**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001213 / Case Ref No: 0415-17790**

**Appellant Tenant:** Olumide Smith

**Respondent Landlord:** Huimin Guan

**Address of Rented Dwelling:** 3 Grangeview Place, Clondalkin , Dublin 22, D22VY62

**Tribunal:** Peter Shanley (Chairperson)

Roderick Maguire, Healy Hynes

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

**Date & time of Hearing:** 04 September 2015 at 2:30

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| **Attendees:** | Olumide Smith (Appellant Tenant)  Huimin Guan (Respondent Landlord)  Ming Chung Poon (Witness for Respondent Landlord)  Patrick O’Dwyer (Representative for Respondent Landlord)  Michael Carroll (Representative for Respondent Landlord)  Leona Kennedy (Representative for Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers  Word Perfect Interpreters |

**1. Background:**

On 10 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 Adjudication which took place on 13 May 2015. In the matter of Mr. Huimin Guan (Applicant Landlord) and Mr. Olumide Smith (Respondent Tenant) the Adjudicator in accordance with Section 97(4)(a) of the Residential Tenancies Act 2004, determined that:

1. The Respondent Tenant shall pay the total sum of €2612.05 to the Applicant Landlord, in 10 consecutive monthly payments of €220, on the 28th day of each month, followed by one payment of €412.05 on the 28th day of the immediately succeeding month, commencing on the 28th day of the month immediately following the date of issue of this Order, being rent arrears of €2,262.05, damages of €350 in respect of the tenancy of the dwelling at 3 Grangeview Place, Clondalkin, Dublin 22.

2. The enforcement of this Order for such payment of €2612.05 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Respondent Tenant to the Applicant Landlord on each due date until such time as the total sum of €2612.05 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.

4. The Notice of Termination served on 3rd July 2014 by the Applicant Landlord on the Respondent Tenant in respect of the tenancy of the above dwelling is invalid.

5. The Notice of Termination served on 10th December 2014 by the Applicant Landlord on the Respondent Tenant in respect of the tenancy of the above dwelling is valid.

6. The Respondent Tenant and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 21 days of the date of issue of this Order.

7. The Respondent Tenant shall continue to pay rent at the monthly rate of €900, or proportionate part thereof at the daily rate of €29.59, 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.

8. The Applicant Landlord shall refund the entire of the security deposit of €900 to the Respondent Tenant, upon the Respondent Tenant vacating and giving up possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received from the Tenant on 11 June 2015. The grounds of the appeal were a Breach of tenant obligations, Overholding and Rent arrears. The appeal was approved by the Board on 23 June 2015.

The PRTB constituted a Tenancy Tribunal and appointed Peter Shanley, Healy Hynes, Roderick Maguire 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 06 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 04 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:**

1. Schedule of Payments made to Huiman Guan prepared and submitted by Olumide Smith.

2. Document with O’Dwyer English Letterhead evidencing payment by Olumide Smith of €100 on 16 January 2014 and €1,700 on 29 January 2014, submitted by Olumide Smith.

3. Application form for Supplementary Welfare Allowance Rent Supplement, submitted by Olumide Smith.

**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:**

The Respondent Landlord’s Case:

1. Rent Arrears

The Landlord submitted that a written letting agreement was entered into between the Landlord and the Tenant on 22 January 2014 for a term of 12 months. A €900 deposit was paid by the Tenant and €900 rent was to be paid monthly in advance. The Landlord provided copies of bank statements showing total rent received from the Tenant from 1 February 2014 to 4 August 2015, being 19 months, of €13,832. The Landlord claimed that total payments of €17,100 ought to have been made during this period and accordingly, the Landlord claimed that the amount of arrears owing at the end of August 2015 was €3,267.67. Further evidence was given to the effect that a recent payment of €900 was received on 1 September 2015. The Landlord therefore updated his claim for arrears of rent to €2,367.67, plus €118.36, being €29.59 per day in respect of the four days of September up to and including the date of the hearing. The Landlord submitted that there was no agreement to vary the payment arrangements under the letting agreement. The Landlord’s letting agent is O’Dwyer English Auctioneers. Ms Leona Kennedy is an employee of O’Dwyer English Auctioneers. Ms. Kennedy gave evidence that she chaired a meeting on 31 July 2014 in the offices of O’Dwyer English Auctioneers between the Landlord, who was accompanied by his wife and son, and the Tenant. She recalled that at the meeting the Tenant made a proposal that the €900 deposit that had been paid at the start of the tenancy could be applied towards the rent arrears and that the Tenant would pay rent at the end of each month rather than in advance at the start of each month. She stated that the Tenant further proposed that he would make ongoing extra payments in order to restore the €900 deposit. She stated that these proposals were not accepted by the Landlord. Her handwritten notes of the meeting state that “Landlord will not agree to this paying in arrears and wants all rent paid up front on 1st of month and arrears cleared asap”.

