**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001206 / Case Ref No: 0215-17011**

**Appellant Landlord:** Donal Gannon

**Respondent Tenant:** Denise Warren

**Address of Rented Dwelling:** Flat 13, 6 Upper Sherrard Street , Dublin 1,

**Tribunal:** Deirdre Bignell (Chairperson)

Eoin Byrne, John Keaney

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

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

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| **Attendees:** | Donal Gannon, Appellant Landlord  Denise Warren, Respondent Tenant |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 27 February 2015 the Applicant, now Respondent, Tenant 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 30 April 2015. The Adjudicator determined that:

The Notice of Termination served on the 30th of January 2015 by the Respondent Landlord on the Applicant Tenant in respect of the tenancy of the dwelling at Flat 13, 6 Upper Sherrard Street, Dublin 1 was invalid.

Subsequently the Landlord appealed. The PRTB constituted a Tenancy Tribunal and appointed Eoin Byrne, John Keaney, and Deirdre Bignell as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Deirdre Bignell to be the chairperson of the Tribunal (“the Chairperson”).

On 6 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 27 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:**

None.

**4. Procedure:**

The Chairperson asked the parties present to identify themselves and to identify the capacity in which 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 and understood 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 possible; that the person who appealed would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present her case, and that there would be an opportunity for cross-examination by the Appellant. The Chairperson explained that following this, the parties would be given an opportunity to make a final submission.

The Chairperson said that she would be happy to clarify any queries in relation to the procedures either then or at any stage over the course of the Tribunal hearing.

The Chairperson stressed that all evidence would be taken on oath or affirmation and recorded by the official stenographer present and that based on that recording a transcript could be made available to the Tribunal if necessary to assist it in preparing its report on the dispute, or to the parties for a fee.

The Chairperson reminded the attending parties that it was an offence for anyone giving evidence to refuse to take the Oath or Affirmation, to refuse to produce any document in his or her control required by the Tribunal, to refuse to answer any question put by the Tribunal, or to knowingly provide false or misleading statements or information to the Tribunal. The Chairperson informed the parties that the above offences were punishable by a fine of up to €4,000 or up to 6 months imprisonment or both.

The Chairperson said that members of the Tribunal would ask questions from time to time to assist in clarifying the issues in dispute between the parties, and informed them that she would clarify any queries raised at the outset, or in the course of, the hearing. She also stated that she would consider an application made at any stage of the hearing seeking a short adjournment for the purpose of allowing the Parties to negotiate on a without prejudice basis, a settlement of the dispute.

The Chairperson also reminded the parties that as a result of the hearing, the Board would make a Determination Order which would be issued to the both parties to the dispute and could be appealed to the High Court on a point of law only The parties were then sworn in and the hearing commenced.

**5. Submissions of the Parties:**

The Appellant Landlord’s case:

Evidence of Donal Gannon (Appellant Landlord)

The Appellant claims that he issued a notice of termination to the Respondent on 30 January 2015, giving a termination date of 27 February 2015 on the grounds of rent arrears alleged at the date of the hearing totalling €570. A 14 day warning notice dated 12 January 2015 entitled “Rent Arrears Notice” had issued to the Respondent stating that the sum of €240 was overdue.

The Appellant submitted that prior to July 2014, the Respondent, who has been in receipt of rent supplement since the commencement of her tenancy in January 2011, would pay a “personal contribution” of €52 per week to supplement the rent assistance of €78.

Upon becoming aware that the amount of rent allowance was due to be increased, the Appellant addressed a letter to the Respondent's CWO dated 24 June 2014 stating that her rent would increase to €120 per week as of 1 July 2014.

On 25 June 2014, the Appellant allegedly wrote a letter to the Respondent noting that the Rent Allowance had been increased to €120 per week. On foot of this increase, stated the Appellant, the Respondent’s rent would be increased by €10 per week. Due however, to the increase in the supplement cheque to €88, stated the Appellant, the amount to be personally paid by the Respondent “should still be the same” (as the rent supplement received would be increased from €78 to €88 per week).

