

Private Residential Tenancies Board

RESIDENTIAL TENANCIES ACT 2004

Report of Tribunal Reference No: TR0614-000728 / Case Ref No: 0414-11337

Appellant Landlord:	Ciaran O'Brien
Respondent Tenant:	Noel Delaney, Rachel Keegan
Address of Rented Dwelling:	55 Alderwood Avenue, Tallaght , Dublin 24
Tribunal:	John Tiernan (Chairperson) Vincent P. Martin, Finian Matthews
Venue:	Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, D'Olier Street, Dublin 2
Date & time of Hearing:	28 August 2014 at 2:30
Attendees:	Ciaran O'Brien – Appellant Landlord
In Attendance:	Gwen Malone Stenographers

1. Background:

On 01/04/2014 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 14/05/2014. The Adjudicator determined that

1. The Notice of Termination dated 16th September 2013 is not valid.
2. The Respondent Tenant shall pay the sum of €2,040.00 to the Landlord in 12 consecutive monthly installments of €170.00 per month on the 28th day of each month, such payments to commence in the month following the issue of the Determination Order.
3. The enforcement of such Order for payment of €2,040.00 shall be deferred and the total sum owing will be reduced by the number of monthly installments of €170.00 made by the Respondent Tenant to the Applicant Landlord on each due date until the sum of €2,040.00 has been paid in full.
4. For the avoidance of doubt, any default in the payment of the monthly installments of €170.00 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.

Subsequently the following appeals were received:

Landlord : received on 17/06/2014. The grounds of the appeal: Overholding, Rent arrears; approved by the Board on 04/07/2014

The PRTB constituted a Tenancy Tribunal and appointed John Tiernan, Vincent P. Martin, Finian Matthews 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 31st 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 28/08/2014 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, 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:

At the commencement of the Tribunal proceedings there was one person in attendance. The Chairperson asked the party present to identify himself and to identify in what capacity he was attending the Tribunal. The person identified himself as the Appellant Landlord. The Chairperson confirmed with that 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 the Appellant Landlord in this case would be invited to present his case first. He said that the Respondent Tenants, if there is an appearance on their behalfs will be offered an opportunity to cross examine that evidence. Subsequent to that the Respondent Tenants or their representative would be invited to present their case and the Appellant Landlord would then be offered an opportunity to cross examine that evidence. Finally he said that both parties if in attendance at that stage would be offered an opportunity to sum up their respective cases and make final closing statements in that regard. He said that members of the Tribunal might ask questions of both parties from time to time throughout the process.

The Chairperson explained to the party present that in the event that agreement is reached between the parties 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 present that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000.00 or up to 6 months imprisonment or both.

He also reminded the party that as a result of the Hearing that day, the Board would make a Determination Order which would be issued to the parties to the dispute 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. He had none.

The party in attendance was sworn in.

5. Submissions of the Parties:

The Appellant Landlord's case:

The Appellant Landlord said that he had appealed the adjudicator's Determination because the adjudicator had found that the Notice of Termination he was relying upon to gain vacant possession of the dwelling was invalid. He said that he needs to sell the dwelling. He said that he owes the Bank €96,000.00 and that the Bank has instigated foreclosure proceedings. The Appellant Landlord submitted that he is seeking vacant possession of the dwelling in order to attract a buyer. This was particularly so in this case he said because any purchaser will want to carry out substantial refurbishment which could not be effected with a sitting tenant. He said that he needs to sell the dwelling to help defray his debts. He gave evidence that when his agent went to the dwelling to erect a 'for sale' sign he was obstructed by the Respondent Tenant and the sign was not erected.

The Appellant Landlord gave evidence that the tenancy commenced on 26th September 2011 at an agreed rent of €950.00 per month. He confirmed that he still has possession of the Respondent Tenants' security deposit of €950.00 and that the Respondent Tenants are still residing at the dwelling.

