

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000725 / Case Ref No: 0414-11663

Appellant Landlord:	Davy Target Investments PLC
Respondent Tenant:	Frank Lynn
Address of Rented Dwelling:	Apartment 43, Hampton Court, Cootehill Road, Co.Cavan
Tribunal:	John Tiernan (Chairperson) Thomas Reilly, Gene Feighery
Venue:	The Ante-Chamber, Athlone Civic Centre, Church Street, Athlone, Co.Westmeath
Date & time of Hearing:	16 September 2014 at 11:00
Attendees:	Crotty Auctioneering & Property Mgt Ltd - Tribunal Representative
In Attendance:	Gwen Malone Stenographers

1. Background:

On 22/04/2014 the 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 27/05/2014. The Adjudicator determined that;

- The notice of termination served on the 04/02/14 by the Applicant Landlord's Agent on the Respondent Tenant, in respect of the tenancy of the Dwelling at Apartment 43 Hampton Court, Cootehill Road, Cavan is invalid.
- The Applicant Landlord's application regarding anti-social behaviour and rent arrears in respect of the tenancy of the Dwelling at Apartment 43 Hampton Court, Cootehill Road, Cavan is not upheld.

Subsequently, an appeal was received from the Landlord. The grounds of the appeal were; Damage in excess of normal wear and tear, rent arrears, overholding, invalid notice of termination. The appeal was approved by the Board on 11/07/2014.

The PRTB constituted a Tenancy Tribunal and appointed Thomas Reilly, John Tiernan, Gene Feighery as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John Tiernan to be the chairperson of the Tribunal ("the Chairperson").

On 21/08/2014 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 16/09/2014 the Tribunal convened a hearing at The Ante-Chamber, Athlone Civic Centre, Church Street, Athlone, Co.Westmeath, Athlone.

2. Documents Submitted Prior to the Hearing Included:

PRTB File

3. Documents Submitted at the Hearing Included:

2 copy Notices allegedly distributed to tenants in the Apartment Block by the Respondent Tenant.

Copy of letter dated 13/02/2014 from Management Agents stated to have been issued to all tenants in the Apartment Block in which the Dwelling is situated advising them of the new bank account in to which rental payments are to be made.

2 pages of supplementary bank statements showing payments made between 19th February 2014 and 2nd April 2014.

4. Procedure:

The Chairperson asked the party present to identify himself and to identify in what capacity he was attending the Tribunal. He confirmed with the party that he had received the relevant papers from the PRTB in relation to the case and that he had received the PRTB document entitled "Tribunal Procedures". He explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as was possible. He said that members of the Tribunal might ask questions of participants from time to time.

The Chairperson explained to the party present that in the event that agreement is reached between the parties should the respondent party attend at the hearing the terms of any such agreement can be incorporated in to a determination of the Tribunal and thus become enforceable through the Courts.

He stressed that all evidence would be taken on oath and be recorded by the official stenographer present and he reminded the party in attendance 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.

He also reminded the party in attendance 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 enforced by either of the Parties or in some cases by the Board of the PRTB at its discretion. He also advised the party in attendance that the Tribunal process was the final step in the dispute resolution process unless appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

He asked the party in attendance if he had any queries about the procedure. There were none.

The party in attendance was sworn in.

5. Submissions of the Parties:

The Appellant Landlord's case:

The Appellant Landlord's Agent said that the tenancy of the Dwelling commenced on 4th November 2013 at a monthly rent of €400 and on payment of a security deposit of €400.

He confirmed that the Respondent Tenant still resides in the Dwelling. He gave evidence that the ownership of the Dwelling and the apartment block in which it is situated changed hands in December 2013 and that subsequent to that his company were engaged to manage the tenancies on behalf of the new owners in late February 2014. He said that the Notice of Termination was served by email on 4th February 2014. He said that it had been deemed necessary to place new locks on the front door to the apartment block in which the Dwelling is situated and that the Respondent Tenant had objected to this and had stated that he would remove same if installed. He gave evidence that subsequently the locks were interfered with and that another tenant in the apartment block had witnessed the Respondent Tenant interfering with the locks with the aid of screwdrivers. He said that the Respondent Tenant had been warned not to interfere with the new locks. He said that the then management agency considered the actions of the Respondent Tenant in the matter to have constituted anti-social behaviour and accordingly had issued the Notice of Termination.

