**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001225 / Case Ref No: 0315-17532**

**Appellant Tenant:** Fergal Mangan

**Respondent Landlord:** Sagar Pardeshi

**Address of Rented Dwelling:** 32 Castle Lawns, Kilgobbin Wood, Stepaside , Dublin 18.

**Tribunal:** Kevin Baneham (Chairperson)

Ciara Doyle, Andrew Nugent

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

**Date & time of Hearing:** 10 September 2015 at 2:30

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| **Attendees:** | Fergal Mangan (Appellant Landlord)  Colin Brady, letting agent, (Representative of Respondent Landlord) |
| **In Attendance:** | Gwen Malone Stenographers |

**1. Background:**

On the 26th March 2015, the tenant referred a dispute to the Private Residential Tenancies Board in relation to deductions made from his deposit arising from the end of a fixed term letting agreement.

Following an adjudication hearing, the adjudicator determined as follows:

The Respondent Landlord shall pay the total sum of €359.61 to the Applicant Tenant, within 7 days of the date of issue of the Order, being the balance of the retained security deposit of €1,800.00 having deducted €810.39 in rent arrears, €90.00 in respect of reregistration of the PRTB and €500.00 in loss of income and €40.00 in costs for attending at a previous PRTB hearing, in respect of the tenancy of the dwelling at 32 Castle Lawn, Kilgobbin Wood, Stepaside, Dublin 18.

On the 23rd June 2015, the appellant tenant lodged an appeal whereby he challenged the findings and determination on the grounds that the agent should not have unilaterally reduced the rent sought in the next letting and complains of the language used in the adjudication report.

The appeal was referred to a Tenancy Tribunal by the board of the Private Residential Tenancies Board. In accordance with sections 102 and 103 of the Residential Tenancies Act (‘the Act’), a Tenancy Tribunal was constituted with Kevin Baneham as Chairperson and Ciara Doyle and Andrew Nugent appointed as members.

The parties were served with notice of the date, time and venue of the Tenancy Tribunal and with copies of the Tribunal Procedures. On 10 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:**

At the commencement of the hearing, the Chairperson asked the parties present to identify themselves and to identify in what capacity they were attending the Tenancy Tribunal. The Chairperson confirmed with the parties that they had received the relevant papers from the Private Residential Tenancies Board in relation to the case and that they had received the Tribunal Procedures.

The Chairperson explained the procedure that would be followed; that the Tribunal was a formal procedure but that it would be held in an informal a manner as was possible; that the appellant tenant would be invited to present their case first; that there would be an opportunity for cross-examination by the respondent landlord; that the respondent landlord would then be invited to present their case, and that there would be an opportunity for cross-examination by the appellant tenant. Both parties would be given the opportunity to make final submissions. The Chairperson asked the parties whether they had questions regarding the procedures to be followed in the Tenancy Tribunal and they both said that they did not.

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 €4,000 or up to six 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 only be appealed to the High Court on a point of law.

**5. Submissions of the Parties:**

Evidence and submissions of the appellant tenant

At the hearing, the appellant tenant outlined that he first viewed the dwelling on the 5th November 2014 and that an alarm had sounded during the duration of his visit. While he liked the apartment, the sounding alarm hid the noise generated by heavy traffic immediately adjacent to the dwelling. On the 10th November 2014, he paid a booking deposit of €750. The tenancy commenced on the 12th November 2014 and he paid a further €2,500 on this date. The rent in the tenancy was €1,450 per month.

In the first week of the tenancy, it became apparent to the appellant tenant and his partner that the amenity of the dwelling was undermined by the heavy traffic both day and night along the adjacent road. They sought to moderate this by shutting the windows and vents, but this had the effect of making the dwelling stuffy. This problem was so serious that the appellant tenant then sought to terminate the tenancy at this early stage. He raised this with one of the letting agents charged with managing the letting. She replied that he would be liable for the rent until the new tenants took possession of the dwelling and that he could advertise for new tenants himself. The appellant tenant said that he took it as a given that the dwelling would be re-let at the same rent as he was paying.