He said that there have been ongoing issues since the Respondent Tenants moved in to the dwelling, particularly in relation to arrears of rent. He submitted that the Respondent Tenants were being supported in their accommodation needs through the Rental Supplement scheme. He said that initially up until June 2012 the tenant was responsible for the top-up element of the rent being €110.30 and that he received a monthly payment for the balance from the Department of Social Protection (DSP) of €839.70. However he said that the top-up element was never paid. Since July 2012 he said the DSP element has been reduced to €808.40 per month leaving the Respondent Tenants responsible for €141.60 which monthly amounts also have never been paid. He gave evidence that he did not agree to any rent reduction in the agreed monthly rent of €950.00 when the DSP element was reduced. He clarified to the Tribunal that the payments from DSP are made in arrears for the previous month on the last Tuesday of each month.

At the adjudication hearing on 14th May 2014 the Appellant Landlord had submitted a handwritten calculation purporting to show rent arrears amounting to a total of €5,000.00 which again was relied upon at the Tribunal. This document included reference to a deduction allowance in the amount of €440.00 said to have been paid by the Respondent Tenants in respect of the 4 months of September 2011 through December 2011 inclusive. The Appellant Landlord submitted that the Respondent Tenants had not paid rent in respect of November 2011 and December 2011. When queried by the Tribunal in regard to this and to the reference to the €440.00 deducted on the calculation sheet he was uncertain in his evidence.

The Appellant Landlord submitted evidence to support the assessment that the accumulated rent arrears in respect of 2012 amount €1,511.40.

The Appellant Landlord also submitted evidence to support the assessment that the rent arrears in respect of 2013 amount to €1,699.20.

The Appellant Landlord also submitted evidence to support the assessment that the rental payments outstanding on the date of the adjudication hearing for the period of January 2014 through to 28th August 2014 amount to €1,146.78.

The Appellant Landlord submitted evidence that on 16th September 2013 the Appellant Landlord issued a letter to the first named Respondent Tenant through his Agent purporting to be a Notice of Termination which was grounded upon the Appellant Landlord's intention to sell the dwelling. Furthermore he submitted that on 22nd November 2013 the Appellant Landlord issued a further letter to both of the Respondent Tenants through his Agent purporting to be a Notice of Termination which was grounded upon rent arrears. This letter had been preceded by a letter dated 15th November 2013 demanding that rent arrears be paid within 7 days and advising that if the arrears were not paid the Appellant Landlord would have no option but to issue the Respondent Tenants with a notice to quit. The Appellant Landlord also wrote to both of the Respondent Tenants on 4th March 2014 through his Solicitors setting out the terms of a purported agreement reached between the parties that the Respondent Tenants would vacate on 28th March 2014. Copies of all such letters were submitted in evidence. He said that the Respondent Tenants had not vacated the dwelling on that date.

The Appellant Landlord when queried by the Tribunal in regard to the allegations expressed at the adjudication hearing that he had refused to carry out repairs requested by the Respondent Tenants gave evidence that he had carried repairs to the gutters thus eliminating a dampness problem in one of the bedrooms. He was uncertain whether his agent had carried out other repairs to the electric shower. He said that when his agent called to the dwelling on foot of a previously arranged appointment to inspect and assess he was not allowed in. He agreed that he had refused to carry out other repairs until arrears of rent were paid. He confirmed that the Respondent Tenants had requested the installation of a new switchboard and that he had refused to do it. He said that he is aware that the Respondent Tenants effected this installation at their own cost.

The Respondent Tenants' Case:

The Respondent Tenants were not in attendance at the Tribunal Hearing to present evidence and there was no appearance on their behalves. No written submissions were received from the Respondent Tenants.

6. Matters Agreed Between the Parties

None

7. Findings and Reasons:

On the basis of the evidence as provided and on the basis of the balance of probabilities the Tribunal has made the following findings:

Finding No.1

The Tribunal finds that the tenancy is a Part 4 tenancy under the provisions of the Act of 2004.

