**Private Residential Tenancies Board**

## RESIDENTIAL TENANCIES ACT 2004

**Report of Tribunal Reference No: TR0615-001230 / Case Ref No: 0215-16995**

**Appellant Landlord:** Paul Kelly

**Respondent Tenant:** Mohammed Lahbib Benkhalifa

**Address of Rented Dwelling:** 35 Delhurst Avenue, Ongar Park , Dublin 15, D15A5F2

**Tribunal:** Elizabeth Maguire (Chairperson)

Louise Moloney, Jack Nicholas

**Venue:** Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, Dolier Street, Dublin 2

**Date & time of Hearing:** 03 September 2015 at 10:30

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| **Attendees:** | Mohammed Lahbib Benkhalifa (Respondent Tenant)  Laura Horan, MacGeehin Toale Solicitors, (Appellant Landlord’s Representative)  Eoin O’Connor, BL, (Appellant Landlord’s Representative)  Simon Kelly (Agent of the Appellant Landlord) |
| **In Attendance:** | Gwen Malone Stenographers  Halan Miloudi - Wordperfect Translations (Interpreter) |

**1. Background:**

On 26 February 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 Respondent Landlord shall pay the total sum of €600 to the Applicant Tenant within 28 days of the date of issue of the Order, this amount being damages for breaches of landlord obligations under section 12 of the Residential Tenancies Act 2004 in relation to 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 the Standard and maintenance of the dwelling. The appeal was approved by the Board on 03 July 2015.

The PRTB constituted a Tenancy Tribunal and appointed Elizabeth Maguire, Louise Moloney, Jack Nicholas as Tribunal members pursuant to Section 102 and 103 of the Act and appointed Elizabeth Maguire to be the chairperson of the Tribunal (“the Chairperson”).

On 12 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 03 September 2015 the Tribunal convened a hearing at Tribunal Room, PRTB, Floor 2, O'Connell Bridge House, Dolier Street, Dublin 2.

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

* 1. PRTB File

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

1. Document dated 6 May 2015, addressed to the Respondent Tenant, being a receipt for €60.00 paid by the Respondent Tenant to A. Speight Electrical relating to the smoke alarm supply and fitting.

2. Undated document addressed to the Respondent Tenant, from A. Speight Electrical relating to the hob and the smoke detector.

3. Undated document addressed to the Respondent Tenant, from A. Speight Electrical, stating the cost for repair of electrical fault relating to the light fitting, being €87.50.

4. Payment receipt dated 15 October 2014 for €120.00 for clamping fee at the dwelling.

The above documents were produced by the Respondent Tenant at the hearing, shown to the Appellant Landlord’s representatives, who had no objection to their being entered in evidence. The documents were also shown to the Tribunal.

**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 their 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 asked the parties if they had any queries on the procedure, there were no queries.

The Chairperson stressed that all evidence would be taken on oath or affirmation and be recorded by the official stenographer present. She said that the Hearing is a Public Hearing and that members of the public were free to attend. She 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 6 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 be appealed to the High Court on a point of law only [reference section 123(3) of the 2004 Act].

The witnesses were sworn in.

**5. Submissions of the Parties:**

Before submissions commenced, the Chairperson noted that there was an Adjudication on the 10 September 2014 (Case No. 0614-12778) concerning the tenancy in the dwelling and that issues of the standard and maintenance of the dwelling were dealt with in the course of that Adjudication. She also noted that the Determination Order which issued from this Adjudication was not appealed. The Chairperson emphasised that this Tribunal cannot deal with issues of standard and maintenance of the dwelling arising which have previously been determined.

Appellant Landlord’s Case:

Evidence of Mr. Simon Kelly, Agent of the Appellant Landlord

The Appellant Landlord’s Agent stated that there had been a problem regarding the nesting of pigeons because a panel came loose on the facia over the balcony of the dwelling. He said this was the responsibility of the Management Company of the dwelling, and they had sealed the loose panel. He said that they did not clean the balcony of the pigeon dirt, and the pigeons returned to the balcony. He said the balcony should have been cleaned by the Management Company.

