**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001205 / Case Ref No: 0415-18047**

**Appellant Landlord:** Clair Melville, John Melville

**Respondent Tenant:** Philip Leo, Helen Moloney

**Address of Rented Dwelling:** Cloneyogan, Lahinch , Clare,

**Tribunal:** Mervyn Hickey (Chairperson)

Siobhan Phelan, Brian Murray

**Venue:** Meeting room 2, 2nd Floor, Limerick County Council, County Hall, Dooradoyle, Limerick

**Date & time of Hearing:** 01 September 2015 at 10:30

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| **Attendees:** | Sorcha Silke, (Witness on behalf of the Respondent Tenants)  Clair Melville, John Melville (Appellant Landlords)  Philip Leo, Helen Moloney (Respondent Tenants) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 24 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 Mediation which took place on 23 April 2015. The Mediation was not successful.

Subsequently the following appeal was received from the landlord on 05 June 2015. The grounds of the appeal was Overholding. This appeal was approved by the Board on 19 June 2015.

The PRTB constituted a Tenancy Tribunal and appointed Siobhan Phelan, Brian Murray, Mervyn Hickey as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Mervyn Hickey to be the chairperson of the Tribunal (“the Chairperson”).

On 08 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 01 September 2015 the Tribunal convened a hearing at Meeting room 2, 2nd Floor, Limerick County Council, County Hall, Dooradoyle, Limerick.

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

* 1. PRTB File

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

[AL1] A two page bank statement relating to the period February - August 2015 was submitted by the Appellant Landlords.

**4. Procedure:**

The Chairperson asked those present to identify themselves and to identify in what capacity they were attending the Tribunal. He 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”. 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 outlined the order in which the Parties would be requested to present evidence and in which cross examination of evidence could take place. He said that members of the Tribunal might ask questions of both Parties from time to time. He stressed that all evidence would be taken on oath 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 €4,000 or up to 6 months imprisonment or both.

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 enforced by either of the Parties or in some cases by the Board of the PRTB at its discretion. He also advised the parties 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 Parties if they had any queries about the procedure. There were none.

The parties were sworn in.

**5. Submissions of the Parties:**

Preamble:

The following factual matters formed the background to the appeal.

The parties had entered into a fixed term tenancy agreement for one year on 24 August 2013. A written tenancy agreement was drawn up and executed to this end. Upon expiry of the fixed term the tenancy continued albeit that no new written agreement was executed. On 6 March 2015 the Appellant Landlords attended at the dwelling and personally served the Respondent Tenants with a Notice of Termination. The date of termination stated therein was 24 April 2015. The reason the Appellant Landlords relied upon to terminate the tenancy was that they wished to sell the dwelling. It was common case that one of the Tenants (Ms. Moloney) had been misnamed on this Notice of Termination (the “First Notice”). This error was realised by the Appellant Landlords who then served a second Notice of Termination (the “Second Notice”) by post with the same date of service as the First Notice.

The Appellant Landlords claimed the Respondent Tenants were overholding, the tenancy having been validly terminated on 24 April 2015. They claimed that despite reasonable requests, the Respondent Tenants had refused to allow them to inspect the rented dwelling after February 2015. The Appellant Landlords claimed that by their conduct in frustrating the intended sale of the dwelling the Respondent Tenants had caused them loss and damage.

The Respondent Tenants position was that the Notice of Termination was invalid on the basis of a prior oral agreement reached between Mr. Leo and Mrs. Melville whereby it was claimed Mrs. Melville had agreed, in effect but not expressly, not to terminate the tenancy until the expiry of a second year from the date of commencement of the tenancy. The Respondent Tenants claimed the Appellant Landlords failed to tell them in sufficient time of their intention to sell the dwelling. They claimed they had been harassed by the Appellant Landlords by them telephoning and attending at the dwelling and that the Appellant Landlords were in breach of their obligations regarding the maintenance of the dwelling in a number of respects.

