**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001222 / Case Ref No: 0115-16512**

**Appellant Landlord:** Tom Long

**Respondent Tenant:** Abdelali Kanane

**Address of Rented Dwelling:** 40 Park Avenue, Clonroad, Ennis , Clare, V95X0NN

**Tribunal:** Siobhan Phelan (Chairperson)

Brian Murray, Mervyn Hickey

**Venue:** Meeting room 2, 2nd Floor, Limerick County Council, County Hall, Dooradoyle, Limerick.

**Date & time of Hearing:** 01 September 2015 at 2:30

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| **Attendees:** | Tom Long (Appellant Landlord)  Perry Long (Landlord's wife), Brendan Long (Landlord's son)  Abdelali Kanane (Respondent Tenant)  Wissal Kanane (Tenant's daughter) |
| **In Attendance:** | Gwen Malone Stenographer |

**1. Background:**

On 31January 2015 the Tenant 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:

1. The Applicant Tenant’s application, regarding the Respondent Landlord’s breach of their obligations under the Act in relation to the repair and maintenance of the dwelling, in respect of the tenancy of the dwelling at 40 Park Avenue, Clonroad, Ennis , Co Clare is not upheld.

2. The Respondent Landlord shall pay the sum of €280 to the Applicant Tenant within 21 days of the date of issue of the Order, being €200 for damages for the unlawful termination of the tenancy of the dwelling at 40 Park Avenue, Clonroad, Ennis, Co. Clare and the sum of €80 for the service of the boiler at the dwelling, having allowed for the justifiably retained security deposit of €600 and having set off the sum of €600 in respect of damages for the breach of the Applicant Tenant of his obligations pursuant to section 16(f) of the Act in respect of the dwelling at 40 Park Avenue, Clonroad, Ennis , Co. Clare.

3. The Applicant Tenant’s application, regarding the Respondent Landlord’s penalisation of the Applicant Tenant for referring a dispute to the PRTB in respect of the tenancy of the dwelling at 40 Park Avenue, Clonroad, Ennis, Co. Clare is not upheld.

Subsequently the following appeal was received from the Landlord on 20 June 2015. The grounds of the appeal were Breach of tenant obligations, Invalid Notice of termination, and another. The appeal was approved by the Board on 03 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Siobhan Phelan, Brian Murray, Mervyn Hickey as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Siobhan Phelan to be the chairperson of the Tribunal (“the Chairperson”).

On 08 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 01 September 2015 the Tribunal convened a hearing at Meeting room 2, 2nd Floor, Limerick County Council, County Hall, Dooradoyle, Limerick.

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

* 1. PRTB File

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

The originals of receipts already submitted to the Tribunal were available.

**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 manner as was possible; that the person who appealed (the Appellant) would be invited to present their case first; that there would be an opportunity for cross-examination by the Respondent, that the Respondent would then be invited to present her case, that there would be an opportunity for cross-examination by the Appellant.

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 she reminded the Parties that knowingly providing false or misleading statements to the Tribunal was an offence punishable by a fine of €4,000 or up to 6 months imprisonment or both.

The Chairperson 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 (section 123(3) of the 2004 Act).

**5. Submissions of the Parties:**

Appellant / Landlord’s Case

The Appellant Landlord was assisted in the presentation of the appeal by his son who informed the Tribunal at the outset that the issues the Landlord was appealing in respect of were limited to:

• The low level at which damage to property and replacement cost had been assessed;

• The finding that the tenant was entitled to credit for fixing the boiler;

• The validity of the Notice of Termination sent by the Tenant / Respondent which it was claimed had not been dealt with in the Adjudicator’s Decision.

It was thus confirmed that Appellant Landlord was not challenging the finding that there had been an invalid termination of tenancy and was not pursuing a claim for arrears of rent associated with a claim for increased rent contained in papers before the Tribunal.

