

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000724 / Case Ref No: 0314-10927

Appellant Landlord:	Aisling Kavanagh
Respondent Tenant:	Debbie Hurst
Address of Rented Dwelling:	26 Ballyshannon Manor, Carbury, Co. Kildare
Tribunal:	Orla Coyne (Chairperson) Gene Feighery, Vincent P. Martin
Venue:	Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	21 August 2014 at 2:30
Attendees:	Aisling Kavanagh; Dispute Respondent Landlord Margaret Kavanagh - Landlord's Representative Carol Hughes - Agent Debbie Hurst - Dispute Applicant Tenant Derek Dowling - Witness
In Attendance:	Gwen Malone Stenographer

1. Background:

On 12/03/2014 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 21/05/2014. The Adjudicator determined that the Respondent Landlord shall pay the sum of EUR750.00 to the Applicant Tenant within 7 days of the date of issue of the Order, being the unjustifiably retained security deposit in respect of the tenancy of the Dwelling at 26 Ballyshannon Manor, Carbury, Co. Kildare.

Subsequently the following appeals were received:

Landlord : received on 27/06/2014. The grounds of the appeal: Breach of fixed term lease (approved by the Board on 04/07/2014)

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

On 30 July 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 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:

None

4. Procedure:

The Chairperson asked the parties to identify themselves and to identify in what capacity they were attending the Tribunal. 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 Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be as informal as possible, that the parties must follow the instructions given by the Chair, that evidence would be given under oath or affirmation and would be recorded by the stenographer present and based on that a recording transcript could be made available to the Tribunal, if necessary, to assist in preparing its Report on the dispute. The Chairperson also stated that it was against the law for any person 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 false or misleading statements or information to the Tribunal. The Chairperson 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 and/or up to 6 months imprisonment or both.

The Chairperson added that the Appellant Landlord's agent would be invited first to present her case together with her witness, this would be followed by an opportunity for cross-examination by the Respondent Tenant, the Respondent Tenant would then be invited to present her case with her witness followed by an opportunity for cross-examination by the Appellant Landlord's agent. She also said that members of the Tribunal might 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.

The Chairperson explained that, following this, both parties would be given an opportunity to make a final submission should they so wish.

The Chairperson also reminded the parties that, as a result of the hearing that they, 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.

The Parties giving evidence were then sworn in.

5. Submissions of the Parties:

APPELLANT LANDLORD'S CASE.

Evidence of Carol Hughes, Agent.

The Agent for the Appellant Landlord stated that the fixed term twelve month tenancy commenced on 6 September 2013 and the Respondent Tenant vacated the dwelling prematurely on 6 March 2014. She said the Respondent Tenant had contacted her by text to inform her that she would be terminating the tenancy and she gave her approximately a month's notice.

She further stated that the Respondent Tenant had left the dwelling in an unclean state. She claimed that all surfaces had to be cleaned, that there were crumbs and surface dirt left throughout the dwelling and garden by the Respondent Tenant. She said that her feet were sticking to the floor in the kitchen, and the carpets upstairs had not been hoovered. The Agent said she made the Respondent Tenant aware that she was dissatisfied with the condition of the dwelling when she vacated, however she said that the Respondent Tenant rejected this assertion and denied it to be the situation.

The Agent accepted that the Respondent Tenant had allowed new prospective tenants to view the dwelling prior to vacating it. In relation to assigning the tenancy to another person, the Agent said that the Tenant gave her the name of a new prospective Tenant who would replace her but when the Agent contacted this person it transpired she was only prepared to pay a monthly rental figure that was €100.00 less than the Respondent Tenant's current monthly rental payment. Therefore this arrangement was unacceptable. She said the Respondent Tenant then offered the name and telephone number of another prospective replacement tenant, who, when attempts were made to contact her, failed to respond to calls.

The Agent stated that she had advised the Tenant that it would be a matter for the Landlord to return the deposit. She stated she had never said to the tenant that the deposit would be returned automatically to her.

The Agent said that new tenants viewed the dwelling a week before the Respondent Tenant vacated. She said the new tenants wanted to take up occupancy of the dwelling immediately as they had no alternative, having returned the keys of their former dwelling to their landlord. The Agent said she did not consider the dwelling appropriately clean and subsequently the new tenants sought, and received, a reduction in their rental payment for the first month in the sum of €130.00 for carrying out cleaning of the dwelling themselves. A schedule of payments, reflecting this deduction was available to the Tribunal in support of this claim. The Agent said that there was no damage in excess of normal wear and tear to the dwelling.

The Agent accepted that there was no loss in rental payments to the Appellant Landlord in circumstances where the Respondent's tenancy was immediately replaced with a new tenancy when the Tenant vacated the Dwelling. The Agent was seeking therefore, on behalf of the Landlord, the sum of €90.00 for the registration of the new tenants which had to be done twice in the one year because of the breaking of the fixed term tenancy by the Tenant, together with the sum of €130.00 towards the cleaning of the dwelling and €300.00 representing her letting fees incurred. Therefore the total sum sought by the Agent, on behalf of the Landlord amounts to €520.00. She was not seeking the €100.00 in respect of the PRTB appeal application fee.

The Respondent Tenant's deposit in the sum of €750.00 had not been returned because the Landlord did not know what to retain from it until the outcome of the PRTB case.

Evidence of Margaret Kavanagh, Witness.

