pay the total sum of €200 to the Respondent Third Party, Robert Shelley within 14 days of the date of issue of the Order being damages for the Respondent 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

Subsequently a valid notice of appeal was received by the PRTB from the Appellant Landlord on 25 June, 2014.

The PRTB approved referral of the Landlord's appeal to a Tenancy Tribunal. In accordance with Sections 102 and 103 of the Act, the PRTB constituted such a Tenancy Tribunal and appointed Gene Feighery, Finian Matthews and John Tiernan as Tribunal members. The Board appointed Gene Feighery to be the Chairperson of the Tribunal

(referred to as “the Chairperson” in this report). The parties were notified of the constitution of the Tribunal, were provided with details of the date, time and venue set for the hearing and were provided with a copy of the Tenancy Tribunal Hearing Procedures.

On 22 August, 2014 the Tribunal convened a hearing at 2.30 a.m. at the offices of the PRTB, Floor 2, O’Connell Bridge House.

In his grounds for the appeal before the Tribunal the Appellant Landlord submitted that he did not agree with the Adjudicator’s determination in respect of damages and did not agree that there was any breach of Landlord obligations.

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

PRTB File

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

A copy of the House Rules for the building in which the dwelling is located was submitted to the Tribunal by the Appellant Landlord and entered into evidence, the Respondent Third Party, Mr. Shelley 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, Dwyer Brothers Partnership and the Respondent Third Party, Robert Shelley in respect of a tenancy at 21, Dun Emer Glade, Lusk, Co. Dublin. She introduced the members of the Tribunal to the parties.

She asked the Parties present and any witnesses to identify themselves and to state the capacity in which they were attending the Tribunal hearing. She 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 she 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 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 their 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. She 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 Party; that the Respondent Third Party would then be invited to present his case, followed by an opportunity for cross-examination by the Appellant Landlord. She said that members of the Tribunal would ask questions of both Parties from time to time. She also directed that neither Party should interrupt the other when direct evidence was being given.

Finally she said that at the end of the hearing, both the Appellant Landlord and the Respondent Third Party 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 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 stated that he had given verbal warnings to his tenants following any complaints he received relating to alleged anti-social behaviour within the dwelling. During these verbal warnings he said he told the tenants that he was entitled to terminate the tenancy if they failed to comply with their obligations. However, he conceded that he had not issued the tenants with a written notice of termination or with a warning letter. He said that he told the tenants that any complaints about alleged anti-social behaviour were being taken seriously.

The Landlord stated that he personally lived in Wicklow but that the dwelling was situated in Lusk. He said his agent's role was to source tenants on his behalf but that he was not a managing 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.

He said that his agent vetted any prospective tenants and that the current tenants were in receipt of rent supplement allowance payments, but were not part of the RAS accommodation scheme. The Appellant Landlord however then stated that his agent did in fact deal with any complaints of anti-social behaviour by his tenants when they were reported. He said that when the agent received a complaint regarding the Landlord's tenants alleging anti-social behaviour, he visited the tenants and told them about the complaints and showed them the e-mails containing the complaints in order to confirm that the allegations were real. He said that his agent also informed Dwyer Brothers Partnership of any reported incidents.

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.

Respondent Third Parties' case

Evidence of Mr. Shelley

The Respondent Third Party told the Tribunal that he is the owner and landlord of Apartment no. 20 Dun Emer Glade. He said that his tenants' dwelling is situated directly beneath Apartment No. 21, the subject of this dispute, where it is alleged that the tenants engage in anti social behaviour on a continuous basis. He stated that within a week of his tenants' occupancy of the dwelling in February 2014, he received a complaint from his tenants to the effect that a party involving loud music, shouting and banging was taking place at 10pm in Apartment no. 21 upstairs. He said that his tenants waited until 1.00am to phone the Garda and that the noise ceased immediately the Gardai arrived. He said that the following day, his tenants' were approached by the Appellant Landlord's tenants from Apartment no. 21 when they expressed their annoyance at the fact that his tenants has called the Gardai.

The Respondent Third Party said that he received a number of further complaints of anti-social behaviour relating to Apartment no. 21 and in particular he cited an incident on 18th March 2014 when an alleged violent argument in the said apartment resulted in his tenants' five year old daughter becoming very distressed.

