**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001217 / Case Ref No: 0315-17149**

**Appellant Tenant:** Istvan Kontz

**Respondent Landlord:** Tommy Hopkins, Jim Hamilton (Receiver), David O'Connor (Receiver)

**Address of Rented Dwelling:** Apartment 45, The Gravel Walk Court, 52 Blackhall Place , Dublin 7.

**Tribunal:** Brian Murray (Chairperson)

Nesta Kelly, Anne Colley

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

**Date & time of Hearing:** 09 September 2015 at 10:30

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| **Attendees:** | Alan McMurray, Bespoke Ltd, (Respondent Landlord’s Representative)  Istvan Kontz (Appellant Tenant)  Erika Marosi (Appellant Tenant’s Witness) |
| **In Attendance:** | Gwen Molone Stenographers |

**1. Background:**

On 06 March 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 07 May 2015. The Adjudicator determined that In the matter of BDO Ireland - the Applicant - (in their capacity as Receiver over certain assets of the Landlord, Mr Thomas Hopkins.) and Mr. Istvan Kontz, (the Respondent Tenant), the Adjudicator, in accordance with Section 97(4)(a) of the Residential Tenancies Act, 2004, determines that:

1. The Notice of Termination served on the 6th of October 2014, by the Applicant’s agent on the Respondent Tenant, in respect of the tenancy of the dwelling at Apartment 45, The Gravel Walk Court, 52 Blackhall Place, Dublin 7, is valid.

2. The Respondent Tenant, and all persons residing in the above dwelling, shall vacate and give up possession of the above dwelling within 30 days of the date of issue of the Order.

3. The Respondent Tenant shall pay the total sum of €8,198 to the Applicant, in 10 consecutive monthly payments of €800, on the 28th day of each month, followed by one final payment of €198 on the 28th day of the immediately succeeding month, payment commencing on the 28th day of the month immediately following the month of issue of the Order, this sum being rent arrears of €8,198 in respect of the tenancy of the dwelling at Apartment 45, The Gravel Walk Court, 52 Blackhall Place, Dublin 7.

4. The enforcement of the Order for such payment of €8,198 will be deferred and the total sum owing reduced by the cumulative sum paid in the monthly payments by the Respondent Tenant to the Applicant, on each due date, until such time as the total sum of €8,198 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 Applicant.

6. The Respondent Tenant shall also pay any further rent outstanding from the 7th of May 2015 (date of the hearing), to the Applicant at the rate of €730 per month or proportional part thereof at the rate of €24 per day, unless lawfully varied, 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.

7. The Landlord shall refund the entire of the security deposit of €730 to the Respondent Tenant, upon the Respondent Tenant vacating and giving up vacant possession of the above dwelling, less any amounts properly withheld in accordance with the provisions of the Act.

Subsequently the following appeal was received by the PRTB from the tenant on 17 June 2015. The grounds of the appeal were Rent arrears and overholding. The appeal was approved by the Board on 23 June 2015.

The PRTB constituted a Tenancy Tribunal and appointed Nesta Kelly, Anne Colley, Brian Murray as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Brian Murray to be the chairperson of the Tribunal (“the Chairperson”).

On 13 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 09 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:**

None

**4. Procedure:**

The Chairperson asked the Parties present to identify themselves and to identify in what capacity they were attending the Tribunal. He 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”. He explained the procedure which would be followed; that the Tribunal was a formal procedure but that it would be conducted in a manner that would be as informal as was possible.

He stressed that all evidence would be taken on oath or affirmation and be recorded by the 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.

He 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 enforced by either of the Parties or in some cases by the Board of the PRTB at its discretion. He also advised the parties that the Tribunal process was the final step in the dispute resolution process unless appealed to the High Court on a point of law only.

He asked the Parties if they had any queries about the procedure. There were none.

The parties intending to give evidence were sworn in.

**5. Submissions of the Parties:**

The Appellant Tenant’s Case:

It was the evidence of the Appellant Tenant that he accepted that he has not paid the rent and he agreed that the rent was in arrears since June 2014. However, he stated that he wants to find a solution with the Receivers so that his family does not end up homeless. He stated that it was his belief that the Receivers have an option to assist the Appellant through the difficult times by agreeing to accept rent supplement allowance towards the rent.

The Appellant states that he and his family are eligible for rent supplement and that they are currently on the Housing Authority waiting list. He states that the tenancy commenced in 2011 and when he started living there, he was not in receipt of rent supplement. He states that he was previously in apartment No. 11 in the same development and owned by the Landlord but in order to qualify for rent supplement, you need to have been living in the same place for 6 months and when he moved to the dwelling the subject of this dispute, that delayed his ability to become eligible for rent supplement. He stated that when he became eligible for rent supplement, the Landlord had agreed to accept it towards the rent and this amounted to €66 per week. He is not currently receiving rent supplement but he was during 2012 and 2013. He stated that the rent supplement stopped at some point during the end of 2013 and he has not been in receipt since then. He stated that the €66 per week which he received by way of rent supplement was not enough to cover the entire rent and he supplemented the balance himself.