Reason: The tenancy has lasted for a period of in excess of 6 months having commenced on 26th September 2011 and still being in existence.

Finding No.2

The Tribunal finds that the Notice of Termination dated 16th September 2013 served by the Appellant Landlord on the first named Respondent Tenant grounded on the reason of the proposed sale of the Dwelling did not comply with the requirements of Section 62(1) of the Act of 2004 and is invalid.

Reason 1:

The said Notice of Termination did not include a statement to the effect that the Respondent Tenant has the whole of the 24 hours to vacate the Dwelling on the termination date as required to be stated under Section 62(1)(f) of the Act of 2004 and it did not state that if the Respondent Tenants had any issue with the validity of the Notice of Termination or the right of the Appellant Landlord to issue it must be referred to the Board within 28 days as required under Section 62(1)(g) of the said Act.

Reason 2:

Whereas the letter was dated 16th September 2013 the same letter did not state and there was insufficient evidence adduced to the Tribunal that the date of service of it was on that same date or another date and the purported Notice of Termination is therefore not in compliance with Section 62 (c) of the Act of 2004.

Finding No.3

The Tribunal finds that the Notice of Termination dated 22nd November 2013 served by the Appellant Landlord on the Respondent Tenants did not comply with the requirements of Section 62(1) of the Act of 2004 in respect of the termination of a Part 4 tenancy and is invalid.

Reason 1:

The said Notice of Termination did not include a statement to the effect that the Respondent Tenant has the whole of the 24 hours to vacate the Dwelling on the termination date as required to be stated under Section 62(1)(f) of the Act of 2004. Furthermore on the Appellant Landlord's own evidence he did not follow up on this Notice of Termination and seek to bring it to effect and he gave evidence that he made a subsequent agreement with the Respondent Tenants agreeing a date of vacation of 28th March 2014.

Reason 2:

The Appellant Landlord did not adduce sufficient evidence to the Tribunal to demonstrate that the required two steps in the procedures leading up the issue of this purported Notice of Termination were properly followed in respect of this Part 4 tenancy. Whereas the purported prior Warning Notice dated 15th November 2013 that preceded the purported Notice of Termination cited the reason as being in respect of rent being outstanding it was not sufficiently clear to any recipient of that letter in regard to the amount of rent being demanded at that stage in order to enable that person to make a payment that would stay any ensuing Termination process.

Finding No.4

The Respondent Tenants are in rent arrears in the total sum of €4,357.38 as of the date of the Tribunal Hearing. The Tribunal determines that this sum is due to the Appellant Landlord and shall be paid in instalments over a 12 month period.

Reason:

The Tribunal accepts the evidence of the Appellant Landlord in regard to rental payments and arrears of unpaid amounts and determines that during the tenancy the accumulated amount of arrears is as follows. The Tribunal considers that payment in instalments is appropriate.

The Appellant Landlord was uncertain in regard to the arrears if any from 26th September 2011 to 31st December 2011 and the Tribunal has not accepted that there are arrears in respect of that period.

The Appellant Landlord submitted evidence that the accumulated rent arrears in respect of 2012 amounts to €1,511.40 being comprised of 6 months @ €110.30 per month = €661.80 and 6 months @ €141.60 per month = €849.60

The Appellant Landlord submitted evidence that the accumulated rent arrears in respect of 2013 amounts to €1,699.20 being comprised of 12 months @ €141.60 per month.

The Appellant Landlord submitted evidence that the accumulated rent arrears in respect of the 8 months and 3 days from 1st January 2014 to August 28th 2014 is €1,146.78 being comprised of 8 months @ €141.60 = €1,132.80 plus three days @ €4.66 = €13.98

Based upon the evidence provided the Tribunal has assessed the total rent arrears due to the Appellant Landlord by the Respondent Tenant as follows:

