**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001228 / Case Ref No: 0315-17407**

**Appellant Landlord:** Paul Kelly

**Respondent Tenant:** Mohammed Lahbib Benkhalifa

**Address of Rented Dwelling:** 35 Delhurst Avenue, Ongar Park , Dublin 15.

**Tribunal:** Roderick Maguire (Chairperson)

Anne Colley, Healy Hynes

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

**Date & time of Hearing:** 25 August 2015 at 2:30

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| **Attendees:** | Eoin O’Connor B.L., Barrister for Appellant Landlord  Laura Horan, Solicitor for Appellant Landlord  Mohammed Lahbib Benkhalifa, Respondent Tenant |
| **In Attendance:** | Gwen Malone Stenography |

**1. Background:**

On 20 March 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 08 May 2015. The Adjudicator determined that

The Notices of Termination served by the Respondent Landlord on the Applicant Tenant on the 17th October 2014 and the 25th February 2015 are invalid in respect of the tenancy of the dwelling at 35 Delhurst Avenue, Ongar Park, Blanchardstown, Dublin 15.

Subsequently the following appeal was received from the Landlord on 24 June 2015. The grounds of the appeal was an Invalid Notice of termination.This appeal was approved by the Board on 03 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Roderick Maguire, Anne Colley and Healy Hynes as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Roderick Maguire to be the chairperson of the Tribunal (“the Chairperson”).

On 14 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 25 August 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. 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 person who appealed (the Appellant) would be invited to present his case first; that there would be an opportunity for cross-examination by the Respondent; that the Respondent would then be invited to present his case, and 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 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 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.

**5. Submissions of the Parties:**

Appellant Landlord’s Case:

The notice of termination that was submitted on behalf of the Landlord, served on 25 February 2015, the only Notice before the Tribunal, was valid as the Tenant knew that he had the whole of the 24 hours to vacate the dwelling, and therefore that the requirements of the Act had been complied with, even though there was no statement in writing on the Notice.

Respondent Tenant’s Case:

The Respondent Tenant submitted that the Notice was not valid as it did not state in writing that the Tenant had the whole of the 24 hours of the date of termination to vacate the premises.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The tenancy commenced on 1 April 2011;

2. A deposit was paid of EUR 900 on commencement of the tenancy.

3. The Tenant remains in occupation of the dwelling.

**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.

Finding:

The Tribunal finds that the Notice of Termination served on 25 February 2015 was not a valid notice under the Residential Tenancies Act 2004.

Reasons:

The Tribunal is satisfied that the clear language of Section 62 of the Residential Tenancies Act 2004 requires that a Termination Notice must be in writing and must indicate, if served by a Landlord, that the Tenant has the whole of the 24 hours to vacate the premises. There was nothing in the Notice of Termination submitted to the Tribunal, agreed by both parties to be a copy of the notice served on the Tenant, that contained such an indication.

**8. Determination:**

**Tribunal Reference TR0615-001228**

**In the matter of Paul Kelly (Landlord) and Mohammed Lahbib Benkhalifa (Tenant) the Tribunal in accordance with section 108(1) of the Residential Tenancies Act 2004, determines that:**

The Notice of Termination served on 25 February 2015 by the Appellant Landlord on the Respondent Landlord in respect of the tenancy of the dwelling at 35 Delhurst Avenue, Ongar Park, Blanchardstown, Dublin 15 is invalid.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 08/09/2015.

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| **Signed:** |  |

**Roderick Maguire Chairperson**

For and on behalf of the Tribunal.