**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001221 / Case Ref No: 0415-17894**

**Appellant Tenant:** Darren Sankey, Vaida Trilikauskiene

**Respondent Landlord:** Ken Tyrell (Receiver), Patrick Garvey

**Address of Rented Dwelling:** 48 Parkwood Avenue, Tallaght , Dublin 24, D24FYW7

**Tribunal:** Rosemary Healy Rae (Chairperson)

Louise Moloney, Kevin Baneham

**Venue:** Tribunal Room, PRTB, 2nd Floor, O'Connell Bridge House, D'Olier Street, Dublin 2.

**Date & time of Hearing:** 28 August 2015 at 10:30

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| **Attendees:** | Michelle O’Sullivan, Aramark, (Tribunal Landlord’s Representative)  Stephen Mooney, Aramark, (Tribunal Landlord’s Representative)  Vaida Trilikauskiene (Appellant Tenant)  Darren Sankey (Appellant Tenant) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 16 April 2015 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 19 May 2015. The Adjudicator determined that:

1. The Notice of Termination dated the 7th August 2014 to the Respondent tenants in respect of the tenancy of the dwelling at 48 Parkwood Avenue, Tallaght, Dublin 24 is valid.

2. The Respondent tenants shall vacate and give up possession of the above dwelling within 21 days of the date of issue of the Order.

3. The Respondent tenant shall continue to pay rent from the 20th May 2015, at the rate of €1000.00 per month, or proportionate part thereof at the daily rate of €32.88, unless lawfully varied, and any other charges as set out in the terms of the tenancy agreement for each week or part thereof, until such time as they vacate the above dwelling.

4. The Applicant landlord and/or receiver shall refund the entire of the security deposit of €1300.00 to the Respondent tenants, on gaining vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received from the Tenant on 19 June 2015. The grounds of the appeal were Breach of landlord obligations and Overholding. The appeal was approved by the Board on 03 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Louise Moloney, Rosemary Healy Rae, Kevin Baneham as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Rosemary Healy Rae to be the chairperson of the Tribunal (“the Chairperson”).

On 07 July 2015 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 August 2015 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:**

* 1. PRTB File

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

The Appellant Tenants submitted the following letters which were shown to the representative of the Respondent Landlord, who had no objection to their being tendered in evidence. The letters were also shown to the Tribunal.

1. Letter dated the 25th August 2015 from the Homeless Unit of South Dublin County Council.

2. Letter dated the 27th August 2015 from the Housing Allocations Unit of South Dublin County Council.

**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 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 their case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his 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 final submissions.

The Chairperson stressed that all evidence would be taken on oath and be recorded by the official stenographer present and she reminded the Parties that knowingly providing false or misleading statements or information to the Tribunal was an offence punishable by a fine of €4,000 or up to 6 months imprisonment or both. She asked the Parties if they had any queries about the procedure, there were no queries.

The Chairperson also 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 [pursuant to section 123(3) of the 2004 Act].

The Parties were then sworn in.

**5. Submissions of the Parties:**

Appellant Tenants’ Case:

Evidence of Darren Sankey on behalf of the Appellant Tenants

The Appellant Tenant indicated that the tenants’ major difficulty in this case is that if they are required to give up possession of the dwelling they have nowhere else to go. He said that since they received the Notice of Termination they have been continuously trying to source alternative accommodation to rent. He said that they have waited in long queues to view properties and have visited various different websites looking for rental properties. He explained that they are in receipt of rent supplement payment but that many landlords do not want to enter into lease agreements with tenants availing of rent supplement allowance.

He said that the second named Appellant, his partner, is from Lithuania and that they have three children aged 19, 8 and 1 years old, residing with them in the dwelling. He said that he has been self-employed from an early age and he is currently doing an intensive Clinical Dental Technician course in Trinity College. He said that he hopes to complete his studies and be fully qualified by June 2016. He apologised to the Tribunal for his non-attendance at the adjudication of this matter which took place on the 19th May 2015. He explained that this was due to the fact that, on that date, he was engaged as part of his studies on a clinical day and he was seeing patients by way of pre-arranged appointments.

The first named Appellant Tenant indicated that the Appellant Tenants have been on the South Dublin County Council housing list for 8 or 9 years and that they are number 57 on a waiting list to get on the emergency housing list. He provided documentary evidence in relation to these matters. He said that their big fear is that, if they become reliant on emergency housing, their family unit will be split up and housed in separate hostels. He said that if his partner returns to Lithuania she will be struck off the housing waiting list and her social welfare payments will cease.

The first named Appellant Tenant stated that the dwelling was broken into recently and that they have had to replace the locks at a cost of €180.00. He said that Aramark Properties who are acting as agent for the Receiver have already re-imbursed them for the replacement of one set of keys and they have sent a receipt for further repairs to the front door which was just recently repaired. He indicated that, since Aramark Properties have taken over the management of the dwelling, there have been no difficulties whatsoever in relation to re-imbursement/reduction in rent in relation to various other items of expenditure.

The first named Appellant Tenant confirmed that the Appellant Tenants had received the Notice of Termination dated the 8th August 2014 and that he was not disputing this Notice.

He stated that they simply need more time to source another property to rent and he indicated that if they had another year’s lease he would by that stage have completed his studies and he would be in a better position as regards employment opportunities.

Respondent Landlord's Case:

Evidence of Michelle O’Sullivan (Aramark Properties, Representative on behalf of the Receiver)

Michelle O’Sullivan gave evidence on behalf of the Receiver, she confirmed that the Receiver was appointed on the 11th July 2014. She said that she is a Property Manager with Aramark Properties who act as managing agents for the Receiver and that Aramark Properties were appointed by the Receiver as managing agents on the 14th July 2014.

