**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001200 / Case Ref No: 0315-17514**

**Appellant Tenant:** Denise Mc Carthy

**Respondent Landlord:** Catherine Norman

**Address of Rented Dwelling:** St Brelades, Church Lane, Kinsale , Co. Cork, P17WR86

**Tribunal:** Thomas Reilly (Chairperson)

James Egan, Dervla Quinn

**Venue:** Commitee Room 1, Cork City Council, City Hall, Anglesea Street, Cork

**Date & time of Hearing:** 27 August 2015 at 2:30

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| **Attendees:** | Catherine Norman, Tribunal Respondent, Landlord, Denise Mc Carthy, Tribunal Appellant, Tenant  John Murphy Solicitor for the Respondent Landlord |
| **In Attendance:** | Gwen Malone Stenographers. |

**1. Background:**

On 26/03/2015 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 Mediation which took place on 23/04/2015. The Mediator determined that:

No agreement was reached between the parties.

Subsequently the following appeals were received:

Tenant: received on 02/06/2015. The grounds of the appeal: Damage in excess of normal wear and tear, Breach of fixed term lease ; Approved by the Board on 12/06/2015.

The PRTB constituted a Tenancy Tribunal and appointed James Egan, Dervla Quinn, Thomas Reilly as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Thomas Reilly to be the chairperson of the Tribunal (“the Chairperson”).

On 03/07/2015 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 27/08/2015 the Tribunal convened a hearing at Commitee Room 1, Cork City Council, City Hall, Anglesea Street, Cork.

**2. Documents Submitted Prior to the Hearing Included:**

* 1. PRTB File

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

Letter from Lisney Auctioneers.

**4. Procedure:**

Opening the Tribunal the Chairperson stated that it had been established to hear a dispute by the Applicant Landlord following an unsuccessful attempt at Mediation in the case of a dispute between the Applicant Landlord and the Respondent Tenant in respect of a tenancy at St Brelades, Church Lane, Kinsale, Co Cork. He introduced the members of the Tribunal to the parties.

He asked the Parties present to identify themselves and to state the capacity in which they were attending the Tribunal hearing. He confirmed with the Parties that they had received the relevant papers from the PRTB in relation to the case. The Chairperson explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in as informal a manner as possible; that the person who made the request (in this case the Applicant Landlord ) would be invited to present her case first, that there would be an opportunity for cross-examination by the Respondent Tenant; that the Respondent Tenant would then be invited to present her case and that there would be an opportunity for cross-examination by the Applicant Landlord present.

He also said that members of the Tribunal might ask questions of both parties from time to time. The Chairperson explained that, following this, both parties would be given an opportunity to make a final submission.

He stressed that all evidence would be taken on oath, or affirmation, 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 and/or up to 6 months imprisonment or both.

The Chairperson noted that should the parties indicate that they would be able to resolve the dispute through negotiation; the Tribunal would facilitate any such settlement. The terms of any such agreement can be incorporated into a Determination Order of the Tribunal and thus become enforceable through the Courts.

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 posted on the PRTB website. The Determination Order could be appealed to the High Court on a point of law only under Section 123(3) of the Residential Tenancies Act, hereafter referred to as the Act of 2004.

The Parties giving evidence were then sworn in and the hearing commenced.

**5. Submissions of the Parties:**

Evidence of the Applicant Landlord:

The Applicant Landlord stated to the Tribunal that following negotiations with her Bank it was decided that the sale of the dwelling known as St Brelades was necessary. Having had the advice of her nominated selling agent it was considered necessary that the dwelling should be presented for sale with vacant possession and having carried out to it any necessary upgrading required to maximise the sales outcome. To this end a Notice of Termination was issued to the Respondent Tenant dated 14 January 2015 and featuring a Termination date of 25 February 2015.

The Landlord stated that her application to the Tribunal was for vacant possession only.

Evidence of the Respondent Tenant:

In her evidence to the Tribunal, the Respondent Tenant accepted that she had to vacate the dwelling, however she stated that she has no alternative accommodation to go to as her Social Welfare Allowance ( rent supplement ) is inadequate to meet the level of rent sought in the area currently and many Landlords will not accept Tenants in receipt of such payments. In acknowledging the position of the Landlord, with whom she had great sympathy for she said her own position was critical in that if she vacates the dwelling she would be rendering herself homeless.

**6. Matters Agreed Between the Parties**

The commencement of the Tenancy was 11 January 2014.

The Tenant continues to occupy the dwelling.

Rent is €750.00 monthly.

A deposit of €750.00 was paid.

The deposit is retained by the Landlords.

**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 therefor, are set out hereunder.

7.1 Finding:

The Tribunal finds that the Applicant Landlords Notice of Termination served on 14 January 2015 is valid.

Reason: The Notice of Termination served upon the Respondent Tenant is compliant with the criteria set out in s 62 of the Residential Tenancies Act 2004.

7.2 Finding:

The Tribunal finds that the Respondent Tenant is overholding.

Reason: The Respondent Tenant continues to reside in the dwelling beyond the Termination date of 25 February 2015 as referred to in the Notice of Termination served on 14 January 2015.

**8. Determination:**

**Tribunal Reference TR0615-001200**

**In the matter of Denise Mc Carthy (Tenant) and Catherine Norman (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 14 January 2015  by the Respondent Landlord on the Appellant Tenant, in respect of the tenancy of the dwelling at St Brelades, Church Lane, Kinsale, Co Cork is valid.  
  
2.The Appellant Tenant ,and all persons residing in the above dwelling, shall vacate and give up possession of the dwelling within 84 days of the date of the issue of the Order.  
  
3.The Appellant Tenant shall continue to pay rent from 27 August 2015 at the rate of €750.00 per month, or proportionate part thereof at the daily rate of €24.66,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 she vacates the above dwelling.  
  
4.The Respondent Landlord shall refund the entire of the security deposit of €750.00 to the Appellant Tenant , on gaining vacant possession of the above dwelling,less any amounts properly witheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 31/08/2015.

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| **Signed:** | \\v-1-hq-fs-01\HOME\Common\Signatures\TribunalMembers\Thomas Reilly.png |

**Thomas Reilly Chairperson**

For and on behalf of the Tribunal.