2. Breach of Tenant Obligations

The Landlord submitted that he had written to the Tenant on 3 July 2014 for the purposes of providing a Notice of Termination. The Landlord accepted that this Notice of Termination was not valid as it did not provide the Tenant with a 28-day notice period. The letter of 3 July 2014 further requested that Tenant make the dwelling available for a “final inspection” on 30 July 2014. The Landlord submitted that the Tenant failed to allow access to the dwelling for the purposes of the inspection of the dwelling. The Landlord submitted that this necessitated him staying in a hotel in Dublin with his family on the night of 30 July 2014 in order to meet with the Tenant the next day. The Landlord claimed damages of €1,000 in respect of the expenses he had to incur due to this breach of the Tenant’s obligations. No documentary evidence of any expenses incurred by the Landlord was submitted.

3. Overholding

The Landlord submitted that on 21 November 2014, following conversations between the Landlord’s son and the Tenant regarding the arrears of rent, a 14-day warning letter was sent to the Tenant. This letter required the Tenant to clear the €2,525 arrears which was outstanding within 14 days and stated that if the said arrears were not cleared, a formal 28-day Notice of Termination would be issued. The Landlord submitted that the said arrears were not cleared within the 14-day period and accordingly a formal Notice of Termination was sent to the Tenant on 10 December 2014, which stated that the tenancy will terminate on 8 January 2015. The Landlord submitted that this was a valid Notice of Termination and that as such the Tenant has been overholding since 9 January 2015.

Appellant Tenant's Case:

1. Rent Arrears

The Tenant submitted that the parties agreed to vary the terms of payment under the lettering agreement. He stated that he required this change in the terms of payment due to a change in his personal circumstances. He stated that at a meeting on 31 July 2014, chaired by Leona Kennedy, the Landlord accepted his proposal to apply the €900 deposit towards the arrears then due, to pay the rent at the end of each month rather than at the start and that he would make ongoing extra payments in order to restore the €900 deposit. As such, while the Tenant accepted that he is in arrears, he disputed the amount of the arrears.

2. Breach of Tenant Obligations

The Tenant submitted that because the Notice of Termination was invalid, the request made therein to carry out a “final inspection” of the dwelling was also invalid. Furthermore, the Tenant disputed the Landlord’s claim for damages for the breach of the tenant’s obligation to allow access to the dwelling for the purposes of the inspection of the dwelling. The Tenant stated that no documentary evidence has been adduced in respect of this claim.

3. Overholding

The Tenant stated that the Notice of Termination dated 10 December 2014 was invalid. He stated that he had been living in the dwelling for 10 months and that accordingly a 35-day period of notice is required. He further submitted that while he does not dispute that he was in arrears on the date of the Notice of Termination, the amount of arrears specified in the 14-day warning letter of 21 November 2014 was incorrect and therefore the Notice of Termination is invalid.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The Tenancy commenced on 1 February 2014.

2. The Tenant remains in occupation.

3. The Tenant is in arrears of rent.

4. The deposit paid at the beginning of the tenancy was €900.

5. The monthly rent was €900.

**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 Appellant Tenant is in breach of Section 16(a)(i) of the Residential Tenancies Act 2004 (“the Act”) in that there are arrears of rent of €2,486.03.

Reasons:

1. Section 16(a) of the Act provides that a tenant must “pay to the landlord or his or her authorised agent (or any other person where required to do so by any enactment)—

(i) the rent provided for under the tenancy concerned on the date it falls due for payment…”.

2. The Tribunal is satisfied that the Tenant has paid €14,732.33 since the commencement of the tenancy whereas the total amount payable under the letting agreement until the end of August 2014 was €17,100. Therefore the shortfall in rent paid until the end of August was €2,367.67.

3. The Tribunal is satisfied that the Tenant has remained in occupation of the dwelling up to the date of the hearing, being 4 September 2015, and that the daily rent was calculated to be €29.59. Therefore the rent due for the four days’ occupation in September is €118.36.

4. The Tribunal is satisfied that there was no agreement reached between the parties to change the payment terms under the letting agreement.