She stated that, since taking over the management of the dwelling, there have been no problems or issues whatsoever with the Appellant Tenants. They have continued to pay the rent due on time and they have complied with all of the terms of the Lease.

She explained that the Receiver is sympathetic to the plight of the Appellant Tenants and he has no wish to make anybody homeless or to split up a family unit. She said however that he has instructed that the dwelling needs to be sold and therefore vacant possession of the dwelling is required. She said that Aramark Properties were instructed to issue a Notice of Termination which was issued on the 8th August 2014 allowing well in excess of 112 days’ notice. She said that since then a full year has elapsed and the Appellant Tenants have not yet vacated the dwelling. She stated that the Receiver does not wish this situation to continue for another year and he has to work towards obtaining vacant possession of the dwelling. She indicated a willingness to assist the Appellant Tenants in any way possible and she said that she will be happy to provide them with a reference for any potential landlords.

She agreed that the sum of €180.00 in respect of lock repairs/replacement in respect of the front door is not an issue and will be re-imbursed following submission of the relevant receipt. In response to a query from the Tribunal she confirmed that there is currently no financial loss accruing as the Appellant Tenants continue to pay the rent. She also confirmed that, subject to an inspection of the dwelling, the Receiver will have no difficulty refunding the security deposit paid to the Landlord.

She re-iterated that whilst the Receiver is extremely sympathetic to the situation in which the Appellant Tenants find themselves, he is concerned that the situation has now continued for a period of one year and that vacant possession is required in order to proceed with the sale of the dwelling.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The Appellant Tenants’ tenancy commenced in or around 2006.

2. The Appellant Tenants pay rent in the sum of €1,000 per month.

3. The Appellant Tenants paid a deposit of €1,300.00 at the commencement of the tenancy.

4. The Appellant Tenants entered into a renewal lease for a period of one year commencing on the 22nd March 2014.

5. The Appellant Tenants received a Notice of Termination dated the 8th August 2014, advising them of the intention to sell the dwelling and that their tenancy was to expire on the 21st March 2015.

6. The Appellant Tenants are still in occupation of the dwelling.

7. The Appellant Tenants continue to pay rent in accordance with the terms of the tenancy.

**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 thereof, are set out hereunder.

7.1 Finding: The Tribunal finds that the Notice of Termination served on the 8th August 2014 by the Respondent Landlord on the Appellant Tenants in respect of the tenancy of the dwelling at 48 Parkwood Avenue, Tallaght, Dublin 24 is valid.

Reasons:

1. The Notice of Termination served on the Appellant Tenants on the 8th August 2014 is valid pursuant to sections 34 and 62 of the Residential Tenancies Act 2004.

2. The Tribunal accepts fully the reason set out in the Notice of Termination, being that the Respondent Landlord intends to sell the dwelling. The Appellant Tenants also accepted that this was the position.

3. The Tribunal notes that the Appellant Tenants and the Respondent Landlord have acted with utmost respect and understanding for each other’s position. In recognition of the fact that the Appellant Tenants have continued to comply with the terms of the tenancy and that the Respondent Landlord has not suffered any loss, the Tribunal has in its Determination Order allowed a period of time to the Appellant Tenants to give up vacant possession of the dwelling which balances the Appellant Tenants’ need to find a suitable new home with the Respondent Landlord’s need to sell the dwelling.

7.2 Finding: The Tribunal finds that the Appellant Tenants shall vacate and give up possession of the above dwelling within 112 days of the date of issue of this Order.

Reasons:

1. It has been found that the Notice of Termination served on the 8th August 2014 is

valid, the Appellant Tenants remain in possession of the dwelling and are therefore overholding.

7.3 Finding: The Tribunal finds that the Respondent Landlord shall refund the entire of the security deposit of €1,300.00 to the Appellant Tenants, upon the Appellant Tenants vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Reasons:

1. This matter was agreed and accepted by the Respondent Landlord.

7.4 Finding: The Tribunal finds that the Respondent Landlord shall, on production of an appropriate receipt, re-imburse theAppellant Tenants the sum of €180.00 in respect of lock repairs/replacement in respect of the front door.

Reasons:

1. This matter was agreed and accepted by the Parties.

**8. Determination:**

**Tribunal Reference TR0615-001221**

**In the matter of Darren Sankey, Vaida Trilikauskiene (Tenant) and Ken Tyrell (Receiver), Patrick Garvey (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

(1) The Notice of Termination served by the Respondent Landlord on the 8th August 2014 on the Appellant Tenants in respect of the tenancy of the dwelling at 48 Parkwood Avenue, Tallaght, Dublin 24 is valid.

(2) The Appellant Tenants and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 112 days of the date of issue of this Order.

(3) The Appellant Tenants shall continue to pay any further rent outstanding from the 28th August 2015 to the Respondent Landlord in the sum of €1,000.00 per month or proportionate part thereof at the rate of €32.88 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 they vacate the above dwelling.

(4) The Respondent Landlord shall refund the entire of the security deposit of €1,300.00 to the Appellant Tenants, upon the Appellant Tenants vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

(5) The Respondent Landlord shall, on production by the Appellant Tenants of an appropriate receipt, re-imburse the Appellant Tenants in the sum of €180.00 in respect of repairs to the front door of the dwelling.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08/09/2015.

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| **Signed:** |  |

**Rosemary Healy Rae Chairperson**

For and on behalf of the Tribunal.