The Appellant Landlord's Agent said that the Respondent Tenant is in rent arrears and has not paid rent since 4th March 2014. He refuted the averment of the Respondent Tenant in written evidence that he had not been provided with the new Bank Account details following the ownership change. He said that at the time of changeover his company wrote to all residents including the Respondent Tenant on 13th February 2014 advising of the new Bank Account details in to which rental payments were to be made from then on. Furthermore he adduced in evidence bank statement details to show that the Respondent Tenant had paid his rent on 4th March 2014 into the newly advised Bank Account. He said that the Respondent Tenant had not paid any rent since that date and he supported this with evidence of further bank statements in the ensuing months up to August 2014 showing no further payments in to the account in respect of the Dwelling.

The Appellant Landlord's Agent gave evidence of his own direct interaction on two occasions with the Respondent Tenant. He said that on those occasions he became abusive and was shouting and roaring. He gave further evidence of interactions between the Respondent Tenant and other residents in the apartment block. This included written warnings that had been issued by the Respondent Tenant to a number of the said residents in relation to closing of doors in complete silence. He adduced one particular written notice to the resident of the adjoining ground floor apartment at No.44 Hampton Court which referred to the need to avoid banging of doors when entering and leaving and included instruction to control cooking smells and to avoid noise from within the apartment relating to television and telephone usage. He said that the language used in the notice was threatening and disturbing. He said that the female resident in No.44 had entered and left through the balcony door after receipt of the said notice and that she was afraid of the Respondent Tenant. The Appellant Landlord's Agent submitted a second written statement to the tribunal that outlined events at apartment No.53 Hampton Court which is directly above the subject Dwelling and describing incidents when the Respondent Tenant came to her apartment door at 11.30 pm. in an aggressive manner and persisted to demand that she open her door in order to be handed a written notice by him. In her statement she wrote that she found it necessary to seek assistance from her brother and the Gardai. She described that the Respondent Tenant was cautioned by the Gardai on that occasion but that on the next day the Respondent Tenant had come to her place of work to present the written notice to her. She wrote that due to these events she had felt unsafe and had immediately vacated apartment No.53 .

The Appellant Landlord's Agent adduced extensive CCTV security camera footage in to evidence. These footages related to dates in June 2014 and July 2014. He said that these showed the Respondent Tenant firstly interfering with the CCTV camera in the vicinity of the external door to the apartment block. He referred to other footage which he said depicted the Respondent Tenant interfering with and removing the recently installed locking mechanism on the door to the apartment block. He said that there was a need to install greater security on the apartment block due to disturbances that had occurred on the part of unknown youths who had entered the block on a number of occasions and had interfered with the lift operation which in turn then necessitated specialist maintenance.

The Appellant Landlord's Agent gave evidence that by hindering the installation of locks on the external door the Respondent Tenant prevented the effective repair and continued serviceability of the lift in the apartment block. He said that not only had the Respondent Tenant harassed two existing tenants in the apartment block leading directly to the vacation of at least one apartment as submitted in evidence but that the inability to ensure continued operation of the lift had resulted in potential new tenants being dissuaded from taking up tenancies in the development when the lift was out of order thereby presenting an image of poor maintenance when viewings were being conducted.

The Appellant Landlord's Agent also pointed to an incident captured on the CCTV footage wherein he said it was clear that the Respondent Tenant engaged in threatening behaviour towards two female cleaning staff and had taken the vacuum cleaner they were using and fired it out through the apartment block doorway causing it to break when it landed.

The Appellant Landlords Agent stated that when the Respondent Tenant made a complaint about his bed base it had been replaced. In regard to the Respondent Tenant's complaint regarding banging doors the Appellant Landlord's Agent said that all of the said doors were fitted with spring closing mechanisms. The Appellant Landlord's Agent gave further evidence that when a complaint was made by the Respondent Tenant in regard to a leak in his hot-press the matter was investigated after much difficulty in making arrangements to enter the Dwelling and that no such leak was apparent.