The Appellant Landlords’ Case:

The Appellant Landlords referred to their submitted documentation upon which they sought to rely in full. At the outset the Appellant Landlords gave evidence that they had been under pressure from their bank to sell the dwelling since in or around the start of 2015. Their evidence was that they had been threatened by their bank with proceedings to repossess their family home and they had submitted written correspondence from the bank as evidence in this regard. They gave evidence that the dwelling had been built using borrowings secured against the Appellant Landlord’s family home. The bank wanted the dwelling to be sold to release monies that could be used to discharge the mortgage on the family home. The financial difficulties facing them were, on the evidence of the Appellant Landlords, the reason for the service of the First Notice in March 2015.

The evidence of the Appellant Landlords was that on serving the First Notice no issue had been raised by the Tenants and they had in fact mentioned the possibility of them purchasing the dwelling themselves. Regarding the Second Notice, the evidence of Mrs. Melville was that she had realised shortly after serving the First Notice that one of the Respondent Tenants had been misnamed. Her evidence was that she posted the Second Notice on 10 March 2015 and that it should have arrived by 12 March 2015 and thus still have given sufficient notice so as to comply with the requirements of the Act.

The Appellant Landlords gave evidence that having served the Second Notice they began taking steps to arrange for the dwelling to be sold. They submitted relevant documentary evidence in this regard in the form of a letter from their auctioneer. They gave evidence that they had decided to make contact with the Respondent Tenants whereupon, after several unsuccessful attempts, Mr. Leo informed Mrs. Melville that the Respondent Tenants would not be vacating the dwelling until the expiry of the second year of the tenancy (August 2015), that the Respondent Tenants had made a claim to the PRTB and that they were awaiting the outcome of same.

Mrs. Melville gave evidence that the Appellant Landlords were concerned with the state of affairs as they had already informed the bank that the dwelling was to be sold. Her evidence was that she tried to make contact with the Respondent Tenants on a number of occasions in or around 20 April 2015. Shortly after this the Appellant Landlords received a letter from Ms. Moloney which stated that all future communication was to be made through the PRTB, that the Appellant Landlords were harassing them and that this had been witnessed by their daughter and made known to An Garda Síochána. The latter allegations were specifically denied by the Appellant Landlords at hearing.

The Appellant Landlords’ evidence was that they had sought to inspect the dwelling in January 2015 with a view to putting it on the market for sale but that this had taken four weeks to arrange. During the inspection (in February 2015), the Appellant Landlords said they had been unable to gain access to the utility room or attic and therefore a second inspection was subsequently sought by them. This, they said, had been resisted and ultimately refused by the Respondent Tenants. The Appellant Landlords relied on a letter dated 19 May 2015 wherein they had suggested a series of possible inspection dates and times, each of which they said was rejected by the Respondent Tenants. By letter dated the 29 May 2015 the Respondent Tenants had indicated that they would not be able to facilitate an inspection of the dwelling “for the foreseeable future”. The Appellant Landlords’ evidence was that they had warned the Respondent Tenants about their lack of co-operation in this regard and had threatened to issue a 28 day notice based on the Respondent Tenants’ breach of obligation in not facilitating an inspection (by letter dated 28 July 2015). Towards the end of July 2015 the Appellant Landlords said that they received a text message from the Respondent Tenants which stated Mr. Leo had fallen and injured his hip and that as a consequence inspection could not be facilitated. Subsequently a further Notice of Termination issued (the Third Notice), based on the Respondent Tenants alleged breach of obligation regarding inspection and with a date of service of 13 August 2015. On being questioned by the Tribunal Mrs. Melville confirmed that the dwelling had been inspected on only two occasions, December 2013 and January 2015.

The Appellant Landlords’ evidence was that they had undertaken to have the grass cut at the dwelling to facilitate the Respondent Tenants, notwithstanding the fact that the written tenancy agreement identified this as an obligation of the Respondent Tenants’. After the Respondent Tenants had complained to An Garda Síochána regarding the issue of harassment, the Appellant Landlords said they felt that the gardener ought not to attend at the dwelling unaccompanied. Ms. Moloney denied having said anything that ought to have led to this conclusion. In or around the start of June, Mrs. Melville said she wrote to the Respondent Tenants informing them that the garden was now their responsibility.