The Appellant Tenant stated that currently he is unable to pay the rent. He stated that he transferred his jobseeker's allowance to a back to work scheme allowance in order to set up a ‘Zumba’ fitness business. He stated that this business made a profit of approximately €500 in the past year and that he receives approximately €560 per month in a back to work allowance. He stated that his partner has just had a baby and after paying the utility bills and essential living expenses, there is not enough money to pay the rent.

The Appellant Tenant stated that the Receivers, or their agents, have refused to accept rent supplement towards the rent and have refused an offer to sign a rent supplement form. He stated that in or around September 2014 he made contact with MABS and through MABS he sought a new letting agreement and the rent book. In addition, he stated that at a meeting outside of the dwelling in September 2014, the Receiver’s agent, Mr. McMurray of Bespoke Estate Agents, refused to sign a SWA RS1 form. He stated that his partner is now in receipt of State maternity benefit and his evidence was that the State maternity benefit along with the rent supplement would allow him and his partner to receive approximately €950 per month in State benefit. He stated that he had been informed of this by the Department of Social Protection.

The Appellant was then cross-examined by Mr. McMurray of Bespoke Estate Agents who asked the Appellant why he did not pay any monies to the Receivers if his evidence was that he previously paid monies to the Landlord over and above the €66 per week he was receiving in rent supplement. The Appellant stated that he did but this was disputed by Mr. McMurray. The Appellant then accepted Mr. McMurray’s assertion that Mr McMurray had a left a note under the door of the Appellant’s apartment informing him that Bespoke Estate Agents were the new managing agents and providing him with contact details and bank account details.

The Appellant Tenant accepted that the rent arrears outstanding in respect of the tenancy up to and including the day of the Tribunal hearing related to 15 months and 9 days of arrears, which amounted to €11,166. The Appellant Tenant did not refer any issue as to the validity of the said Notice of Termination per se to the PRTB within the prescribed period and stated at the Tribunal hearing that he accepted that he had received the Notices of warning and termination

The Respondent’s Case:

Evidence was given by Mr. Alan McMurray of Bespoke Estate Agents and he stated that when they took over as managing agents of the apartments in the control of the Receivers in the apartment block within which the Appellant’s apartment is situated, the only information they had was whatever information the Landlord had given the Receivers and he said his communication with the Appellant was very limited as he had been unable to make contact with him and the tenant had not returned his calls. As a result of this he stated he had to visit the apartment personally. He stated that the Appellant was unresponsive and never responded to a letter of February 2014 seeking information. In response to the Appellant’s evidence that he refused to sign a SWA RS1 form, Mr. McMurray denied ever being presented with such a form.

Mr. McMurray was asked by the Tribunal whether he would have been mindful of, and considered acceding to a request to sign the rent supplement forms if the Notice of Termination had not already issued. In response, he stated that they had already attempted to agree a scheme with the Appellant in order to bring his arrears up to date. He stated that they had made an agreement that the Appellant would increase the monthly rent to make up for the 4 months in arrears at the time but that agreement was not adhered to by the Appellant. In addition, he stated that the Appellant had told him that he had an arrangement with the previous Landlord that in order to make up for the shortfall in rent, the Appellant would do cleaning work in the common areas. Mr. McMurray states that this never happened and that there is a company engaged for that cleaning work. Mr. McMurray stated that he received an email on 30 October 2014 looking for a new letting agreement and the rent book but he states that by that stage the Notice of Termination had already been served. Mr. McMurray’s evidence was that there was a genuine belief that the Appellant would have continued to fail to pay the rent and that he would break any alternative payment arrangement and therefore there was nothing to be gained by prolonging the tenancy.

Mr. McMurray stated that notwithstanding the Appellant’s assertion that he is now entitled to receive €950 per month in social welfare payments, the trust with the Appellant has irretrievably broken down and that the rent is very much undervalued and he believes that in the current market it will re-rent for approximately €1,200. He stated that enough money has been lost already and therefore he wishes to continue with the termination of the tenancy.

**6. Matters Agreed Between the Parties**

1) The Dwelling is Apartment 45, The Gravel Walk Court, 52 Blackhall Place, Dublin 7.

2) The tenancy commenced in August or September 2011.

3) The agreed rent in respect of the tenancy of the Dwelling is €730 per month.

