**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001210 / Case Ref No: 0315-17287**

**Appellant Tenant:** Paul Butler

**Respondent Landlord:** James Keenan

**Address of Rented Dwelling:** Flat 1, 35 Connaught Street, Phibsboro , Dublin 7, D07H28X

**Tribunal:** Peter Shanley (Chairperson)

Andrew Nugent, Deirdre Bignell

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

**Date & time of Hearing:** 07 September 2015 at 2:30

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| **Attendees:** | Mark Gorman, Solicitor, (Respondent Landlord’s Representative)  James Keenan (Respondent Landlord)  Paul Butler (Appellant Tenant) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On 13 March 2015 the Tenant made an application to the Private Residential Tenancies Board (“the PRTB”) pursuant to Section 76 of the Act. The matter was referred to an Adjudication which took place on 08 May 2015. The Adjudicator determined that:

The notice of termination of the 2nd March 2015 served by the Respondent Landlord on the Applicant Tenant in respect of the tenancy of the dwelling at Flat 1, 35 Connaught Street, Phibsboro, Dublin 7 is invalid.

The notice of termination of the 22nd April 2015 served by the Respondent Landlord on the Applicant Tenant in respect of the tenancy of the dwelling at Flat 1, 35 Connaught Street, Phibsboro, Dublin 7 is valid.

Subsequently the following appeal was received from the Tenant on 10 June 2015. The grounds of the appeal was Breach of landlord obligations & another. This appeal was approved by the Board on 19 June 2015.

The PRTB constituted a Tenancy Tribunal and appointed Peter Shanley, Andrew Nugent, Deirdre Bignell as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Peter Shanley to be the chairperson of the Tribunal (“the Chairperson”).

On 02 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 07 September 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:**

Letter from the Tenant's girlfriend's employer stating her residential address as being in Kilkenny.

**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 Respondent Landlord would be invited to present his case first; that there would be an opportunity for cross-examination by the Appellant Tenant; that the Appellant Tenant would then be invited to present his case, and that there would be an opportunity for cross-examination by the Respondent Landlord.

The Chairperson explained that following this, both parties would be given an opportunity to make a final submission.

The Chairperson 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 or imprisonment or both.

The Chairperson also reminded the Parties that following 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.

**5. Submissions of the Parties:**

Appellant Tenant's Case:

The Tenant submitted that the tenancy is a Part 4 tenancy and that he received a “Notice to Quit” on 2 March 2015, which contained a proposed termination date of 7 May 2015. The Landlord had told the Tenant a few days prior to this that he intended selling the property in which the Dwelling is situated. The Tenant found this “Notice to Quit” under his door and sought advice in relation to it from Threshold. He was advised that the Notice with which he had been served was not a proper Notice of Termination in accordance with the provisions of the Residential Tenancies Act 2004. The Tenant advised the Landlord of this and contacted the PRTB and the PRTB fixed a date for an adjudication of 8 May 2015. Prior to the hearing of the adjudication, the Tenant received another Notice of Termination on or about 22 April 2015, which provided a termination date of 14 August 2015.

The Tenant submitted (i) that this second Notice of Termination named not only the Tenant himself, but his girlfriend too, which rendered it invalid (although the Tenant subsequently re-stated this submission to be more of “an annoyance” than an invalidating flaw with the Notice of Termination); (ii) that he should receive 112 days’ notice from the date of the intention to sell the property, rather than from the date of the Notice of Termination; and (iii) that the Landlord has made no real effort to sell the property and as such the Tenant is therefore sceptical about his intention to sell the property.

Respondent Landlord’s Case:

The Landlord accepted that the first “Notice to Quit” dated 2 March 2015 was an invalid Notice of Termination within the meaning of the Residential Tenancies Act 2004 and does not dispute the Tenant’s submission in this regard.