Damages

During the course of the hearing the Appellant Landlord produced originals of the receipts already lodged with the PRTB and claimed that expense had been incurred to the order €1,323.74 in replacing damaged and missing property and in cleaning the property. Reliance was placed on an inventory of items said to have been in the dwelling at the commencement of the tenancy, photographic evidence of the dwelling and its contents prior to the commencement of the tenancy and photographic evidence of the condition of the dwelling at the conclusion of the tenancy.

The Appellant Landlord contended that the damage to the dwelling and its contents was well beyond normal wear and tear. It was maintained that the dwelling was left in a filthy condition and that items such as the kettle and toaster, although functioning, were so dirty as to require replacement. It was also claimed that the carpet was so dirty as to require to be steam cleaned and that there was nail varnish on walls, carpets and furniture. As a consequence it was claimed that the dwelling needed to be repainted and that it had proven impossible to remove the varnish from the carpet. It was claimed that beds had been removed from the dwelling by the Respondent Tenant and had been damaged. It was claimed that a remote control for the stove was missing and could not be replaced necessitating the use of manual controls.

In response to a complaint about leaks put to the Appellant Landlord by the Respondent Tenant, the Appellant Landlord did not accept that damage to property had resulted from leaks which the Landlord had failed to repair contending that there were no such leaks and that this damage resulted from the manner in which the Respondent Tenant was using the shower and bathroom. The Appellant Landlord produced photographic evidence of two of the vents in the dwelling blocked with paper. It was maintained that mould resulted from poor ventilation which it was claimed was caused by the Respondent Tenant blocking up the vents with paper and identified paper blocking one of the vents as a document bearing the Respondent Tenant’s name and details.

In response to the Respondent Tenant’s claim that he had offered to replace the mattress protectors identified as missing on final inspection and to replace any other damaged items, the Appellant Landlord stated that the he was concerned that the Respondent Tenant did not know what a mattress protector was and would not replace them with the correct items. It was further stated that the Landlord was not aware of all damage or missing items upon final inspection and had decided in advance that they would not engage in conflict by identifying damaged items during the inspection. It was similarly maintained that the by the time the adjudication hearing took place, the Landlord still did not know the extent of the damage and had not been in a position to fully set out or vouch for the claim before the Adjudicator.

Boiler

The Appellant Landlord maintained that the first the Landlord was aware that the boiler had required repair was when the invoice was produced as part of the Respondent Tenant’s claim. It was stated that there had been no prior notification to them of any issue with the boiler and issue was taken with the categorization by the Adjudicator of the repair work as “urgent” in circumstances where the boiler is located outside the property and thus did not present a risk to safety in the dwelling.

Service of Notice of Termination by Respondent

The Appellant Landlord maintained a claim for compensation arising from an asserted unlawful termination of the tenancy by the Respondent Tenant. This claim was maintained on the basis of inadequate notice in the Notice of Termination and notwithstanding that they had already sought to effect the termination of the tenancy on the basis that they were left in a state of uncertainty in relation to when they might hope to recover possession of their property. The Appellant Landlord pointed to the fact that the Respondent Tenant had been allowed a figure in compensation for unlawful termination of the tenancy by the Adjudicator but that no similar award had been made in their favour.

Respondent / Tenant’s Case

Damage to Property

The Respondent Tenant claimed that there had been no signed inventory of dwelling contents at the commencement of the tenancy and that he had not seen the inventory at that time. Thus, he claimed that the inventory produced did not represent an agreement by him that the matters listed were actually present in the dwelling.

The Respondent Tenant accepted that some damage had been caused to the property during his occupation. In particular he accepted that a bedroom locker had been damaged. He accepted wear and tear to a mattress. He did not accept that damage to other items, such as kettle or toaster, exceeded normal wear and tear or was such as to require the replacement of those items. He claimed that he had offered to replace the mattress protectors or any other items identified to him as damaged but that this offer was not accepted and he was not advised of matters requiring attention at the time of vacating the premises.