However, claims the Appellant, upon receiving this notice, as and from 1 July 2014, the Respondent reduced the amount of her personal contribution to her rent from €52 to €42 per week, and began to accrue arrears as a result, of €10 per week.

The Appellant was adamant that he had issued a rent review notice giving the minimum 28 days’ notice to the Respondent in “late May, beginning of June”, and that the new rent was due to take effect on 1 August 2014. The Respondent, however, had to date failed to pay her full personal contribution of €52 per week. The Appellant was unable to locate a copy of the original rent review notice upon which he was seeking to rely.

On 9 December 2014, the Appellant had given a further notice to the Respondent, purporting to increase the rent to €140 per week, which notice was backdated to 1 August 2014, and which stipulated that the increase was due to take effect on 1 August 2014. According to the Appellant, he delivered this notice as the Respondent had claimed to not have received the initial rent review notice. In these circumstances, contends the Appellant, only one rent review notice issued in a twelve month period, as the second was, in effect, a copy of the first.

According to the Appellant, any confusion has arisen as a result of there being two rent books in place - an “official” one for the purposes of obtaining rent assistance, and an “unofficial” one, reflecting the actual rent being paid.

The Respondent Tenant’s Case

Evidence of Denise Warren (Respondent Tenant)

According to the Respondent, the actual rent which was agreed, and has been duly paid since the outset of the tenancy, is €130 per week. At the commencement of her tenancy, the Appellant would be paid a “top-up” of €40 in addition to rent assistance of €90.

On 8 July 2013, the rent supplement was decreased to €77 per week, as a result of which the Respondent increased her personal contribution to €53, to pay the weekly rent of €130.

On or around 1 July 2014, when the rent supplement was increased to €88 per week, the Respondent had reduced her personal contribution to the amount of €42.

The Respondent denies that there was any agreement reached in or around July 2014 to increase the rent to €140 per week, or that the Appellant indicated prior to December 2014 that she would be required to maintain her personal contribution of €53 per week. According to the Respondent, the first indication she had that the Appellant had expected her personal contribution to the rent to remain the same as she had been paying prior to July 2014, was upon receipt of a letter from the Appellant on 9 December 2014 stating that her rent had been increased to €140 per week.

The Respondent claims that in or around six months passed since July 2014 before the Appellant indicated to her that he considered that she owed €10 per week for the period since 1 August 2014. When questioned as to why she had failed to pay the additional €10 per week since December 2014, the time at which she had allegedly been informed of the ongoing shortfall, the Respondent declared that she could not afford to pay the additional sum.

The Respondent challenged the validity of a notice of termination which issued to her by the Appellant on the grounds of rent arrears, in circumstances where the figure of arrears cited was based upon a rent review notice being given effect.

**6. Matters Agreed Between the Parties**

Before inviting the parties to make their submissions, the Chairperson said that the Tribunal had read the documentation in relation to the case as circulated to the parties and it appeared to the Tribunal that the following factual matters in relation to the tenancy were not in dispute between the parties:

• The Respondent has been in occupation of the dwelling since the tenancy commenced in January 2011.

• A deposit of €530 was paid by the Respondent at the outset of the tenancy.

• The amount of rent payable by the Respondent throughout the tenancy up to July 2014, totalled €130 per week.

• The Appellant issued a 14 day warning notice to the Respondent on 12 January 2015 alleging that rent arrears of €240 were due.

• The Appellant issued a notice of termination to the Respondent on 30 January 2015, giving a termination date of 27 February 2015, on the grounds of rent arrears.

**7. Findings and Reasons:**

Having considered all the evidence, the Tribunal’s findings and reasons therefor, based on the balance of probabilities, are set out hereunder:

Rent review notices

Finding:

The claim by the Appellant Landlord to have validly increased the rent payable by the Respondent Tenant, as and from 1 July 2014, or as and from 1 August 2014, is not upheld.