The Appellant Landlords complained that the optimum period to sell the dwelling was during the summer months and that by frustrating the process of sale the Respondent Tenants had caused them loss and damage. Mr. Melville had prepared a document which he submitted in evidence as quantifying this claim. Mortgage interest of €214 per month was claimed in respect of the period April 2015 - April 2016. This was on the basis that the dwelling would have been sold in April 2015 and now won’t be sold prior to April 2016. Mr. Melville’s evidence was that if the dwelling had been sold, the entire mortgage on the family home would have been cleared. Mr. Melvile accepted that the claim for house insurance related to the period 2014 - 15 and would have to be discounted proportionately. The claim for legal costs was said to be based upon an oral estimate given to him by his Solicitor in resisting the banks attempts to repossess the family home. Mr. Melville confirmed that no legal proceedings had yet been commenced. There was a claim regarding the estimated cost of what it will cost to put the lawn back to its previous condition as estimated by the gardener.

Regarding the washing machine, they stated that there was nothing of substance wrong with it, that it was quickly addressed once raised and that any problem experienced was due to the manner of use by the Respondent Tenants.

The Appellant Landlords claimed that the complaints regarding their alleged breaches of obligation had only been raised in response to their attempts to terminate the tenancy.

Cross-Examination of the Appellant Landlords

It was put to the Appellant Landlords that they had represented to the Respondent Tenants that theirs’ was a first letting of the dwelling but that there had in fact been a prior letting. The Appellant Landlords accepted that there had been a prior “casual” letting under which rent had been paid. The Respondent Tenants maintained this misrepresentation undermined the Appellant Landlords’ credibility in a general sense. The Appellant Landlords denied stating that this prior letting had not involved the payment of rent.

It was put to the Appellant Landlords that their attendance at the dwelling in December 2013 was more in the nature of a social visit as distinct from an inspection, a proposition the Appellant Landlords did not significantly dispute. The Appellant Landlords were asked why they hadn’t sought access to the attic and utility area during the January 2015 inspection. In answering, the Appellant Landlords confirmed that it was not due to the Respondent Tenants. The Appellant Landlords confirmed that when an issue regarding a rat infestation had been raised with them, among the responses given was that the Respondent Tenants should “get a cat”. It was put to the Appellant Landlords that they ought to have disclosed their financial difficulties and their decision to sell the dwelling earlier than they did. They denied that their financial difficulties were matters with which the Respondent Tenants ought to be concerned and they explained the delay in informing the Respondent Tenants regarding the sale on the basis that they needed to have the dwelling valued.

The Respondent Tenants’ Case:

The Respondent Tenants said when they initially spoke with the Appellant Landlords’ Agent prior to renting the dwelling they had indicated their intention to reside in the dwelling for a long time as the previous years had been difficult for them. Their evidence was that the Agent told them to see how the first year went. The Respondent Tenants’ evidence was that they had found the dwelling to be cold which caused particular difficulties for Mr. Leo due to certain injuries he had previously sustained. They had sought a BER rating from the Appellant Landlords but their evidence was that Mr. Melville had responded by stating “buyer beware” or words to similar effect. They said that certain windows in the dwelling had to be opened and closed from the outside which did not help the heating of the dwelling. The Respondent Tenants said they purchased insulating items themselves. They said that the cost of heating the dwelling by burning oil was excessive and that they had therefore agreed with the Appellant Landlords that a cast iron stove would be installed. The Respondent Tenants were to pay for this and borrowed money to this end. The Respondent Tenants stated that the Appellant Landlords had agreed to pay for the connection of the stove to the chimney. They said that they provided the Appellant Landlords with a quotation for the cost of a suitable person to install the stove however the Appellant Landlords felt the cost was excessive and insisted that installation be carried out by someone else. The Respondent Tenants claimed this other person was a chimney sweep by trade and was not qualified to install the stove. Ultimately the cost of stove installation was borne by the Respondent Tenants which cost was not vouched by them.