He relied on photographic evidence to show the condition of the dwelling at the time the tenancy ended and to support his contention that the dwelling was left in a clean condition and that household contents, subsequently replaced by the Appellant Landlord, were present in the dwelling. He claimed that he had replaced a mattress in the dwelling with a better mattress and that the bed which had been left in the back garden of the dwelling and removed as damaged by the Appellant Landlord was his mattress and was not the property of the Appellant Landlord. He claimed to have moved household items to the attic and the shed with the Appellant Landlord’s consent. He claimed to have no knowledge of the remote control for the stove or some of the household items identified by the Appellant Landlord as damaged. He did not accept that the dwelling required to be repainted or that the carpet, which he said was dark green, was so dirty as to require to be steam cleaned.

He claimed that mould in the dwelling was as a result of poor ventilation and that water damage had also resulted from leaks which had never been properly repaired by the Appellant Landlord. He contended that the ceiling would have collapsed due to trapped water but for his intervention in releasing trapped water by piercing small holes in the ceiling.

Boiler

The Respondent Tenant maintained that following a significant storm the boiler stopped working. He said he sent a message to the Appellant Landlord. As the boiler was not working and he could not stay in the dwelling without heating, he called a plumber who repaired the boiler. He paid the invoice himself.

Termination of Tenancy

The Respondent Tenant said he served short notice of Termination of Tenancy because the dwelling had become unsafe and he was concerned that there was a risk of ceiling collapse as a result of water leaking through and the persistence of the leaking problem. He also complained about a lack of privacy in his home as he felt he was under surveillance and the fact that his interactions with the Appellant Landlord by text and otherwise had made his family uncomfortable remaining in the dwelling.

The Respondent Tenant sought to introduce covert surveillance footage into evidence. This had been taken during a final inspection but without the knowledge of the Appellant Landlord. The Respondent Tenant wished to rely on the footage to demonstrate the length of time and thoroughness of the inspection and also to evidence the fact that no issues were raised. As there was agreement that a lengthy inspection had taken place and that the issues now raised were not raised at that time, the Tribunal decided it was not necessary to decide on the admissibility of the video evidence.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the parties:

1. The address of the rented property is 40 Park Avenue, Clonroad, Ennis, Co. Clare.

2. The monthly rent under the written lease agreement was €600.00. Rent was paid at this rate for the duration of the tenancy.

3. The security deposit paid was €600.00. The deposit has not been refunded.

4. The tenancy commenced on the 25th of November, 2012 and the Respondent Tenant vacated the dwelling on the 25th of April 2015.

5. There were three Notice of Terminations served by the Appellant Landlord on the Respondent Tenant on the 19th of March 2015, on the 23rd of March 2015 and on the 24th of March 2015. The Respondent Tenant served a Notice of Termination on the 14th of April, 2015.

6. That a final inspection lasting more than forty minutes had taken place.

**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 the reasons thereof, are set out hereunder.

7.1 Finding: The Tribunal finds that there was damage to property in excess of normal wear and tear which it assesses at €500.

Reasons

In light of the conflict of evidence between the parties, the Tribunal placed particular weight on the photographic evidence available to the Tribunal and was assisted by the fact that photographs had been taken prior to the commencement of the tenancy and at the end of the tenancy.

The Appellant Landlords have established that the Respondent Tenant acted in breach of section 16 of the Act in relation to the condition of the dwelling and in particular in relation to the contents including the mattresses, a damaged bedroom locker, holes in the wall in the sitting room and a broken decorative plate. It is further accepted that mattress protectors and some other household items were missing.

Although it has been established that there was some damage in excess of normal wear and tear, the Tribunal considered that the photographic evidence did not bear out much of the complaint when one has regard to what could be considered normal wear and tear following occupation of a property by a family unit which includes children for a period exceeding two years.

It is the view of the Tribunal that the kettle and toaster, for example, were functioning and could have been cleaned rather than replaced. The Tribunal does not consider the Respondent Tenant is liable under the Act for the cost of replacement of items in such circumstances.

While it was common case that there was damage to the property resulting from leaks and poor ventilation, there was no agreement as to the cause of the problem. Having weighed all of the available evidence, the Tribunal considers that the Appellant Landlord did not establish that the leaks were caused by the Respondent Tenant.