The appellant tenant said that on the 22nd November 2014, he confirmed with the agent that he would be terminating the tenancy; he placed an advertisement on a property lettings website on the 24th November 2014. The following day he received an exhibited email from the agency to ask whether he would be free to move out earlier; the appellant tenant said that this suggested to him that there would be a quick turnaround. The appellant tenant outlined that he signed a lease for his subsequent tenancy on the 28th November 2014 and vacated the dwelling on the 30th November 2014.

In respect of the re-letting of the dwelling, the appellant tenant outlined that he had paid €35 for the lettings advertisement. He had received four or five enquiries from potential tenants and had forwarded their contact details to the agent. These prospective renters had responded to the advertisement when it gave the rent as €1,450 per month. On the 15th December 2014, he checked the property lettings website and saw that the agent had also placed an advertisement on the same website, but was charging a lower rent, that of €1,395. He said that he thought that the respondent landlord and agent had come to an arrangement between them and that this change would not impose a financial liability onto him. He said that the agent had not consulted with him before lowering the advertised rent and should have done so. He had asked what the implications were for his deposit; he was told that he was liable for the rent up to when new tenants moved in. On the 22nd December 2014, the appellant tenant facilitated viewings and this included to the person who later took the tenancy.

In respect of the condition of the dwelling, the appellant tenant said that he was unhappy that the agent had raised the cracked hob with him in an email on the 22nd December 2014. This was a pre-existing fault and the appellant tenant had brought it to the attention of the other agent involved in the letting. There were also issues regarding broken side panels in the fridge and a bad odour emanating from the bath in the main bathroom; these pre-existing items would have been submitted to the agent in a snag list had the tenancy lasted.

On the 29th December 2014, the appellant tenant said that he gave the keys of the dwelling to the agent. It was at this meeting that the issue of the deposit was discussed. The agent handed him a letter, stating that he owed €500 for the loss in rent following the reassignment of the lease. In response to a question from the Tribunal, the appellant tenant said that the agent had mentioned the word “reassignment” in conversation prior to this date. Following this, the appellant tenant emailed the agent on the 9th January 2015, seeking the return of his deposit and on the 15th January 2015 received an email back from the agent, which sought to compromise the dispute.

In cross-examination, it was put to the appellant tenant that the hob was an electric convection hob and it worked; the appellant tenant said that while it worked, this was a safety issue. It was put to the appellant tenant that the alarm was not sounding during his second viewing; the appellant tenant said that given the time of day that this took place, the traffic issue was not apparent. In response to a question from the Tribunal, the appellant tenant answered that he reduced the rent on his website advertisement once the agent had reduced the rent in theirs; it was not feasible to have the same dwelling advertised for rent at different rents.

In closing submissions, the appellant tenant said that the agent was using his deposit to finance a reduction in the rent; he asserted that the deposit continued to belong to him. He said that it was a complete surprise to him that the agent sought to impose the shortfall in rent on him for 10 months that followed the end of his tenancy. He stated that he should have been consulted regarding lowering the rent and that it was for the Tribunal to decide whether the deposit remained his property when in the possession of the respondent landlord.

Evidence and submissions on behalf of the respondent landlord

In evidence, the agent for the respondent landlord outlined that the reason for the reduction in rent was that the appellant tenant wished to terminate the tenancy during the month of December; this is generally a quiet time of year for lettings. He outlined that his motivation was to avoid further financial loss for the appellant tenant; had he persisted in insisting on a rent of €1,450, it could have been some time in 2015 when the dwelling was re-let. As soon as the appellant tenant confirmed that he wished to terminate the tenancy, the agent said that he acted upon the referrals sent by the appellant tenant and attended viewings of the dwelling. When no one was willing to rent the dwelling at €1,450, the agent decided to advertise the dwelling at the lower rent of €1,395. This expanded the range of potential renters and increased the number of viewings, leading to the letting of the dwelling. The agent stated that there were no potential tenants interested at the higher rent and that the question for the Tribunal was whether there was a legal onus on the agent to have first consulted with the appellant tenant prior to lowering the advertised rent. In response to a question from the Tribunal, the agent said that he could not recall whether there had been other people who had sought to rent the dwelling at the time that the appellant tenant rented the dwelling, i.e. in early November 2014, when the rent was €1,450.