The Respondent Tenants complained that there was a problem with the washing machine in the dwelling which they brought to the attention of the Appellant Landlords on 5 February 2014. They complained that it was March 2015 before this issue was resolved. In the interim they telephoned the Appellant Landlords and sent them text messages from time to time about the problem but to no avail. Their evidence was that the washing machine worked intermittently during this period. On one occasion the washing machine ended up blocking access to the utility area. As the Respondent Tenants’ key to the back door was inside they sought the assistance of the Appellant Landlords. Their evidence was that the Appellant Landlords sent a friend who was of little help and that Mrs. Melville said she had to go to Ennis. The heating controls were in the utility area and therefore until the matter was resolved (the following day with a neighbour’s assistance), the Respondent Tenants had only the open fire and stove to keep them warm. They gave evidence of their daughter being unwell at this time and they found the whole matter distressing.

The Respondent Tenants also complained that they experienced problems with a ‘Puriflo’ system used in the dwelling. These problems led to shores becoming blocked and toilets filling up and not flushing. The Respondent Tenants gave evidence that on one occasion frogs were observed by them coming up through the toilet. These various matters were attributed to the non-activation by the Appellant Landlords of the Puriflo system. The Respondent Tenants stated that the response of the Appellant Landlords to their complaints was to have their nephew attend at the dwelling which he did on two or three occasions. The Appellant Landlord’s nephew attributed the problems experienced to the Respondent Tenants themselves. He was unable to resolve the problems. The evidence of the Respondent Tenants was that Mrs. Melville had told them at the outset that while there was a Purfilo system it was too expensive to run. The Respondent Tenants stated they did not know much about the Puriflo system and they did not even know where it was. Their evidence was that ultimately the Appellant Landlords arranged for someone to resolve the problem for them but by then it had been ongoing for a significant period. The Respondent Tenants were however, unable to say precisely how long this issue had taken to be resolved.

The Respondent Tenants gave evidence of a rat infestation which had resulted in considerable damage being caused in particular to two motor vehicles. When the matter was raised with Mrs. Melville the Respondent Tenant said she had commented only that Rentokil would be expensive. The Respondent Tenants’ evidence was that they were made to feel as though the infestation was their fault. They said ultimately the Appellant Landlords arranged for Rentokil to come and the issue was adequately resolved. On being questioned by the Tribunal, they accepted that the response was reasonably prompt. The Respondent Tenants were insured in respect of the damage to their vehicles but had to pay the excess and their premium was adversely affected.

Other matters complained of by the Respondent Tenants were a broken front door handle (which they said was raised with the Appellant Landlords but not addressed); the failure of the Appellant Landlords to provide them with a copy lease; items left in the garage by the Appellant Landlords (which they acknowledged they had chosen not to raise with the Appellant Landlords in expectation of it being ignored); and animals trespassing on the land due to inadequate fencing. In respect of this latter point, the evidence of the Respondent Tenants was that there was an electric fence around the lands but that on the instruction of the Appellant Landlords it was not used. They acknowledged that only once was this issue raised with the Appellant Landlords (again due to a stated expectation of no response) and that they had thereafter tried to remedy the issue themselves. The Respondent Tenants’ evidence was that generally speaking, all issues raised by them aroused the disapproval of the Appellant Landlords.

The Respondent Tenants gave evidence that they were shocked by the service of the Notice of Termination in March 2015 as they understood there to be an agreement for them to remain in the dwelling for the long term. They claimed the First and Second Notices of Termination were invalid on the basis of a prior oral agreement concluded in or around July 2014 between Mr. Leo and Mrs. Melville. On being questioned by the Tribunal as to the terms of this agreement the Respondent Tenants stated that the agreement was that they would be there long-term. They confirmed that no specific time period was agreed however. On being questioned by the Tribunal as to whether they were making the case that the Appellant Landlords were not permitted to terminate the tenancy under any circumstances for the ‘long term’ the Respondent Tenants replied that they were not making that case. They did say however that “fair play” dictated that they should get adequate notice and they felt seven weeks’ notice was not adequate. Their evidence was that their particular circumstances made changing accommodation difficult.

The Respondent Tenants stated their belief that the Appellant Landlords had really sought to be terminate the tenancy as they wanted to increase the rent and / or to impose water charges.