The Appellant Landlord's Agent gave evidence that the apartment complex is immediately adjacent to part of the Cavan College of Further Education and that despite frequent and regular caretaking facilities being in place on occasions students may congregate outside the Dwelling and cigarette butts may be discarded in the vicinity. He said that the caretakers attend to the area twice daily. He said that on one occasion the Respondent Tenant had arrived at his office and had scattered approximately 50 cigarette butts on to the floor and desk apparently in an act of protest at finding cigarette butts outside of the Dwelling window.

In summing up his case the Appellant Landlord's Agent said that whereas he has tried to deal with the Respondent Tenant that the Respondent Tenant had seriously harassed two tenants in the apartment block and had abused staff working there on a number of occasions. He said that there are 18 apartments in the apartment block and that he considers that the Respondent Tenant is a threat to the enjoyment of the tenancies of the other residents.

The Respondent Tenant's Case:

The Respondent Tenant did not attend at the Tribunal hearing. However he did submit a written defence of his position and other statements emails and documents to the PRTB

file which were considered in the context of the dispute. These documents included objection to the submission of a statement dated 1st September 2014 on the part of a tenant in apartment No.53 on the basis that it had not been adduced in evidence at the adjudication hearing. Furthermore the Respondent Tenant objected to the matter of rent arrears being cited before the Tribunal by the Appellant Landlord and to the introduction of all related bank statements and documents.

The Respondent Tenant raised issues relating to alleged breaches on the part of the Appellant Landlord in relation to the standard and maintenance of the Dwelling and leading also to interruption of his peaceful enjoyment of the Dwelling.

The matters he raised were:

1) That the bed base provided in his Dwelling was squeaky.

In his written submission the Respondent Tenant said that this disturbed his sleep due to the squeaking noises even on movement of his arms when in bed.

2) That the doors in the apartment block were noisy.

The Respondent Tenant referred to the banging of the external and common area doors being of a loud nature which interrupted his peaceful enjoyment of the Dwelling.

3) A leak in the hot-press in the Dwelling.

The Respondent Tenant referred to a leak in his hot-press and when apparent difficulties in communication with the plumbers despatched by the Appellant Landlord's Agent arose he asserted that at 5 pm which he said was an hour later than arranged they had banged loudly on his door when they arrived to inspect and accordingly he had not opened the door to admit them.

4) Cigarette butts being deposited outside of his window.

The Respondent Tenant said that the deposition of cigarette butts on the ground outside of his Dwelling was disgusting and requested that 'No Smoking' signs be erected in the vicinity and sought to have all tenants issued with 'No Smoking' letters.

5) Water leaking in to his bathroom from the apartment above.

The Respondent Tenant described in his written submissions that there was water leaking from the apartment above the Dwelling in to his bathroom and had caused damage to his bathroom walls and tiling.

6. Matters Agreed Between the Parties

None

7. Findings and Reasons:

Based upon the evidence provided and based upon the balance of probabilities the Tribunal has made the following findings:

Finding No. 1

The Respondent Tenant has been in breach of his obligations under Section 16(h) of the Act of 2004 by behaving within the vicinity of the Dwelling in a way that was anti-social.

Reason 1:

The Tribunal has had regard to the evidence of the Appellant Landlord's Agent in relation to actions of the Respondent Tenant in the vicinity of the Dwelling. The Tribunal accepts the direct evidence in regard to the actions of the Respondent Tenant that was provided on the part of the Appellant Landlord's Agent of abusive behaviour towards himself. Corroborating evidence was also provided in the written contents of various statements by persons who interacted with the Respondent Tenant in the apartment block in which the Dwelling is situated submitted to the Tribunal by the Appellant Landlord's Agent. Notwithstanding the objection of the Respondent Tenant to the admission of the written statement of the tenant who had resided in the apartment directly above the Dwelling in to evidence on the grounds that it had not been adduced at the adjudication hearing the Tribunal decided that it was appropriate to accept the said statement on the grounds that the Tribunal hearing is a De Novo hearing.