The agent said that it was normal practice for agents in his firm to go through the Special Conditions of a lease with every tenant at the start of the tenancy. In relation to Special Condition 1 of the lease and in response to a question from the Tribunal, he explained that the reference to “temporary convenience” in this provision was a vestige of older leases. He said that the remainder of the provision allowed the respondent landlord to terminate the tenancy on the grounds provided in section 34 of the Residential Tenancies Act during the term of what was otherwise a fixed term lease. He outlined that in an email of the 19th November 2014, the other agent informed the appellant tenant that in terminating the lease early, he was responsible for the rent up until the dwelling was re-let; any administrative charge and the PRTB registration fee for the new tenancy. He outlined that the tenant who succeeded this tenancy had agreed a 12-month lease and this was common practice, as opposed to tenants taking up occupation for the residue of a fixed term. The agent clarified that the 28th December 2014 was the last day that rent was charged to the appellant tenant as he was not in full occupation of the dwelling on the following day; the day the keys were returned.

In summarising his claim, the agent said that the respondent landlord was entitled to the rent for the 17 days from the 12th December to the 28th December 2014; the PRTB registration fee of €90 for the new tenancy; the loss in rent of €550 for the remainder of the appellant tenant’s lease agreement and €40 for the cost the agent charged the respondent landlord in attending the first adjudication. The €500 claimed in the Deposit Refund Calculations document was incorrect and at this stage, he wished to claim for the full shortfall incurred (€550 made up of 10 months of a €55 shortfall).

The agent outlined that he wished the Tribunal to answer the question of whether a landlord or agent should have consulted with the tenant prior to reducing the advertised rent.

The agent acknowledged that the respondent landlord owed the appellant tenant an amount of €304.59. The initial “Deposit Refund Calculations” document given to the appellant tenant in late December 2014 was inaccurate as it was drawn up on the assumption that the tenancy commenced on the first day of November 2014, as opposed to the unusual occurrence of commencing mid-way through the month, in this case on the 12th. The agent said that a corrected reconciliation document had been issued to the appellant tenant and the agent had sought, unsuccessfully, to refund the amount due.

In cross-examination, it was put to the agent that he wrongly sought to charge the appellant tenant for advertising the dwelling when re-activating the advertisement was free; the agent answered that he did not seek to charge the appellant tenant as soon as he was aware of this. Asked why he did not know that the hob was previously damaged, the agent that he had not been personally aware of this. It was put to the agent that he had not properly followed up on the four or five people referred to him by the appellant tenant when the advertised rent was €1,450; he denied this allegation and said that despite his attempts to pursue these potential lettings, none lead to a fresh tenancy agreement.

In closing submissions, the agent said that there were no issues in the current tenancy regarding the standard and maintenance of the dwelling. He outlined that he had acted on all the referrals made to him by the appellant tenant. The main question for the Tribunal was whether there was a legal obligation on the respondent landlord to consult with the appellant tenant prior to advertising the dwelling at a lower rent. In the circumstances of this case, the re-letting had been done at a time when there was less demand for rented housing, in the month of December. He said that a landlord should not be held liable for any financial loss when a tenant broke a fixed-term lease.

**6. Matters Agreed Between the Parties**

The parties were in agreement on the following matters:

1. The tenancy commenced on the 12th November 2014 and came to an end on the 28th December 2014;

2. The appellant tenant paid a deposit of €1,800 that has not been returned to him;

3. The rent in the tenancy was €1,450;

4. The tenancy was subject to a fixed term of 12 months less one day.

**7. Findings and Reasons:**

Finding: The tenancy between the parties was brought to an end by the mutual agreement of the parties and not subject to an assignment.

