**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001211 / Case Ref No: 1114-15295**

**Appellant Landlord:** Colin Farquharson (Receiver), Luke Charleton (Receiver), Michael Finnegan

**Respondent Tenant:** Karolina Prochownik, Ibrahim Mohamed

**Address of Rented Dwelling:** 106 Fearann Ri, Doughiska , Galway, H91FXK2

**Tribunal:** Aidan Brennan (Chairperson)

John Tiernan, Gene Feighery

**Venue:** Executive Lounge, Hotel Meyrick, Eyre Square, Galway

**Date & time of Hearing:** 08 September 2015 at 2:30

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| **Attendees:** | Amy Hughes, Savills, (Receiver’s Representative)  Ibrahim Mohamed (Respondent Tenant)  Karolina Prochownik (Respondent Tenant) |
| **In Attendance:** | Gwen Malone stenographers |

**1. Background:**

On 17 November 2014 the Tenants 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 16 April 2015. The Adjudicator determined that:

The Respondent Landlord shall pay the total sum of €1400 to the Applicant Tenant, within 28 days of the date of issue of this Order, being the unjustifiably retained security deposit of €700 together with the sum of €700 representing damages for the consequences of retaining the said deposit in respect of the tenancy of a dwelling at 106 Fearann Ri, Doughiska, Galway.

An appeal was received from the landlord (Michael Finnegan) on11 June 2015. The ground of the appeal was deposit retention. This appeal was approved by the Board of the PRTB on 23 June 2015.

The PRTB constituted a Tenancy Tribunal and appointed Aidan Brennan, John Tiernan and Gene Feighery 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 17 August 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 08 September 2015 the Tribunal convened a hearing at the Executive Lounge, Hotel Meyrick, Eyre Square Galway.

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

* 1. PRTB File

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

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**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 representative would be invited to present the Appellants case first; that there would be an opportunity for cross-examination by the Respondent Tenants; that the Respondent Tenants would then be invited to present their case, and that there would be an opportunity for cross-examination by the Appellants representative. 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 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 [reference section 123(3) of the 2004 Act hereafter referred to as the Act].

The parties intending to give evidence were sworn in.

**5. Submissions of the Parties:**

Evidence on behalf of the Appellant Landlord

Amy Hughes (Savills) representing the Receivers:

The Receivers representative gave evidence to the effect that neither the Receivers nor Savills received the deposit money from Allman Reynolds; that she has no doubt that a deposit was paid; that there were no rent arrears and submitted that in these circumstances neither the Receivers nor Savills had an obligation to repay the deposit in accordance with the Act.

Respondent Tenants:

Evidence of Karolina Prochownik.

The tenant gave evidence that the deposit of €700 and the first month’s rent of €700 was paid in cash to Allman Reynolds at their office and referred the Tribunal to the documentation in the PRTB case file concerning the initial lease as evidence of payment. The tenant gave further evidence to say that the deposit has not been refunded and referred to the distress this has caused as outlined in writing in the PRTB case file.

**6. Matters Agreed Between the Parties**

* The tenancy commenced on 27 May 2010.
* The Rent was €700 per month.
* A deposit of €700 has not been repaid to the tenants.
* The tenants vacated the dwelling on 4 April 2013 and returned the keys on 5 April 2013.
* There are no arrears of rent.

**7. Findings and Reasons:**

The applicant tenants paid a security deposit of €700 to the landlord’s agent Allman Reynolds. The agent was appointed by and was acting on behalf of the appellant landlord Mr Michael Finnegan. The tenants are entitled to repayment of their deposit and the repayment should be made by the landlord Mr Michael Finnegan together the sum of €700 damages for the inconvenience and distress caused to the tenants as consequences of the non-refund of their deposit.

Reason:

The Tribunal accepts the evidence of the tenants that they paid a deposit of €700 which has not been repaid and that there are no grounds within the meaning of the Act for the retention of the deposit, or any part of the deposit, by the landlord Mr Michael Finnegan or his agent at the time Allman Reynolds. The landlord has a legal obligation under S12 (d) subject to certain provisions contained in section 12(4) of the Act to return the tenants deposit monies to them promptly. Section 4 of the Act interprets generally “authorised agent” to be the person authorised by the landlord to act on his behalf in relation to the tenancy for the time being cf. Section 12 (1) (e). Accordingly the repayment of the tenants deposit which was paid to the authorised agent Allman Reynolds is the responsibility of Mr Michael Finnegan. The Tribunal accepts the evidence of the tenant in regard to the distress and inconvenience she has suffered due to the withholding of her deposit. Furthermore the Tribunal accepts the evidence of Amy Hughes that neither the joint receivers nor Savills received money representing the deposit.

**8. Determination:**

**Tribunal Reference TR0615-001211**

**In the matter of Colin Farquharson (Receiver), Luke Charleton (Receiver), Michael Finnegan (Landlord) and Karolina Prochownik, Ibrahim Mohamed (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlord Mr Michael Finnegan shall pay the total sum of €1400 to the Respondent Tenants, within 28 days of the date of issue of this Order, being the unjustifiably retained security deposit of €700 together with the sum of €700 representing damages for the consequences of retaining the said deposit in respect of the tenancy of a dwelling at 106 Fearann Ri, Doughiska, Galway.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 14 September 2015.

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

**Aidan Brennan Chairperson**

For and on behalf of the Tribunal.