

**Private Residential Tenancies Board**

**RESIDENTIAL TENANCIES ACT 2004**

**Report of Tribunal Reference No: TR0614-000721 / Case Ref No: 0414-11470**

<b>Appellant Tenant:</b>	Peter Keehan
<b>Respondent Landlord:</b>	Talebury Properties
<b>Address of Rented Dwelling:</b>	17 Edward Square, Bloomfield Avenue, Donnybrook , Dublin 4
<b>Tribunal:</b>	Vincent P. Martin (Chairperson) Orla Coyne, Gene Feighery
<b>Venue:</b>	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
<b>Date &amp; time of Hearing:</b>	21 August 2014 at 10:30
<b>Attendees:</b>	Attendees: For the Appellant Tenant: Peter Keehan (the Appellant Tenant) Conor McGreevy (witness)  For the Respondent Landlord: Barry Finnegan (Director, Sherry Fitzgerald Lettings) Holly Butler (Operations Manager, Sherry Fitzgerald Lettings)
<b>In Attendance:</b>	Representative of Gwen Malone Stenographers

**1. Background:**

On 10/04/2014 the Respondent 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 13/05/2014. The Adjudicator determined:

1. The notice of termination served on 10th March 2014 by the Respondent Landlord on the Appellant Tenant in respect of the tenancy of the dwelling at 17, Edward Square, Bloomfield Avenue, Donnybrook, Dublin 4, is valid.
2. The Appellant Tenant and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling within 14 days of the date of issue of the Order.
3. The Appellant Tenant shall pay the sum of €6000 damages together with €35,429.47 in respect of rent arrears to the Respondent Landlord within 14 days of the date of issue

of the Order, being the rent arrears and damages for the Appellant Tenants' breach of his obligations under the Act.

4. The Appellant Tenant shall also pay any further rent outstanding from 13th May 2014 (date of the hearing) at the rate of €3,000 per month, €98.63 per day, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as he vacates the above dwelling.

Subsequently the following appeals were received: An application to appeal was received from the Appellant Tenant on 25/06/2014. The grounds of the appeal: Rent arrears, Overholding, Breach of landlord obligations which appeal was deemed valid and approved by the Board on 04/07/2014. The PRTB constituted a Tenancy Tribunal and appointed Vincent P. Martin, Orla Coyne, Gene Feighery as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Vincent P. Martin 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 21/08/2014 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:**

PRTB File

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

N/A

## **4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson 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".

The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be held in as informal a manner as was possible; that the person who appealed (the Appellant) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellant. The Chairperson explained that following this both parties would be given an opportunity to make a final submission.

The Chairperson said that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of up to €4,000 or up to 6 months imprisonment or both. The Parties giving evidence were then sworn in.

The Chairperson reminded the Parties that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties and could be

appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act

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

Appellant Tenant's case:

Evidence of Peter Keehan (Appellant Tenant)

The Appellant Tenant confirmed that he continues to reside in the dwelling. He stated that he tried to meet the Respondent Landlord personally who agreed to meet him but that the meeting had not happened. He accepted that he signed the lease agreement with a Company and not an individual but without intending to disrespect the Agents in this case, he preferred not to talk to them but deal directly with the individual in charge of the Company who had previously assured him that he would sort out this dispute. He stated that he had known the Respondent Landlord for 5 years having worked with him together on various projects. He stated that he was initially given an informal option of purchasing the dwelling but that the Respondent Landlord was no longer in a position to sell it to him and since January 2014 has been putting him under pressure to pay the rent indicating that the Respondent Landlord had no other option but to collect outstanding rent arrears.

He said he was not disputing or procedurally challenging the warning letter and notice of termination which was served on him by the Agents acting on behalf of the Respondent Landlord.

He stated that there was no deposit paid when the tenancy commenced that it was agreed that no rent would be paid in the first month of the tenancy. He submitted that it was a caretaker agreement but accepted that there was no mention of a caretaker agreement in the written lease agreement. He accepted that the monthly rent in the sum of €3,000.00 was well below market value. In reply to a question raised by the Tribunal, he accepted that he could not give any evidence to show that the warning letter and notice of termination which was being relied upon by the Respondent Landlord was invalid or defective but appealed to the Tribunal to give him as much time as reasonably possible in order to secure alternative accommodation stating that he would like to stay on in the dwelling until the end of the month of November 2014. He stated that he had made a number of rental payments to the Respondent Landlord including one payment in respect of rent in the sum of €9,000.00 but did not dispute the claim made by the Respondent Landlord that up to the date of the hearing the rent due and owing to the Respondent Landlord was in the sum of €44,429.47.

Respondent Landlord's case:

Evidence of Barry Finnegan

He stated that he was a Director of Sherry Fitzgerald Lettings and has been acting as an Agent for the Respondent Landlord since 1 August 2013. He stated that he was instructed by the Respondent Landlord to collect rental arrears. He stated that direct conversations took place with the Appellant Tenant verbally warning him about the implications of failure to pay the rent but in doing so that there had never been a cross word between them. He added that they were at one stage open to recovering the arrears through an agreed payment strategy but now wanted the Appellant Tenant to vacate the dwelling and in this respect he was relying on the 14 day warning letter dated 17

February 2014 and the Notice of Termination served on the Appellant Tenant dated 10 March 2014.