Cross-Examination of the Respondent Tenants

It was put to the Respondent Tenants by the Appellant Landlords that Rentokil had attended at the dwelling the day following the issue first being raised with the Appellant Landlords. This was not disputed by the Respondent Tenants. The Appellant Landlords put clause 5.1 of the written tenancy agreement to the Respondent Tenants and asked why they had agreed the dwelling was in a good state of repair at the commencement of the tenancy if in fact it was not. The Respondent Tenants replied that the matters complained of were not apparent at the outset. Mrs. Melville denied that she had said she was going to Ennis at the time the Respondent Tenants could not gain access to the utility area, stating that her diary indicated to the contrary. It was put to the Respondent Tenants by Mr. Neville that they had moved the washing machine themselves and locked themselves out of the utility area. They denied doing this. On being asked how they knew the electric fence wasn’t working, Ms. Moloney responded by stating Mrs. Melville’s brother told her. It was put to the Respondent Tenants that they had only made their complaints after the Notice of Termination was served. The Respondent Tenants denied this stating that they ceased making complaints having become overwhelmed by the attitude of the Appellant Landlords to the complaints they had made. They felt it was a “no win” scenario to raise issues with the Appellant Landlords who would only address issues after a battle.

In respect of the Puriflo system, it was put to the Respondent Tenants that when the nephew of the Appellant Landlords had been unable to resolve the problem himself that another person was arranged almost immediately to look at it. This was denied by the Respondent Tenants. The Respondent Tenants stated that they didn’t know why it wasn’t on. It was put to them that there was no advantage to the Appellant Landlords in the system being off as any cost incurred would be borne by the Respondent Tenants. They did not dispute that this was the position.

Evidence of Sorcha Silke for the Respondent Tenants

Ms. Silke worked with Spinal Injuries Ireland. She had been working with the Respondent Tenants since 2014 due to injuries previously sustained by Mr. Leo. She was consulted by them regarding social housing and had been working with them to see what options were available to them. She stated that the Respondent Tenants were just outside the threshold requirements to be put on the social housing list. She stated that the Respondent Tenants had wanted to obtain a mortgage to purchase the dwelling but that they could not raise enough to do this. She had met with the Respondent Tenants shortly after the service of the Notice of Termination and she stated that they were very upset. Her evidence was that they told her they had expected to be in the dwelling on a long term basis. She was continuing to work with the Respondent Tenants to find a solution to their situation.

At the conclusion of the hearing the Chairperson thanked the attending Parties and advised them that following the hearing the Tribunal will prepare a report and make its Determination in relation the dispute and will notify the PRTB of that Determination.

**6. Matters Agreed Between the Parties**

The tenancy had commenced on 24 August 2013. It was a fixed term tenancy of one year’s duration. The monthly rent at all times was €650. A security deposit of €650 had been paid by the Respondent Tenants and was retained by the Appellant Landlords. A written tenancy agreement was drawn up and executed. At the expiry of the fixed term the tenancy continued albeit that no new written agreement was executed. On 6 March 2015 the Appellant Landlords attended at the dwelling and personally served the Respondent Tenants with a Notice of Termination. The date of termination stated therein was 24 April 2015. The reason the Appellant Landlords relied upon to terminate the tenancy was that they wished to sell the dwelling. It was common case that one of the Tenants (Ms. Moloney) had been misnamed on this Notice of Termination (the “First Notice”). This error was realised by the Appellant Landlords who then served a second Notice of Termination (the “Second Notice”) by post with the same date of service as the First Notice. It was accepted by the Respondent Tenants that they received the Second Notice on 12 March 2015.

The Appellant Landlords had inspected the dwelling in February 2015 by arrangement with the Respondent Tenants. There was an infestation of rats in the curtilage of the dwelling. The Puriflo system had not been operating during the initial phase of the tenancy.

**7. Findings and Reasons:**

Finding No. 1

The First Notice of Termination with a date of service of 6 March 2015 served by the Appellant Landlords on the Respondent Tenants in respect of the tenancy of the dwelling at Cloneyogan South, Moy, Lahinch, County Clare is valid.