Evidence provided to the Tribunal from footage captured on security camera fixtures which evidence was uncontested depicts intimidating behaviour towards cleaning staff at the apartment block in which the Dwelling is situated on the part of Respondent Tenant as well as damage being caused to property by the Respondent Tenant. Further evidence adduced by the Agent of the Appellant Landlord demonstrates intimidating behaviour towards persons in the vicinity of the dwelling in the form of intimidating notices issued on the part of the Respondent Tenant to occupants of neighbouring apartments.

The Tribunal considers that the weight of evidence in regard to the behaviour of the Respondent Tenant leads to the conclusion that he has behaved in a manner that is anti-social in the vicinity of the Dwelling and as defined in Section (17) (1) of the Act of 2004.

Finding No. 2

The Tribunal finds that the Respondent Tenant is in breach of his obligations under Section 16(a) of the Act of 2004 in that he has failed to pay the rent provided for under the tenancy on the day it falls due for payment. The Tribunal finds that the Respondent Tenant is in rent arrears in respect of the tenancy of the Dwelling in the amount of €2,170.95 The Tribunal finds that this sum shall be paid to the Appellant Landlord by the Respondent Tenant in regular instalments over 11 consecutive months commencing in the month immediately ensuing the date of issue of the Order by the Board.

Reason 1:

The Tribunal is satisfied based upon the averments of the Appellant Landlord's Agent and upon the Bank Statements adduced in evidence at the Tribunal Hearing that rent arrears have accrued in respect of the tenancy of the Dwelling commencing on 4th April 2014 and that no rent has been paid since that date up to and including the date of the hearing on 16th September 2014. The assessment of the sum owing is calculated as follows:

- 1) Rent due in respect of 5 whole months from 4th April 2014 to 3rd September 2014.
- 2) The monthly rent is €400 and therefore 5 months = €2,000.....(i)
plus
- 3) Rent due in respect of 13 days from 4th to 16th September 2014 inclusive.
- 4) The daily rent is calculated by multiplying the monthly rent by 12 to yield the annual rent and then this amount is divided by 365 to yield a daily rate.

Therefore rent due in respect of 13 days is

$= €400 \times 12 = €4,800$ = Annual Rent

$€4,800 \div 365 = €13.15$ = Daily Rate

$€13.15 \times 13 = €170.95$(ii)

Total amount owing therefore = (i) + (ii) = $€2,000 + €170.95 = €2,170.95$

In his written submissions the Respondent Tenant made reference to his view that the rent arrears issue is not validly before the Tribunal. He purported that this issue was not raised in the original form of application for dispute resolution submitted by the Appellant (then Applicant) Landlord. The Tribunal notes that the issue of rent arrears was raised on the part of the Agent for the Appellant (then Applicant) Landlord at the adjudication hearing and that a finding in this regard was made on the part of the Adjudicator. The Tribunal is mindful of the obligation imposed upon the Adjudicator under Section 97(2) of the Act of 2004 to inquire fully in to each relevant aspect of the dispute concerned.

Finding No. 3

The Notice of Termination served by the Appellant Landlord on the Respondent Tenant on 4th February 2014 in respect of the tenancy of the Dwelling at 43 Hampton Court, Cootehill Road, Cavan is invalid.

Reason 1:

The Tribunal notes that the evidence adduced in regard to the manner of service of the said Notice of Termination referred to it being served by email. The Tribunal considers that this methodology is not sufficient to ensure compliance with the requirements of Section 6(1) of the Act of 2004. The Tribunal also notes that Clause 4.3 of the written tenancy agreement applicable to the tenancy of the Dwelling stipulates that 'Any notice required to be given to the tenant under this agreement shall be duly served if sent by registered post addressed to the tenant at the property.' No evidence of such registered postage was adduced in evidence to the Tribunal.