Reasoning:

The first issue for the Tribunal to determine is whether the tenancy was subject to an assignment by the appellant tenant or did this tenancy come to an end by the mutual agreement of the parties. The “Deposit Refund Calculations” document provided by the agent for the respondent landlord refers to a reassignment having taken place and the appellant tenant acknowledged that this term had been used with him by the agent in conversation.

Murdoch’s Irish Legal Companion provides the following definition of “assignment of lease”: “The transfer of the total interest of the lessee under a lease to a new lessee. The assignee or new lessee takes subject to all the rights and liabilities of the former lessee.” An assignment must be executed by the tenant in writing (see section 9 of Deasy’s Act, 1860).

Having considered the evidence in this case, the Tribunal is of the view that no assignment took place as no instrument or deed was prepared to assign the tenancy to a third party. The Tribunal concludes that this tenancy came to an end when, following the appellant tenant’s expressed wish to terminate the tenancy at an early stage, the parties agreed that it should end.

Finding: The respondent landlord is entitled to withhold €940.41 of the appellant tenant’s deposit of €1,800.

Reasoning:

Having considered the oral and written evidence and submissions of the parties, the Tribunal considers that the respondent landlord is entitled to withhold €940.41 from the deposit of €1,800. This amount includes rent of €810.41 for 17 days from the 12th December 2014 to the 28th December 2014; €90 for the registration of the succeeding tenancy and the €40 loss incurred by the respondent landlord in agency expenses arising from this matter. There was no re-advertising fee as the agent could re-new the existing advertisement for no charge.

The Tribunal concludes that the respondent landlord is not entitled to recover €550 for the difference in rent in the tenancy that followed the tenancy in dispute. In reaching this conclusion, the Tribunal has regard to Special Condition 17 of the lease agreement agreed by the parties. This provides that “[W]hen in breach of the lease, the tenant will be liable for rent until a new tenant is found and subject to the cost of re-advertising, re-registration and an administration fee.” These were the same potential areas of loss identified to the appellant tenant in their communication prior to the end of the tenancy. The parties are in agreement that as a matter of fact, the first reference to the appellant tenant being liable to a shortfall in rent in the next tenancy was when the “Deposit Refund Calculations” document was provided to the appellant tenant; the agent asks the Tribunal to answer the question of whether he was obliged to raise the possibility of requiring the appellant tenant to pay for any shortfall in rent before lowering the advertised rent.

In the circumstances of this case, it is sufficient for the Tribunal to determine that the respondent landlord should be bound by the terms of the lease agreement he agreed with the appellant tenant in respect of this tenancy. This explicitly provides the losses a tenant might face in the light of a “breach of the lease” and the Tribunal holds that these are the expenses the respondent landlord is entitled to claim when withholding part of the appellant tenant’s deposit. It was agreed by the parties that those charges amount to €940.41, including rent up to and including the 28th December 2014, a €90 re-registration fee and a €40 expenses. Any shortfall in rent is not provided for in the lease and not allowed for by the Tribunal.

In relation to the period of time by which the respondent landlord shall return the remaining €859.59 of the deposit, the Tribunal considers that a period of 28 days is fair in the circumstances, taking account that the tenancy came to an end in December 2014.

**8. Determination:**

**Tribunal Reference TR0615-001225**

**In the matter of Fergal Mangan (Tenant) and Sagar Pardeshi (Landlord) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Respondent Landlord shall pay the total sum of €859.59 to the Appellant Tenant within 28 days of the date of issue of the Order, this amount being the remainder of the deposit of €1,800, having deducted €940.41 for losses incurred by the Respondent Landlord following the early termination of the fixed term agreement in respect of the tenancy of the dwelling at 32 Castle Lawn, Kilgobbin Wood, Stepaside, Dublin 18.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 11/10/2015.

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| **Signed:** |  |

**Kevin Baneham Chairperson**

For and on behalf of the Tribunal.