The Respondent Third Party said that he contacted the Appellant Landlord's agent who told him that dealing with tenant issues was not his concern and that the Respondent Third Party should contact Dwyer Brothers Partnership directly. He further said that when he contacted Dwyer Brothers Partnership, they informed him that their agent was dealing with the matter. He said that he regularly spoke with staff members within Dwyer Brothers Partnership and sent e-mails highlighting the unsatisfactory situation to no avail and that the problems persist. He stated that he has continued to receive complaints from his tenants about alleged anti-social behavior post the Adjudication Hearing.

The Respondent Third Party stated that he felt that there was a personal element to the Agent's actions when dealing with his complaints, because his modus operandi was to pass on his e-mail complaints directly to the Appellant Landlord's tenants. This identified the source of the complaint to the Appellant Landlord's tenants thereby provoking a situation where the Appellant Landlord's tenants engaged in harassment and intimidation of the complainant. This action by the agent has resulted in the Respondent Third Party's tenants refusing to e-mail their concerns to him because they do not want their e-mails passed on the Appellant Landlord's tenants. He said that his tenants call him on the phone when they want to report an incident. He also said that one of the reasons he himself is undertaking the case is that by so doing he is protecting his tenants from any risk of confrontation with the occupants of Apartment No 21. In response to a query from the Tribunal he said that if his tenants had not made a complaint to him he would not have taken this case to the PRTB.

The Respondent Third Party stated that he is concerned that his tenants will terminate their tenancy as a result of the alleged intimidation and anti social behaviour of the Appellant Landlord's tenants. He said that if they do leave, he would be out of pocket. He stated that he had been under pressure from both the bank and his tenants over the past number of months. He is concerned that he will get a phone call from his tenants to

say that they are leaving as a result of the Appellant Landlord's tenants' anti social behaviour which is allowed to continue. He stated that he is reacting to his tenants' complaints and that it is reasonably foreseeable that he would be affected by such anti-social behaviour.

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

None

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

7. Findings of the Tribunal and reasons therefor,

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's appeal relating to alleged breach of landlord obligations under Section 15(1) of the Act is upheld.

Reason: Under Section 15 (1) of the Act it states that a landlord of a dwelling owes to each person who could be potentially affected, a duty to enforce the obligation of the tenant under the tenancy. It then goes on to describe a person who could be potentially affected as someone who it is reasonably foreseeable would be directly and adversely affected through the failure by a Landlord to enforce an obligation of the tenant were such a failure to occur, and includes any other tenant under the tenancy mentioned in that subsection.

The Respondent Third Party is an owner landlord of a dwelling situated below that of the dwelling under dispute. He does not reside in the dwelling himself and has rented it out to tenants. He is indirectly affected as a result of complaints to him by his tenant's relating to alleged anti-social behaviour engaged in by the Appellant Landlord's Tenants.

Finding 2: The Tribunal finds that the 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 21 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: 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. 21 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 21 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.

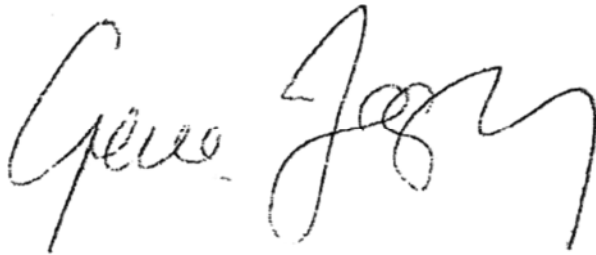
**8. Determination:**

**Tribunal Reference TR0614-000720**

**In the matter of Dwyer Nolan Partnerships (Landlord) and Robert Shelley (Third Party) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord's appeal relating to alleged breach of landlord obligations under Section 15(1) of the Act is upheld in respect of the tenancy of the dwelling at 21 Dun Emer Glade, Lusk, Co.Dublin.

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

A handwritten signature in black ink, appearing to read 'Gene Feighery', written over a horizontal line.

**Signed:**

**Gene Feighery Chairperson**

For and on behalf of the Tribunal.