Reason 2:

The Tribunal considers that insufficient evidence was adduced to the Tribunal to support the reason on which the purported Notice of Termination dated 4th February 2014 was grounded. Notwithstanding that the said Notice of Termination was served within the first six months of the tenancy and Part 4 of the Act had no application the tenancy of the Dwelling is a fixed term tenancy and in accordance with the provisions of Section 58(3)(c) of the Act such a tenancy may only be terminated by the Landlord where there has been a breach of obligation by the Tenant. The Appellant Landlord purported to terminate the tenancy on the grounds of anti-social behaviour. The Tribunal considers that insufficient evidence was presented to it to make a finding that the Tenant engaged in anti-social behaviour before the service of the notice of termination was served. For this reason also the Tribunal considers that the said notice of termination is invalid.

Finding No. 4

The Tribunal finds that the Appellant Landlord has not been in breach of his duties under the provisions of Section (12) (a) or Section (12) (b) of the Act of 2014 in respect of the tenant's right to peaceful enjoyment of the Dwelling or in respect of the standard and maintenance of the Dwelling.

Reason 1:

The Tribunal considers that Respondent Tenant has not adduced sufficient evidence to the Tribunal in regard to the matters he has raised to enable the Tribunal uphold a claim of breach of obligation on the part of the Appellant Landlord. The Tribunal accepts the evidence that the Appellant Landlord had replaced the bed in the Dwelling as requested. The Tribunal also accepts the evidence of the Appellant Landlord's Agent in regard to the level of any noise emanating from the doors in the apartment block and accepts that the spring closing mechanisms are affixed thereto. The Tribunal considers that the expectation of the Respondent Tenant in this regard has been unreasonable and could not sustain a finding of breach of duty in relation to disruption of the Respondent Tenant's peaceful enjoyment of the Dwelling or that same could sustain a conclusion that there was a breach of obligation in relation to the standard and maintenance of the Dwelling.

The Tribunal also accepts that the Appellant Landlord made adequate efforts to respond to the Respondent Tenant's request regarding an alleged leak in his hot-press and alleged water seepage from the apartment above the Dwelling. The Tribunal further finds that although there may well have been accumulations of cigarette butts on the ground and/or on the window sill at the front of the Dwelling it accepts the evidence of the Appellant Landlord's Agent in regard to the ongoing maintenance and frequency of clean-ups in the area in front of the Dwelling. The Tribunal considers that the Appellant Landlord's Agent has made reasonable efforts to effect control and a reduction in any impacts arising which based upon the evidence adduced are not deemed to be significant.

8. Determination:

Tribunal Reference TR0614-000725

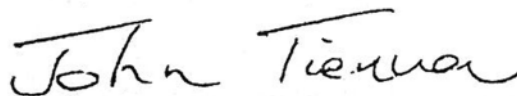
In the matter of Davy Target Investments PLC, Appellant Landlord and Frank Lynn, Respondent Tenant the Tribunal in accordance with Section 108(1) of the Residential Tenancies Act determines that:

1. The notice of termination served on the 4th February 2014 by the Appellant Landlord's Agent on the Respondent Tenant in respect of the tenancy of the Dwelling at Apartment 43 Hampton Court, Cootehill Road, Cavan is invalid.
2. The Respondent Tenant has been in breach of his obligation under Section 16(h) of the Act of 2004 not to behave in the vicinity of the Dwelling at 43 Hampton Court, Cootehill Road, Cavan in a way that is anti-social.
3. The Respondent Tenant shall pay the sum of €2,170.95 to the Appellant Landlord in 10 consecutive monthly payments of €200 on or before the 28th day of each month commencing in the month immediately following the date of issue of the Order by the Board followed by one further payment of €170.95 to be paid on or before the 28th day of the next succeeding month being rent arrears in respect of the tenancy of the Dwelling at 43 Hampton Court, Cootehill Road, Cavan.
4. The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the number of monthly instalments made to the Applicant Landlord on each due date until the sum of €2,170.95 has been paid in full.

5. For the avoidance of doubt any default in the payment of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Applicant Landlord.

6. The Respondent Tenant shall also pay any further rent outstanding from 16th September 2014 on the date it falls due at the rate of €400 per month, 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 dwelling;

Signed:

A handwritten signature in black ink that reads "John Tiernan". The signature is written in a cursive, flowing style.

John Tiernan Chairperson

For and on behalf of the Tribunal.