Reasons:

Section 62(1) of the Act provides that for a notice of termination to be valid, it shall—

(a) be in writing,

(b) be signed by the landlord or his or her authorised agent or, as appropriate, the tenant,

(c) specify the date of service of it,

(d) be in such form (if any) as may be prescribed,

(e) if the duration of the tenancy is a period of more than 6 months, state (where the termination is by the landlord) the reason for the termination,

(f) specify the termination date, that is to say, the day (stating the month and year in which it falls)—

(i) on which the tenancy will terminate, and

(ii) on or before which (in the case of a termination by the landlord) the tenant must vacate possession of the dwelling concerned, (and indicating that the tenant has the whole of the 24 hours of the termination date to vacate possession),

and

(g) state that any issue as to the validity of the notice or the right of the landlord or tenant, as appropriate, to serve it must be referred to the Board under Part 6 within 28 days from the date of receipt of it.

The Tribunal is satisfied that the First Notice complies as to its form with the requirements of section 62(1). It further complies with the notice requirements set out in section 66 of the Act in terms of the length of notice to be given. It was served personally on the Respondent Tenants who understood it to apply to them and to their tenancy of the dwelling. The Tribunal accepts the evidence of the Appellant Landlords that they wished and intended to put the dwelling up for sale and that this was the basis for their decision to terminate the tenancy.

Finding No. 2

The Respondent Tenants have been overholding at the dwelling since 25 April 2015.

Reasons:

The First Notice having validly terminated the tenancy on 24 April 2015, the Respondent Tenants thereafter had no lawful basis for remaining in occupation of the dwelling and they have been overholding since 25 April 2015.

Finding No. 3

The Appellant Landlords have suffered damage by reason of the Respondent Tenants’ overholding.

Reasons:

The Tribunal accepts the evidence of the Appellant Landlords that they wished to put the dwelling on the market for sale by May 2015. At the date of hearing they had been frustrated in this regard by a period of approximately four months. A letter from their auctioneer was submitted in evidence of their intention to sell the dwelling during the summer months upon gaining vacant possession thereof. Mr. Melville had prepared a document which quantified the loss allegedly sustained. Amounts were claimed in respect of mortgage interest, house insurance, fuel and additional legal costs. The mortgage interest claim was supported by copy bank statements but aside from this the claims were not adequately substantiated. The Tribunal finds these claims of the Appellant Landlords to be too remote in law to be recoverable, however it is the case that the Appellant Landlords have been caused inconvenience, delay and emotional upset by reason of the Respondent Tenants’ overholding at the dwelling. The Tribunal awards the sum of €650 to the Appellant Landlords by way of damages in this regard.

Finding No. 4

The Appellant Landlords are in breach of their obligations arising under section 12(b)(ii) of the Act.

Reasons:

A number of complaints of breach of obligation were made by the Respondent Tenants. Each of these is addressed below.

A. Rat infestation - The Tribunal are satisfied on the evidence that the response of the Appellant Landlords was adequate once the issue was raised with them, the Respondent Tenants accepting that the response resolved the problem and was reasonably prompt. The complaint in this regard is therefore not upheld.

B. Installation of stove by chimney sweep - while the Appellant Landlords had indicated that they would cover the cost of installing the stove, ultimately this cost was borne by the Respondent Tenants. The Tribunal is satisfied that in breach of the agreement reached between the parties, the Appellant Landlords failed to pay for the installation of the stove and the Respondent Tenants are therefore entitled to damages in the sum of €80 in this regard being the cost of installation. .

C. Garden - The Appellant Landlords had agreed to ensure the regular upkeep of the garden areas by way of special condition in the written tenancy agreement. They complied with this obligation until in or around June 2015 when matters became particularly contentious with the Respondent Tenants. While they did not maintain the garden thereafter, the Tribunal is satisfied on the evidence that this was primarily the result of misunderstanding and / or miscommunication as between the parties and the complaints of the parties in this regard are not upheld.

D. Harassment - the claim of harassment was linked to the efforts made by the Appellant Landlords to have the dwelling inspected after the service of the First Notice. The Tribunal finds that the efforts made to inspect the dwelling during this period were not unreasonable in the circumstances and the complaints of harassment are not upheld.