A) Arrears for 4 months from September 2011 through December 2011

= € nil

B) Arrears for the 12 months from January 2012 to December 2012 inclusive

= €1,511.40

C) Arrears for 12 months January 2013 to December 2013 inclusive

= €1,699.20

D) Arrears for 8 months and 3 days to the date of Tribunal hearing in 2014

= €1,146.78

Total

€ 4,357.38

The Daily rate as included in item D) above is calculated as follows:

Monthly rent top-up shortfall = € 141.60

Annual Shortfall = Monthly rent shortfall multiplied by 12 = €141.60 X 12 = €1,699.20

Daily shortfall rate has been calculated as the Annual Shortfall divided by 365 = €4.66

Rent shortfall for 3 days = €4.66 X 3 = €13.98

Finding No. 5

The Tribunal finds that the Respondent Tenant is entitled to recover the sum of €300 in respect of replacement repairs carried out to the fuse board in the Dwelling under the provisions of Section 119(1)(b) of the Act. .

Reason:

The Appellant Landlord gave evidence that he had refused to carry out repairs to the fuse board and other defects in the Dwelling when requested to do so by the Respondent Tenants until such time that the arrears of rent were paid. He also stated that the first named Respondent Tenant had carried out repairs at his own expense by installing a new fuse board.

Under Section 119(1) of the Act of 2004 the Tribunal may set off for expenditure on any repairs the Respondent Tenant would be entitled to make under section 87 of the Landlord and Tenant (Amendment) Act 1980.

Section 119 of the Act of 2004 states:

119.—(1) Any amount of arrears stipulated to be paid by a determination shall be the gross amount of the rent and other charges (if any) concerned which the adjudicator or the Tribunal considers to be in arrears as reduced by—

(b) any set-off for expenditure on repairs the tenant would be entitled to make under Section 87 of the Landlord and Tenant (Amendment) Act 1980

Section 87 of the Landlord and Tenant (Amendment) Act 1980 states:

87.—(1) Where a landlord refuses or fails to execute repairs to a tenement which he is bound by covenant or otherwise by law to execute and has been called upon by the tenant to execute, and the tenant executes the repairs at his own expense, the tenant may set off the expenditure against any subsequent gale or gales of rent until it is recouped.

Having regard to the evidence that the Respondent Tenant has carried out the repairs to the fuse board the Tribunal allows for a set-off sum of €300 in this regard.

8. Determination:

Tribunal Reference TR0614-000728

In the matter of Ciaran O'Brien (Landlord) and Noel Delaney, Rachel Keegan (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:

- 1) The Notice of Termination served by the Appellant Landlord on the first named Respondent Tenant on 16th September 2013 is invalid.
- 2) The Notice of Termination served by the Appellant Landlord on the Respondent Tenants on 22nd November 2013 is invalid.
- 3) The Respondent Tenants shall be jointly and severally responsible to pay the sum of €4,057.38 to the Appellant Landlord in 11 consecutive monthly instalments of €350 on the 28th day of each month commencing on the 28th day of the month immediately ensuing the issue of the Determination Order by the Board followed by one further payment of €207.38 on the 28th day of the immediately following month being rent

arrears of €4,357.38 having deducted the sum of €300 in respect of set-off expenditure for repairs in respect of the tenancy of the Dwelling at 55 Alderwood Avenue, Tallaght, Dublin 24.

4) The enforcement of the Order for such payment will be deferred and the total sum owing will be reduced by the accrued amount paid under the cumulative monthly instalments made to the Appellant Landlord on each due date until the sum of €4,057.38 has been paid in full.

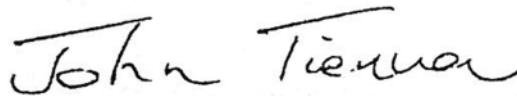
5) For the avoidance of doubt any default in the payment of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Appellant Landlord.

6) The Respondent Tenants shall continue to pay rent to the Appellant Landlord at a rate of €950 per month and at a daily rate of €31.23 per day where a whole month does not apply unless such monthly rent is lawfully varied and until such time as the tenancy is lawfully terminated.

Signed:

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 15/09/2014.

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.