7.2 Finding:

The Tribunal finds that the Tenant was not in breach of his obligation to allow access to the dwelling for the purposes of a final inspection of the dwelling and furthermore the Tribunal finds that the failure to allow access to the dwelling for the purposes of the inspection of the dwelling did not cause the Landlord to incur expense. The Landlord’s claim for damages for breach of the Tenant’s obligations is rejected.

Reasons:

1. The Tribunal is satisfied that the Landlord sought to carry out a “final inspection” of the dwelling on 30 July 2014 and the Tenant did not allow access to the dwelling for the purposes of the “final inspection” of the dwelling.

2. The Tribunal was satisfied that where the inspection is phrased as a “final inspection” on termination of the tenancy, and the termination notice is invalid (as was accepted by the Landlord), the Tenant cannot reasonably be expected to allow the inspection as the stated reason for the inspection is no longer taking place.

3. Furthermore, section 16(c) of the Residential Tenacies Act 2004 (“the Act”) provides that the Tenant must “allow, at reasonable intervals, the landlord, or any person or persons acting on the landlord's behalf, access to the dwelling (on a date and time agreed in advance with the tenant) for the purposes of inspecting the dwelling”. The Tribunal is satisfied that Landlord had not agreed a date and time for the inspection in advance with the Tenant and as such there was no breach of the Tenant’s obligations under section 16 of the Act.

4. The Landlord stayed in Dublin on the night of 30 July with his family for the purposes of meeting with the Tenant on the following day. No inspection of the premises took place on the following day. Therefore any accommodation expenses incurred by the Landlord were unconnected to any failure by the Tenant to allow access to the dwelling for the purposes of the inspection of the dwelling.

7.3 Finding:

The Tribunal finds that the Notice of Termination served on the Tenant by the Landlord on 21 December 2014 in respect of the tenancy of the dwelling at 3 Grangeview Place, Clondalkin, Dublin 22 is valid and that the Tenant is over holding.

Reasons:

1. The Tribunal finds that the Tenant enjoys a Part 4 tenancy and Tenants who meet the requirements set out in Part 4 of the Act enjoy a certain security of tenure. In order for the Landlord to terminate a Part 4 tenancy on grounds that the tenant has failed and/or neglected to pay rent and thereby being in arrears of rent, the Landlord must follow all three procedural steps as follows:

STEP 1: The landlord must notify the tenant that the tenant is in arrears of rent.

STEP 2: Under Section 67(3) of the Act, where a tenant falls into rent arrears, the landlord must serve a written notice on the tenant informing him or her of the amount of rent that is due. The landlord must then give the tenant 14 days to pay those rent arrears.

STEP 3: Under Section 67(2) of the Act, if the tenant fails to pay the rent due within 14 days of receipt of the written notice under Section 67(3) (step 2 above), the landlord may proceed to terminate the tenancy by serving a 28-day notice of termination. 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: section 62 of the Act.

2. The Tribunal is satisfied that the Landlord was in compliance with all the above steps. The Tenant accepted that he is arrears of rent. The Tribunal is satisfied that the amount of arrears claimed by the Landlord was correct. The Tenant accepted that he discussed the issue of rent arrears with the Landlord’s son prior to serving the 14-day warning letter. The 14-day warning letter was served on the Tenant on 21 November 2014 and the subsequent Notice of Termination was served on the Tenant dated 10 December 2014. The Notice of Termination complied with the requirements set out above. The Tribunal finds that the Notice of Termination is valid.

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

**8. Determination:**

**Tribunal Reference TR0615-001213**

**In the matter of Olumide Smith (Tenant) and Huimin Guan (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 10 December 2014 by the Respondent Landlord on the Appellant Tenant in respect of the tenancy of the dwelling at 3 Grangeview Place, Clondalkin, Dublin 22 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 pay the total sum of €2,486.03 to the Respondent Landlord, in 20 consecutive monthly payments of €120, on the 28th day of each month, followed by one payment of €86.03 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, being rent arrears of €2,486.03 in respect of the tenancy of the dwelling at 3 Grangeview Place, Clondalkin, Dublin 22.

4. The enforcement of this Order for such payment of €2,486.03 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly instalments made by the Appellant Tenant to the Respondent Landlord on each due date until such time as the total sum of €2,486.03 has been paid in full.

5. 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.

6. The Appellant Tenant shall also pay any further rent outstanding from 4 September 2015, at the rate of €900 per month or proportional part thereof at the rate of €29.59 per day and any other charges as set out in the terms of the tenancy agreement for each month or part thereof, until such time as he vacates the above dwelling.

8. The Respondent Landlord shall refund the entire of the security deposit of €900 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.