**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001219 / Case Ref No: 0115-16052**

**Appellant Tenant:** Beverly Copeland

**Respondent Landlord:** Simon Coyle (Receiver), John O'Connor

**Address of Rented Dwelling:** 16 Linden, 31-33 Merrion Road, Ballsbridge, Dublin 4,

**Tribunal:** John FitzGerald (Chairperson)

Deirdre Bignell, Gareth Robinson

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

**Date & time of Hearing:** 13 August 2015 at 10:30

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| **Attendees:** | Maria Keeshan, Mazars Receivers and Linda May Fox, Landlord's Agent. |
| **In Attendance:** | Gwen Malone Stenographer. |

**1. Background:**

On 6 January 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 6 March 2015. The Adjudicator determined that

1. The Respondent Tenant shall pay the total sum of €3,800 to the Applicant Landlord in 6 consecutive monthly instalments at the rate of €600 per calendar month, on the first day of each month, followed by one further instalment of €200 on the first day of the 7th month, commencing the next month after the issue of the Order. This sum represents rent arrears of €5,700 having deduced the entire of the justifiably retained security deposit of €1,900 in respect of the tenancy of the dwelling at 16 Linden, 31-33 Merrion Road, Ballsbridge, Dublin 4.

2. The enforcement of the Order for such payment of €3,800 will be deferred and the total sum owing will be reduced by the number of monthly instalments of €600 made by the Respondent Tenant to the Applicant Landlord on each due date until the sum of €3,800 has been paid in full

3. For the avoidance of doubt, any default in the payment of the monthly instalments of €600 shall act to cancel any further deferral and the balance due at the date of the default shall immediately become due and owing to the Applicant Landlord.

Subsequently the following appeal was received by the PRTB and this was approved by the Board.

The PRTB constituted a Tenancy Tribunal and appointed Deirdre Bignell, John FitzGerald and Gareth Robinson as Tribunal members pursuant to Section 102 and 103 of the Act and appointed John FitzGerald to be the chairperson of the Tribunal (“the Chairperson”).

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 13 August 2015 the Tribunal convened a hearing at Tribunal Room, PRTB,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 Party present to identify themselves and to identify in what capacity they were attending the Tribunal. The Chairperson confirmed with the Party 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 outlined to the Tribunal that the Appellant Tenant was unable to attend the hearing but had indicated that she wished to have considerable documentation which she had submitted taken into account by the Tribunal and he notified the Party present of this request.

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.

The Chairperson explained that, the Party would be given an opportunity to make a final submission.

The Chairperson stressed 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 Party 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].

The Chairperson notified the Party present that any member of the Tribunal could ask a question from time to time which he directed should be answered.

The Party was then sworn in.

**5. Submissions of the Parties:**

Appellant Tenant’s Case

There was no appearance by the Appellant Tenant at the Tribunal, however considerable paperwork had been received by the PRTB which was considered at the Tribunal. The Appellant Tenant made it clear that her time in Ireland was upsetting and unhappy and that she felt very insecure in the dwelling and the country. She gave lengthy details of her reasons for being uneasy during the duration of the tenancy, and felt that the high cost of her rented accommodation in Dublin was one of her primary reasons for vacating the dwelling. The Appellant Tenant conceded at various points in her submissions that two months’ rent remained outstanding but indicated that she cannot afford to repay the debt.

Respondent Landlord’s Case:

Evidence of Linda May Fox (Landlord’s Management Agent)

The Respondent Landlord’s Agent gave evidence that the Respondent Landlord was happy to release the Appellant Tenant from the tenancy when she became unhappy and insecure there. She outlined to the Tribunal that it was obvious in her correspondence exchanged with the Appellant Tenant towards the conclusion of her tenancy that there was no point prolonging a tenancy which was problematic. She told the Tribunal that the Appellant Tenant had indicated that she did not have the funds to discharge the outstanding rent owed and that she had stated ‘that you cannot get blood from a stone’. She understood that the Appellant Tenant tried to find alternative accommodation and they were happy to give her a good onward reference. This had been their position prior to their becoming aware of rent arrears in respect of June, July and August 2014 totalling €5,700. Having deducted the value of the security deposit in the sum of €1,900 from the arrears, she stated that the rent outstanding amounted to €3,800.

The Respondent Landlord’s Agent stated that the dwelling was in good condition on termination of the tenancy and went on to give evidence that the dwelling was situated in a highly secure building which was protected by CCTV, an alarm on each apartment, security gates, bolt locks and regular locks on the doors, and being located in the embassy belt of Dublin city, a high level of Gardai surveillance.

She summed up by stating that the tenancy came to a natural conclusion and that the Appellant Tenant had always stated in emails that she intended to pay the outstanding rent and it was only after a period of time that new reasons for not paying were highlighted. The Tribunal asked the Respondent Landlord’s Agent if she had considered the documentation provided to the Tribunal by the Appellant Tenant and if she wished to address her submissions. The Respondent Landlord’s Agent had no comments which would bring new evidence to bear based on what she had read in the casefile.

**6. Matters Agreed Between the Parties**

None.

**7. Findings and Reasons:**

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

7.1 Finding: The Tribunal find that the Appellant Tenant is in breach of her obligations under section 16(a) of the Act for failing to pay the Respondent Landlord the rent provided for under the tenancy on the date it fell due for payment.

Reasons:

1. At the end of the tenancy there were rent arrears in the sum of €5,700, being three months’ rent in respect of the months of June, July and August 2014. Taking into account the retention by the Respondent Landlord of the security deposit of €1,900, the balance due to the Respondent Landlord is €3,800. The Tribunal is satisfied on the basis of the oral testimony of the Respondent Landlord’s Agent, and considerable email and correspondence on the casefile, that this sum is due and owing to the Respondent Landlord in respect of the tenancy at 16 Linden, 31-33 Merrion Rd, Ballsbridge, Dublin 4.

**8. Determination:**

**Tribunal Reference TR0615-001219**

**In the matter of Beverly Copeland, Beverly Copeland (Tenant) and Simon Coyle (Receiver), John O'Connor (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Tenant shall pay the total sum of €3,800 to the Receiver, within 28 days of the date of the issue of this order, being rent arrears of €5,700 having deducted the entire of the justifiably retained security deposit of €1,900 in respect of the tenancy of the dwelling at 16 Linden, 31-33 Merrion Rd, Ballsbridge, Dublin 4.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 23/08/2015.

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

**John FitzGerald Chairperson**

For and on behalf of the Tribunal.