She stated that she is the mother of the Appellant Landlord and that her daughter and family had to move to New Zealand for employment and financial considerations. She said the Appellant Landlord had a mortgage to pay and that she was at a financial loss as a result of the Respondent Tenant's actions by breaking her fixed term 12 month tenancy. This has resulted in extra expense and Agency fees to the Appellant Landlord.

RESPONDENT TENANT'S CASE.

Evidence of Debbie Hurst

The Respondent Tenant stated that she had been struggling to pay the rent. She said that 6 weeks before she vacated the dwelling she rang the Agent and explained the circumstances wherein she could not sustain her rental payments. She stated that the Agent had told her that if she accommodated viewings and the dwelling was left in good condition after she had vacated it she would get her deposit back. The Respondent Tenant said that she had facilitated two viewings of the dwelling when she was in occupation, and on one occasion she even carried out a viewing without the presence of the Agent because she was too busy to attend.

The Respondent Tenant totally refuted the Agent's evidence that the dwelling was dirty when she vacated it. She said she was shocked to receive the call from the Agent describing the dwelling as dirty after she had vacated.

The Respondent Tenant stated that she had taken advice from Threshold to the effect that as there were no photographs taken by the Agent in support of her claim that the Dwelling was dirty, and no invoice for the cleaning bill. Therefore she was advised by Threshold that the Landlord could not retain the deposit. She queried why, if the dwelling was so unclean, did the new Tenants move in immediately. According to her advice, only structural damage, rent arrears, and damage in excess of normal wear and tear were sufficient grounds for deposit retention.

The Respondent Tenant accepted that there was an ice cream left in the freezer which had to be removed and she conceded that there was a slight delay in her leaving the dwelling as her children were sick. She said she did not return the keys the next day, but had posted them the night she left the dwelling. She said her parents came to the dwelling as she was leaving to help her clean it because they were aware that if the dwelling was dirty she would not get her deposit back.

In relation to assigning the lease, the Respondent Tenant said she had attempted to have people take over the lease but, unfortunately, this did not happen. She did not accept that the Landlord is justified in deducting any money from her deposit.

Derek Dowling's Evidence

Derek Dowling stated that the Landlord was not at a financial loss because the Agent had secured new tenants immediately for the dwelling. In relation to the Agent's fees, he claimed the Landlord would have to pay them in any event.

He also stated that the Landlord is now receiving more rent than the rent that the Tenant had been paying, and he reiterated the Respondent Tenant's claim that the dwelling was not dirty and this was supported by the fact that the new tenants moved in immediately.

6. Matters Agreed Between the Parties

The tenancy commenced on the 6th September 2013 and terminated on the 6th March 2014.

It was a 12 month term tenancy rent €750.00 per month, deposit of €750.00 had been paid to the Landlords agent.

There were no rent arrears.

7. Findings and Reasons:

1. Finding

The Tribunal finds that the Tenant is in breach of her obligations under Section 16 (f) of the Act by reason of her failure to return the dwelling to the Landlord in the condition the dwelling was in at the commencement of the tenancy, having regard to the time that has elapsed from the commencement of the tenancy, the extent of the occupation and other relevant matters including any deterioration in that condition owing to normal wear and tear.

Reasons

The Tribunal accepts the evidence of the Appellant Landlord's Agent wherein the sum of €130.00 was deducted from the first month's rent of the new tenancy to compensate the new tenants for essential cleaning carried out by them to the dwelling in order to make it habitable. However, in her direct evidence, the Agent stated that no professional cleaning was required, or carried out to the dwelling and therefore the Tribunal awards the sum of €65.00 towards the costs of the cleaning by the new tenants to the Appellant Landlord.

2. Finding

The Tenant is in breach of her obligations by terminating her fixed 12 month tenancy prematurely and not in accordance with the provisions of the Act. A tenant can only terminate a fixed term tenancy where the landlord has been in breach of his or her obligations under Section 12 of the Act. The Tribunal finds that there is no allegation of, or actual failure on the part of the Appellant Landlord in this regard. In addition, the Appellant Landlord did not refuse her consent to an assignment or sub-let the dwelling and this precludes the Respondent Tenant from the benefit of Section 186.

The Tribunal awards to the Landlord the sum of €150.00, representing 50% of the Agents fees in the sum of €300.00.

The Tribunal refuses the claim by the Agent for the Appellant Landlord's Registration fee for the new tenancy in the sum of €90.00.

Reasons

The Respondent Tenant terminated her fixed term 12 month tenancy mid-way through (but without having acquired Part 4 security of tenure), and made little or no attempt to assign or sub-let the lease with a replacement tenant, accordingly the Appellant Landlord had to engage the services of the Agent half way through the fixed term lease.

8. Determination:

Tribunal Reference TR0614-000724

In the matter of Aisling Kavanagh (Landlord) and Debbie Hurst (Tenant) 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 €535.00 to the Respondent Tenant being the portion of the deposit unjustifiably retained within 14 days of the date of issue of the Determination Order by the Board, being the security deposit of €750.00 having deducted the sum of 150.00 for Agent's fees and a further sum of €65.00 justifiably retained towards cleaning costs incurred for breach of the Tenant's obligations under the Act in respect of the tenancy of the dwelling 26 Ballyshannon Manor, Carbury, Co. Kildare.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/09/2014.

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

Signed:

Orla Coyne Chairperson

For and on behalf of the Tribunal.