The Tribunal is satisfied, however, that some of the vents in the dwelling were blocked by the Respondent Tenant and this may have contributed to the development of a mould problem or exacerbated an existing problem of poor ventilation. Where the tenancy was a relatively long tenancy, however, and where damage was caused by leaks which the Tribunal does not accept were caused by the Respondent Tenant, the Tribunal considers that the costs of repainting the property is not a cost which the Respondent Tenant should bear.

As it has not been possible to replace the remote control for the stove and the stove is still functioning, the Tribunal does not consider it necessary to resolve the conflict of whether there was a remote control present in the dwelling at the time or letting or not for the purpose of assessing damages.

The photographic evidence does not bear out the complaint that the property was left in a dirty condition or that the carpets required to be steam cleaned and this aspect of damage was not established.

Allowing the full amount of the vouched figures for two mattresses, two bases, a bedside locker, the damaged table and four mattress protectors, the Tribunal assesses damages in the sum of €500.00. The Tribunal does not allow the figures claimed for replacement cutlery, delph and other items as it is not satisfied that these items required to be replaced. Nor does the Tribunal allow the figure claimed for repainting the dwelling or steam cleaning the carpet having regard to the failure on the part of the Appellant Landlords to establish that the Respondent Tenant caused them to incur costs they would not otherwise have incurred but for damage in excess of normal wear and tear.

7.2 Finding: The Tribunal finds the Appellant Landlord was in breach of his obligations under section 12 in failing to properly investigate and resolve leaks at the dwelling and it assesses damages in respect of this breach in the sum of €500.00.

Reasons

While the Appellant Landlord attended to deal with the leaks, the Tribunal considers the response of the Appellant Landlord to the leaks was inadequate in circumstances where we are satisfied on the evidence that the leaks persisted for a significant period and were never resolved satisfactorily by the Appellant Landlord. We are further satisfied on the evidence that the leaks interfered to a significant extent with the Respondent Tenant’s peaceful occupation of the dwelling and further that ultimately the collapse of the ceiling was prevented only by the Respondent Tenant's intervention. The Tribunal determines that the Landlord was in breach of his obligations by failing to ensure that the problem was professionally investigated and resolved.

7.3 Finding: The Tribunal finds that the Respondent Tenant should be reimbursed the costs of repairs to the boiler.

Reasons

There was conflict on the evidence as to whether the Appellant Landlords had been notified of the service to the boiler or not. The Tribunal has concluded that as boiler service is the responsibility of the Appellant Landlord and it was common case that the Appellant Landlord had not arranged for the service of the boiler during the course of the tenancy, that the Respondent Tenant is entitled to be reimbursed the cost of boiler service.

7.4 Finding: The Tribunal finds that neither the Appellant Landlord nor Respondent Tenant is are entitled to damages for the service of an invalid termination notice.

Reasons

From the evidence before the Tribunal and the conduct of the parties during the hearing, it is clear that by the time the Respondent Tenant served his Notice of Termination the relationship between the parties had become unworkable and the Appellant Landlord had already attempted to terminate the tenancy on no less than three separate occasions. Even during the hearing there was an unrestrained and undignified exchange of allegations and counter allegations. In the circumstances, the Tribunal considers that neither party should be entitled to an award of damages for the service of an invalid termination notice.

**8. Determination:**

**Tribunal Reference TR0615-001222**

**In the matter of Tom Long (Landlord) and Abdelali Kanane (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Appellant Landlords shall pay the Respondent Tenant the sum of €680 within a period of six weeks from the date of issue of the Order by the Board being the sum of the unjustifiably retained deposit of €600 and the cost of boiler repairs of €80 together with €500 in respect of the breach of the Appellant Landlord’s obligations in failing to properly address leaks at the dwelling less the sum of €500 for damages payable to the Appellant Landlord in respect of damages in excess of normal wear and tear in respect of the tenancy of the dwelling at 40 Park Avenue, Clonroad, Ennis, Co. Clare.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 29th of September, 2015.

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| **Signed:** |  |

**Siobhan Phelan Chairperson**

For and on behalf of the Tribunal.