Reasons:

Section 22 of the 2004 Act prescribes that a rent review shall not have effect unless and until the condition specified in subsection (2) is satisfied. That condition is that, at least 28 days before the date from which the new rent is to have effect, a notice in writing is served by the landlord on the tenant stating the amount of the new rent and the date from which it is to have effect.

As none of the documents submitted into evidence by the Appellant satisfied all of the above criteria, none of the documents purporting to increase the Respondent’s rent can be said to have validly set a new rent.

Although the Appellant claimed to have issued the Respondent with an additional notice in or around May / June 2014, in which the above criteria were satisfied, as a copy was not made available to the Tribunal for review, in circumstances where the Respondent claimed no knowledge of an additional notice, the Tribunal is not satisfied that such a notice was served or was valid.

Rent arrears and overholding

Finding:

The Tribunal finds that the Respondent Tenant is not in breach of her obligations under section 16(a)(i) of the Act, to pay rent as it fell due.

Reason:

The evidence before the Tribunal contained a copy of a Notice of Termination served on behalf of the Appellant Landlord on the Respondent Tenant, dated 30 January 2015, based on the accrual of rent arrears arising from a purported rent review claimed by the Appellant to have taken effect some six months prior. As no valid rent increase has been found to have occurred, and the only rent alleged by the Appellant to have been unpaid was that resulting from the invalid increase, the Respondent cannot be said to have accrued rent arrears.

Finding:

The Notice of Termination served by the Appellant Landlord upon the Respondent Tenant, dated 30 January 2015, was invalid.

Reason:

For a Notice of Termination to be valid, it must comply with section 62 of the 2004 Act, and meet all relevant requirements in Part 5 of the 2004 Act.

Section 67 of the 2004 Act applies where the tenancy is being terminated by a landlord by reason of the failure of the tenant to comply with any of the obligations of the tenancy.

Termination of a tenancy for failure to pay rent as it falls due must be preceded by prior notification to the tenant specifying the amount owed and stating that, if the sum due is not received in full within 14 days from receipt by the tenant of the notification, the tenancy will be terminated. If the tenant fails to discharge the sums due following receipt of the warning letter, the landlord may issue a notice of termination giving 28 days’ notice.

Where a landlord seeks to terminate a Part 4 tenancy because the tenant has failed to pay rent, an additional requirement must be fulfilled pursuant to paragraph 1 of the Table to section 34 of the 2004 Act. Accordingly, to terminate a Part 4 tenancy where a tenant is in rent arrears, the following procedure must be followed:

1. The landlord must notify the tenant that:

a. the tenant is in arrears of rent; and allow

b. a reasonable period of time within which the tenant has to remedy that breach of obligation.

2. If the tenant fails to pay the arrears of rent, the landlord must serve a notice on the tenant informing him or her that an amount of rent is due. The landlord must then give the tenant 14 days to pay those rent arrears.

3. If the tenant fails to pay the rent due within 14 days of receipt of the notice referred to at (2), the landlord may proceed to terminate the tenancy by serving a notice of termination, giving 28 days notice of the termination of the tenancy.

The Appellant is seeking to rely on the notice of termination dated 30 January 2015 and 14 day warning letter which issued to the Respondent on 12 January 2015, in which the sum of €240 was claimed to be overdue. Implicit in the provisions of the legislation which set out a means to terminate a tenancy on the grounds of rent arrears, is the requirement that said arrears are due and owing by the tenant.

As the Notice of Termination at issue was served on the basis of the Respondent having failed to discharge rent arrears which cannot be said to have validly arisen, the Tribunal finds that the Notice of Termination dated 30 January 2015, was invalid.

**8. Determination:**

**Tribunal Reference TR0615-001206**

**In the matter of Donal Gannon (Landlord) and Denise Warren (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination dated 30 January 2015, served by the Appellant Landlord on the Respondent Tenant in respect of the tenancy of the dwelling at Flat 13, 6 Upper Sherrard Street, Dublin 1, is invalid.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 10/09/2015.

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| **Signed:** |  |

**Deirdre Bignell Chairperson**

For and on behalf of the Tribunal.