The Landlord submitted that the Notice of Termination dated 22 April 2015 was valid. The Landlord gave evidence that in February 2015 he approached Cormac O’Ceallaigh & Co. Solicitors regarding the proposed sale of the property after he had issued notices to quit to the tenants of each of the units within the property. The Landlord gave evidence that he also engaged DNG auctioneers at this stage. The Landlord provided evidence of a letter from DNG dated 27 March 2015 which stated that “[w]e will make arrangements to put the property on the market on April 30th 2015.” The Landlord spoke to Mark Gorman of Cormac O’Ceallaigh & Co. Solicitors on 24 March 2015 regarding the first “notice to quit” and Mark Gorman advised him that this was not valid and that a new Notice of Termination would have to be drafted. Having drafted and sent a Notice of Termination by registered post on 7 April 2015 which was returned “not called for” on 14 April 2015, a further Notice of Termination was drafted on 22 April 2015 and the Landlord sought to hand deliver this to the Tenant and knocked at the Tenant’s door to do this, but when the door was not answered, the Landlord pushed the Notice of Termination under the door. The Landlord further provided evidence of a letter from DNG dated 22 July 2015 confirming that DNG have signed a “Property Service Agreement” for the sale of the property and confirming that they are not actively marketing the property as they are awaiting vacant possession. The Landlord confirmed, under cross-examination by the Tenant, that he intended to sell the property as soon as he had vacant possession of the property. The Landlord submitted that the Tenant’s girlfriend’s name appeared on the Notice of Termination “to cover all bases” and submitted that even if she is not a tenant of the dwelling, this does not invalidate the Notice of Termination.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The Tenancy commenced on 24 August 2007.

2. The Tenant remains in occupation.

3. The deposit paid at the beginning of the tenancy was €500.

4. The monthly rent is €475 and as at the date of the hearing had been paid up to 18 September 2015.

**7. Findings and Reasons:**

Having considered all of the documentation before it, and having considered the evidence and submissions presented to it by the Parties, the Tribunal’s findings and reasons therefore, are set out hereunder.

7.1 Finding:

The Tribunal finds that the Notice of Termination served on the Tenant by the Landlord on 22 April 2014 in respect of the tenancy of the dwelling at Flat 1, 35 Connaught Street, Dublin 7 is valid and that the Tenant is over holding since 15 August 2015.

Reasons:

1. As provided for in section 34 of the Residential Tenancies Act 2004 (the Act), the Landlord is entitled to terminate a Part 4 tenancy if he intends, within 3 months after the termination of the tenancy under this section, to enter into an enforceable agreement for the transfer to another, for full consideration, of the whole of his or her interest in the dwelling or the property containing the dwelling and he serves a valid Notice of Termination giving the requisite period of notice. The Tribunal is satisfied that the Landlord intends to sell the property within 3 months after the termination of the tenancy.

2. Section 62 of the Act requires that, to be valid, a Notice of Termination must be in writing, signed by the landlord or authorised agent; specify its date of service; provide a reason for the termination where the tenancy is of greater than six months’ duration; specify the termination date and that the tenant has the full 24 hours to vacate possession on that date; and state that any issue regarding the validity of the notice or the right to serve the Notice can be referred to the PRTB within 28 days of receipt of it. The Tribunal is satisfied that the Landlord complied with these requirements.

3. The Notice of Termination was served on the Tenant in accordance with section 6(1)(b) of the Act, by leaving it at the address at which the tenant ordinarily resides.

4. Section 66 of the Act provides that where a tenant has been in occupation of a dwelling for 4 or more years, the period of notice to be given by the notice of termination is 112 days. As provided for by section 61 of the Act, this notice period begins on the day immediately following the date of service of the notice. The Notice of Termination was served on the 22 April 2015 and specified that the tenancy would terminate on 14 August 2015. The Tribunal is therefore satisfied that the Notice of Termination provided the requisite minimum notice period.

5. The Tribunal finds that the Appellant Tenant is over holding because he continues to reside at the Dwelling despite the service upon him by the Respondent Landlord of a valid Notice of Termination and the expiry thereof.

**8. Determination:**

**Tribunal Reference TR0615-001210**

**In the matter of Paul Butler (Tenant) and James Keenan (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 22 April 2015 by the Respondent Landlord on the Appellant Tenant in respect of the tenancy of the dwelling at Flat 1, 35 Connaught Street, Phibsboro, Dublin 7 is valid.

2. The Appellant Tenant 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.

3. The Appellant Tenant shall continue to pay rent at the monthly rate of €475, or proportionate part thereof at the daily rate of €15.62, unless lawfully varied, and any other charges set out in the terms of the tenancy agreement, for each month or part thereof, until such time as he vacates the above dwelling.

4. The Respondent Landlord shall refund the entire of the security deposit of €500 to the Appellant Tenant, on gaining vacant 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 28 September 2015.

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| **Signed:** |  |

**Peter Shanley Chairperson**

For and on behalf of the Tribunal.