4) The Tenant paid a security deposit of €730.

5) The security deposit is still retained by the Landlord.

6) Rent was in arrears since 1 June 2014.

7) The Receivers were validly appointed on 6 December 2013.

**7. Findings and Reasons:**

Based upon the evidence provided and on the balance of probabilities the Tribunal has made the following findings:

Finding No.1:

The Tribunal finds that the Notice of Termination served on 6th October September 2014 on the Appellant Tenant in respect of the tenancy of the dwelling at Apartment 45, The Gravel Walk Court, 52 Blackhall Place, Dublin 7 is valid.

Reason:

The tenancy of the dwelling commenced in 2011 and as such being in existence for a period of in excess of 6 months has attained Part 4 status under the Act of 2004. The oral evidence of Mr. McMurray and the supporting documentation submitted to the Tribunal showed that the Respondent Landlord complied with all three preliminary steps required in a process of termination of a Part 4 tenancy in respect of rent arrears in accordance with the provisions of s.34 and s.67 of the Act of 2004. In this case the steps taken were by issuing the appropriate notifications warning the Appellant Tenant of the consequences of being in rent arrears on a number of occasions, and then by issuing a 14 day Warning Notice in regard to the rent arrears in accordance with the provisions of s.67 of the Act on the 16th September 2014 and finally by issuing a Notice of Termination that contained all of the elements prescribed under s.62 of the Act on 6th October 2014.

Furthermore the Appellant Tenant stated to the Tribunal at the hearing that he did not dispute or question the validity of the said Notice of Termination.

Finding No. 2

The Tribunal finds that rent arrears in the total sum of €11,166 as at the date of the Tribunal Hearing had accumulated during the course of the tenancy.

Reason:

The Parties agreed that, as of the date of the hearing, the rent had been in arrears for 15 months and 9 days since 1 June 2014 and therefore the sum of €11,166 represents the amount that is due in rent arrears from that date. This is calculated on the following basis:

15 months at €730 p/m = €10,950

9 days at €24 per day = €216 (730 x 12 = €8,760/365 = €24 [daily rent])

Total rent arrears are €10,950 + €216 = €11,166

In respect of the arrears, the Tribunal did consider whether the Respondent Landlord had failed to mitigate its losses through the withholding of cooperation in relation to the issue of refusing to accept rent supplement from the Appellant. However, having carefully considered all of the evidence, the Tribunal accepts the evidence of Mr. McMurray that attempts had been made to come to alternative payment arrangement with the Tenant but that the Tenant had not adhered to these arrangements. It was accepted therefore that the trust between the parties had irretrievably broken down and that the Landlord/Receivers would receive a higher rent on the open market than any rent the Appellant may be in a position to pay. Accordingly therefore, no finding of culpability on the part of the Landlord/Receivers for not accepting rent supplement is made.

**8. Determination:**

**Tribunal Reference TR0615-001217**

**In the matter of Istvan Kontz (Tenant) and Tommy Hopkins, Jim Hamilton (Receiver), David O'Connor (Receiver) (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

1. The Notice of Termination served on 6 October 2014 by the Respondent on the Appellant Tenant in respect of the tenancy of the dwelling at Apartment 45, The Gravel Walk Court, 52 Blackhall Place, Dublin 7 is valid.
2. The Respondent Tenant and all persons residing in the above dwelling shall vacate and give up possession of the above dwelling within 84 days of the date of issue of this Order.
3. The Appellant Tenant shall pay the total sum of €11,166 to the Respondent being rent arrears due in 55 equal consecutive payments of €200 per month on the 28th day of each month commencing on the 28th day of the month immediately following the date of issue of the Order followed by one further payment of €166 on the 28th day of the immediately ensuing month.
4. The enforcement of the Order for such payment shall be deferred and the total sum owing will be reduced by the value of the cumulative monthly instalments made to the Respondent on each due date until the total sum of €11,166 has been paid in full.
5. For the avoidance of doubt any default in the payment of the monthly instalments shall act to cancel any further deferral and the balance due at the date of default shall immediately become due and owing to the Respondent.
6. The Appellant Tenant shall also pay any further rent outstanding from 10 September 2015 at the rate of €730 per month, or at a rate of €24 per day where a full calendar month does not apply, unless lawfully varied and any other charges as set out in the tenancy agreement for each month or part thereof until such time as he vacates and gives up possession of the dwelling.
7. The Respondent Landlord shall return the security deposit of €730 to the Appellant Tenant on gaining vacant possession of the above dwelling less any amount proprtly withheld in accordance with the provisions of the Act.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 16 September 2015.

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| **Signed:** |  |

**Brian Murray Chairperson**

For and on behalf of the Tribunal.