E. The Respondent Tenants made complaints regarding the windows in the dwelling, a broken washing machine, a broken door handle, items left in the garage, trespassing animals, a broken electric fence and the alleged failure of the Appellant Landlords to provide them with a lease. There was a direct conflict in the evidence in respect of the windows and washing machine and on balance, taking account of the evidence given, these claims are not upheld. In respect of the other matters complained of, there was insufficient supporting evidence to substantiate the claims or indeed to prove on the balance of probabilities that they had been brought to the attention of the Appellant Landlords. On the Respondent Tenants’ own case, they did not always bring issues to the Appellant Landlords’ attention as they anticipated an inadequate response. In respect of the lease, there was insufficient evidence of any actual damage caused by reason of the Respondent Tenants not being furnished with a copy thereof and they were able to obtain a copy on request from the auctioneer.

F. Blocked utility area - there was a direct conflict on the evidence as to the cause of the Respondent Tenants being denied access to the utility area and also the response of the Appellant Landlords to the issue one raised. Taking account of the evidence given, the claim of the Respondent Tenants in this regard is not upheld.

G. Puriflo system - The Tribunal accepts the evidence of the Respondent Tenants that the Puriflo system was not working for a period and that the response of the Appellant Landlords when the issue was raised with them, was inadequate. While it was the case that clause 5.1 of the written tenancy agreement amounted to a contractual acceptance by the Respondent Tenants that the sanitary facilities, internal plumbing, sinks and hand basins were in good order and condition, the Tribunal is satisfied that the Respondent Tenants were unaware of the significance of the Puriflo system at the time nor were they properly instructed as to its operation. Indeed, the only reference made to it by the Appellant Landlords was in respect of how expensive it was to run whereas in fact, its use was fundamental to the proper functioning of the dwelling’s domestic waste-water system. The Tribunal further finds that the response of the Appellant Landlords to this issue when it was raised with them was inadequate given their nephew had no particular specialist knowledge of the Puriflo system and attended on a number of occasions at the dwelling before the problem was ultimately addressed by someone else. The Respondent Tenants were unable to identify the precise period during which the Puriflo system was not operating but felt it was a period of months. The Tribunal is satisfied on the evidence given that the period in question was not an insignificant one and therefore awards the Respondent Tenants damages in the sum of €300 in this regard.

Finding No. 5

The Respondent Tenants are in breach of their obligations arising under the written tenancy agreement and / or the Act.

Reasons

Clause 3.3 of the written tenancy agreement and section 16(c) of the Act alike obliged the Respondent Tenants to permit the Appellant Landlords at reasonable times to enter the dwelling and examine the state of repair and condition thereof. The Tribunal is satisfied that it was not unreasonable for the Appellant Landlords to wish to inspect the dwelling after February 2015 given they were seeking to put the dwelling on the market for sale. The fact that the matter had become contentious by the time of later requests did not remove this obligation. For this breach and the inconvenience caused thereby, the Appellant Landlords are entitled to damages in the sum of €200.

In respect the alleged breach of the special condition concerning the maintenance of the garden, the Tribunal finds on the evidence, that other matters in dispute between the parties gave rise to a misunderstanding as between them concerning responsibility for maintenance of the garden. That being so, none of the complaints made in respect of this issue are upheld.

**8. Determination:**

**Tribunal Reference TR0615-001205**

**In the matter of Clair Melville, John Melville (Landlord) and Philip Leo, Helen Moloney (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 6 March 2015 by the Appellant Landlords on the Respondent Tenants in respect of the tenancy of the dwelling at Cloneyogan South, Moy, Lahinch, County Clare, is valid.

2. The Respondent Tenants and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 28 days of the date of issue of the Order by the Board.

3. The Respondent Tenants shall pay the sum of €470.00 to the Appellant Landlords, within 42 days of the date of issue of the Order by the Board, being damages of €650.00 for overholding and €200.00 for breach of obligation, having set off the sum of €380.00 in respect of the Appellant Landlord’s breach of obligation in respect of tenancy of the above dwelling.

4. The Respondent Tenants shall also pay any further rent outstanding rent from 1 September 2015, at the rate of €650.00 per month or proportionate part thereof at the rate of €21.37 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.

5. The Appellant Landlord shall refund the entire of the security deposit of €650.00 to the Respondent Tenants, upon the Respondent Tenants vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 25/09/2015.

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| **Signed:** |  |

**Mervyn Hickey Chairperson**

For and on behalf of the Tribunal.