**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001207 / Case Ref No: 0315-17160**

**Appellant Tenant:** Pamela Dunne, Sean Nolan, Pamela Dunne

**Respondent Landlord:** Colm O'Cleirigh

**Address of Rented Dwelling:** 22 Pebble Grove, Pebble Beach, Tramore , Waterford, X91A7D9

**Tribunal:** Aidan Brennan (Chairperson)

Dervla Quinn, Vincent P. Martin

**Venue:** Council Chamber, Borough District Officel, Old County Hall, Spawell Road, Wexford

**Date & time of Hearing:** 04 November 2015 at 11:00

|  |  |
| --- | --- |
| **Attendees:** | Emma Clarke, Property Partners (Representative of the Respondent Landlord)  Sean Nolan (Appellant Tenant) |
| **In Attendance:** | Gwen Malone stenographers |

**1. Background:**

On 09 March 2015 the Landlord made an application to the Private Residential Tenancies Board (the PRTB) pursuant to Section 76 of the Residential Tenancies Act 2004 (the Act).

The matter was referred to an Adjudication which took place on 07 May 2015. The Adjudicator determined that:

1. The Respondent Tenants shall pay the total sum of €2,270 to the Applicant Landlord, in 5 consecutive monthly payments of €400, on the 28th day of each month, followed by one payment of €270 on the 28th day of the immediately succeeding month, commencing on the 28th day of the month immediately following the date of issue of the Order. This sum represents rent arrears of €1,600, the sum of €270 for damage in excess of normal wear and tear, the sum of €600 in damages for failure to serve a Notice of Termination and the sum of €200 in damages for failure to pay rent in breach of the Respondent Tenants obligations under the Act, having deducted the entire of the justifiably retained security deposit of €400, in respect of the tenancy of the dwelling at 22 Pebble Grove, Pebble Beach, Tramore, County Waterford.

2. The enforcement of the Order for such payment of €2,270 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Respondent Tenants to the Applicant Landlord on each due date until such time as the total sum of €2,270 has been paid in full.

3. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default of any such monthly payment shall immediately become due and owing to the Applicant Landlord.

An appeal was received from the Tenants on 05 June 2015. This appeal was approved by the Board of the PRTB 19 June 2015.

The PRTB constituted a Tenancy Tribunal and appointed Aidan Brennan, Dervla Quinn and Vincent P. Martin as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Aidan Brennan to be the chairperson of the Tribunal (the Chairperson).

On 13 October 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 04 November 2015 the Tribunal convened a hearing at the Council Chamber, Borough District Office, Old County Hall, Spawell Road, Wexford.

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

* 1. PRTB File

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

na

**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 titled “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 Appellants would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent Landlord’s representative; that the Respondent Landlord’s representative would then be invited to present the landlords case, and that there would be an opportunity for cross-examination by the Appellant Tenants. The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson said 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 or up to 6 months imprisonment or both.

The Chairperson also reminded the Parties that as a result of the Hearing, the Board of the PRTB 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.

The parties intending to give evidence were sworn in.

**5. Submissions of the Parties:**

Appellant Tenants:

Evidence of Sean Nolan second named Appellant Tenant:

The second named Appellant Tenant gave evidence to the effect that he entered the tenancy arrangement on the 13 January 2014 for a fixed period of six months. He said that unhappy differences had arisen between himself and the first named Appellant Tenant and he left the dwelling after about three months and the arrears of rent were for a period after he had vacated the dwelling. He said that he had telephoned the Landlord’s agent when he was leaving but admitted that he had not given any written notice of termination. He admitted that he had signed a lease and accepted that joint and several liability applied in respect of the tenancy. He stated that there was little communication between himself and the first named Appellant Tenant due to their differences. In relation to items alleged to be missing from the dwelling he said that the curtains were stored in the attic and a “missing” dressing table was never in the dwelling to begin with.

Respondent Landlord:

Evidence of Emma Clarke Landlord’s Representative.

The Respondent Landlord’s Representative gave evidence to the effect that the tenancy at 22 Pebble Grove commenced on 13 January 2014 under a lease signed by both Tenants; the rent was €400 per month and a deposit was paid in the sum of €400. The Appellant Tenants had been renting a dwelling, managed by Property Partners, prior to renting the dwelling the subject of this dispute. The first named Appellant Tenant was pregnant and this dwelling suited them better than the dwelling that they occupied prior to moving. The Tenants were given the first month rent free. [The Tenant in reply to a question from the Tribunal accepted this evidence]. The Landlord’s Representative gave evidence that a Notice of Termination was served on the Tenants on 26 June 2014 with a termination date of 24 July 2014 as a consequence of rent arrears, and that the Tenants had not moved out by the termination date. The Landlord’s Agent went to the property on numerous occasions in August, but she did not want to enter the property as she was concerned that the Tenants were still living there and might simply have been on holidays.