The Chairperson thanked all present for attending the hearing and advised them that following the hearing the Tribunal will make its Determination in relation to the dispute and will notify the PRTB of that Determination.

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

1. The Parties entered into a 24 month fixed term tenancy agreement which commencement date on the said agreement was 1 December 2012.
2. The rent is €3,000.00 per month.
3. No security deposit was paid by the Appellant Tenant to the Respondent Landlord
4. The Appellant Tenant remains in occupation of the rented dwelling

## **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 are set out hereunder.

1. The Tribunal finds that the Appellant Tenant is in significant rent arrears. In relation to the calculation of the rent arrears, on the balance of probabilities, the Tribunal finds the evidence given on behalf of the Respondent Landlord (claiming €44,429.47 up to the date of this hearing) to be reliable and compelling and notes that the Appellant Tenant did not challenge the veracity of same. The Tribunal finds the Appellant Tenant breached his statutory obligation under the Act to pay rent on the date it falls due for payment pursuant to Section 16(a)(i). As a result of this said breach, the Tribunal finds that the Respondent Landlord has suffered loss by being deprived of the use of this said amount of monies which remain due and owing. In the circumstances the Tribunal, pursuant to Section 115 of the Act, makes an award of damages in favour of the Respondent Landlord in the sum of €3000.00 to be paid by the Appellant Tenant.

2. For the purpose of clarity, the Tribunal finds that the monthly rent is €3000.00 and the rent per day is €98.36 which is calculated as follows: €3000.00 multiplied by 12 months = €36,000.00 divided by 365 (days) = €98.63 (rent per day).

3. The letting was a Part 4 tenancy under the Act as the Appellant Tenant has been in continuous occupation of the dwelling in excess of the requisite six-month period. The Tribunal holds that the Appellant Tenant enjoys a Part 4 tenancy and Tenants who meet the requirements set out in Part 4 of the 2004 Act ("Part 4 Tenants") enjoy a certain security of tenure. In order for the Respondent Landlord to terminate a Part 4 tenancy on grounds that the tenant has failed and/or neglected to pay rent and thereby being in arrears of rent, the Landlord must follow all three procedural steps as follows:

STEP 1: Under Section 34 of the Act, the landlord must notify the tenant that:

- a) the tenant is in arrears of rent;
- b) the tenant is allowed a reasonable time (14 days) to remedy that breach of obligation;
- c) the landlord is entitled to terminate the tenancy if the tenant fails to remedy that breach of obligation within the period specified.

STEP 2: Under Section 67(3) of the Act, where a tenant falls into rent arrears, the landlord must serve a written notice on the tenant informing him or her of the amount of rent that is due. The landlord must then give the tenant 14 days to pay those rent arrears.

STEP 3: Under Section 67(2) of the Act, if the tenant fails to pay the rent due within 14 days of receipt of the written notice under Section 67(3) (step 2 above), the landlord may proceed to terminate the tenancy by serving a 28 day notice of termination.

4. The Tribunal is satisfied that the Respondent Landlord has complied with all said 3 steps and therefore the said Notice of Termination dated 10 March 2014 is valid terminating the said tenancy on 8 April 2014. The Tribunal finds that the Appellant Tenant is over holding from 8 April 2014 because he continues to reside at the said rented dwelling despite the service upon him by the Respondent Landlord of a valid notice of termination and the expiry thereof.

## **8. Determination:**

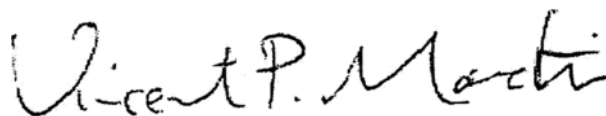
**Tribunal Reference TR0614-000721**

**In the matter of Peter Keehan (Tenant) and Talebury Properties (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 10 March 2014 by the Respondent Landlord on the Appellant Tenant in respect of the tenancy of the dwelling at 17 Edward Square, Bloomfield Avenue, Donnybrook, Dublin 4 is valid.
2. The Appellant tenant, and any other persons residing in the above dwelling, shall vacate and give up possession of the dwelling within 14 days of the date of issue of this Order.
3. The Appellant Tenant shall pay the total sum of €47,429.47 comprising of €3000.00 damages together with €44,429.47 in respect of rent arrears due and owing to the Appellant Landlord within 14 days of the date of issue of this Order, being rent arrears and damages for the Appellant Tenant's breach of his obligations under the Act.
4. The Appellant Tenant shall also pay any further rent outstanding from 21 August 2014 (date of appeal hearing) at a rate of €3000.00 per month, or proportionate part thereof at the daily rate of €98.63, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each month or part thereof until such time as he vacates the said dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 05/10/2014.

**Signed:**



**Vincent P. Martin Chairperson**

For and on behalf of the Tribunal.