The Landlord’s Representative gave evidence that as far as she was concerned the Tenants owed rent until at least 13 September 2014; that the Tenants were overholding and did not give any notice that they were leaving the property. The Landlord’s Representative gave evidence that there was rent outstanding for four months when the Tenants vacated the dwelling. The arrears were calculated on the basis that the tenancy had lasted for eight months, from 13 January 2014 to 13 September 2014 and in that period three payments of €400 were received; one month was rent free leaving four months arrears of €1600

The Landlord’s Representative, referring to the invoice on the PRTB file, said that the dwelling was very unkempt when they entered. The cleaner had to give the dwelling a thorough clean, remove waste, replace the front door lock, replace the dead bolt lock and replace three sets of curtains.

She accepted that the curtains may well be stored in the attic as stated by the Tenant in evidence. She said that the property had been cleaned and repaired on 20 September 2014, at a cost of €345, and that €75 would normally be spent on a clean between rentals. The Landlords Representative said that the property was rented out from 1 November 2014 and that the non payment of the rent had caused stress a financial loss and difficulties for the Landlord.

**6. Matters Agreed Between the Parties**

N/A

**7. Findings and Reasons:**

Finding:

The Tribunal finds that the Appellant Tenants were in breach of their obligations under the Act and owe four months rent in the sum of €1,600; that the Landlord was justified in retaining the security deposit of €400; that the Landlord is entitled to damages in the sum of €200 for the disturbance, inconvenience and distress caused by the failure of the Tenants to pay rent; that the Tenants failed to serve a Notice of Termination and vacated the dwelling without informing the Landlord or his agent; that the Landlord is entitled to damages as a result of the Tenant’s failure to serve a Notice of Termination and that, in circumstances where the Landlord could not rent the property until 01 November 2014, the Landlord is entitled to damages in the sum of €600, being a month and a half’s rental income. The Landlord is further entitled to recover €270 representing damages in excess of normal wear and tear.

Reason:

While the second named Appellant Tenant gave evidence that he had vacated the dwelling about three months after the tenancy commenced, the Tribunal accepts the evidence of the Landlord’s Representative that the first named Appellant Tenant did not vacate the dwelling until 13 September 2014 and left the property owing four months rent in the sum of €1,600. This was not contested by the second named Appellant Tenant and accordingly the Landlord is entitled to recover the arrears of rent as provided by section 23 of the Act.

A Landlord is entitled to damages under the provisions of section 115 (2) (d) where Tenants fail to meet their obligation under section 16 (a) (i) of the Act to pay rent on the date it falls due. The Tribunal directs that an amount of damages in the sum of €200 be paid to the Landlord.

The Tenants breached their obligations under sections 58 and 62 of the Act in that they did not serve a written Notice of Termination, and while the second named Respondent Tenant gave evidence that he made a phone call to the Landlords agent to say he was leaving, this did not in any way ameliorate the breach of Tenants’ obligations to give valid notice in accordance with section 62 of the Act. The first named Appellant Tenant simply left the property without informing the Landlord or the Landlord’s agent. As a consequence the Landlord was not in a position to advertise the property prior to it being vacated and was not in a position to rent the property until 1 November 2014 and thus incurred further financial loss for a period of one and one half months. The Tribunal awards an amount of damages is the sum of €600 being a month and a half’s rental income.

The Landlord’s Representative stated that to clean a dwelling between rentals would cost €75 and it was normal practice to clean the dwellings between lettings. The excess cost of repairs and cleaning that was incurred is €270. (€345 incurred less the normal cost of €75).

**8. Determination:**

**Tribunal Reference TR0615-001207**

**In the matter of Pamela Dunne, Sean Nolan, Pamela Dunne (Tenant) and Colm O'Cleirigh (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Appellant Tenants shall pay the total sum of €2270.00 to the Respondent Landlord, in 5 consecutive monthly payments of €400.00 on the 28th day of each month, followed by one payment of €270 on the 28th day of the immediately following month, commencing on the 28th day of the month immediately following the date of issue of this Order. This sum represents rent arrears of €1600.00 reduced by the entire of the justifiably retained security deposit of €400, and increased by the sums of €270 damage in excess of normal wear and tear; €600.00 damages for failure to serve a Notice of Termination and €200 damages for failure to pay rent in breach of the Appellant Tenants obligations under the Act, in respect of the tenancy of the dwelling at 22 Pebble Grove, Pebble Beach, Tramore, County Waterford.

2. The enforcement of the Order for such payment of €2,270 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Appellant Tenants to the Respondent Landlord on each due date until such time as the total sum of €2,270 has been paid in full.

3. For the avoidance of doubt, any default in the payment of any of the monthly instalments shall act to cancel any further deferral and the balance due, at the date of default of any such monthly payment, shall immediately become due and owing to the Respondent Landlord.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 05 November 2015.

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

**Aidan Brennan Chairperson**

For and on behalf of the Tribunal.