However, he said that the Adjudication in Case number 0614-12778 held on 10 September 2014 included provision for the inconvenience suffered by the Respondent Tenant relating to the problem with the pigeon dirt.

Mr. Kelly said that since the 8 May 2015 he had emailed the Respondent Tenant six or eight times, requesting a date and time that he (Mr. Kelly) could attend at the dwelling with his workman or workmen in order to carry out the repairs needed to the dwelling. He said that the times did not suit the Respondent Tenant. He said that he had emailed the Respondent Tenant, requesting that the Respondent Tenant would suggest a time that would be convenient for him but had no response.

In relation to the damaged lino in the kitchen, he said that this was damaged because of blockage on the street in or about 2012.

He said that he was not sure of the extent of the damage to the lino as he had not been given access to the dwelling.

In relation to the letterbox flap, he said he had not been given access to repair this, and accepted that it is broken and requires to be repaired. He stated that he had attended with a man in order to fix this, but the Respondent Tenant was not there so it could not be done.

In relation to the panel in the kitchen, he said that this was a matter already canvassed in the Adjudication in September 2014. He was not sure whether this had been repaired.

He accepted that the Respondent Tenant had purchased a new hoover, and accepted that this cost €100.00.

He accepted that the toilet flush was not working, but stated that as he had no access to the dwelling he had not had a chance to have it repaired.

He said that he had arranged for a workman to do a repair to the kitchen sink. He said his workman was a skilled and reputable worker and had carried out the repair. He did not accept that the work done was sub-standard as the Respondent Tenant had claimed, but re-iterated that he had not been given access to the dwelling to inspect it or to do further repairs if required.

Mr. Kelly said he had been given no notice prior to the hearing on 8 May 2015 about the problem with the sliding door of the shower, but was willing to repair same if needed.

In relation to the smoke alarm, he said he had not been given access to repair this, but accepted that the Respondent Tenant had had it repaired at a cost of €60.00.

Regarding the lock on the window, he said that he had not been given notice of this problem prior to 8 May 2015, but was willing to have it repaired if given access to the dwelling.

He submitted that the he was dissatisfied with the award in the Adjudication of 8 May 2015. He said that in the photographs submitted for the Adjudication of 8 May 2015 it was very difficult to see whether any work needed to be done. He said that in the photograph showing mould in the corners, this was due to bad ventilation. He said that all the matters complained of were minor deficiencies. He also said that he was not aware that the Management Company had not cleaned the balcony properly as there was no communication on this issue from the Respondent Tenant after September 2014.

The Respondent Tenant was invited to cross-examine Mr. Kelly, but stated that he would prefer to give his own evidence.

Respondent Tenant’s Case:

Evidence of Mohammed Lahib Benkhalifa (Respondent Tenant)

The Respondent Tenant stated that the letterbox flap was still not working. He said that a very poor repair job had been done to the kitchen sink. He said that the smoke alarm was not working, and he had it repaired at a cost of €60.00 on 6 May 2015.

He said that he had notified the Appellant Landlord of the problem with the sliding door of the shower, but he had had no reply from him. The Respondent Tenant was unable to direct the Tribunal to any email notifying the Appellant Landlord of the problem with the sliding door.

He said that the toilet flush was still not working, despite having notified the Appellant Landlord of this problem. He said that there was mould in the living room and the window lock was broken. When questioned by the Tribunal, he said that he had not been given a key to the window.

Regarding the pigeon dirt, when asked by the Tribunal if he had attempted to clean the balcony of pigeon dirt, he said he had made attempts but it was not possible to do so properly.

He confirmed that the cooker hob had been replaced on 22 December 2014, and that he had paid €100.00 for a new hoover although he did not have a receipt for same.

He stated that his car had been clamped on 15 October 2014, and he had paid €120.00 to have the clamp removed. He produced a receipt for same. He said that the parking permit was issued to him on 15 October 2014, he had not received it until 17 October 2014 and therefore he had not displayed the permit and had been clamped. He said the permit was only issued after the Appellant Landlord had paid the management fees due.

The Respondent Tenant said that there was an ongoing problem with the electricity and that he had organised an electrician to come to fix the problem which related to the light fitting. He said that this had been done on 2 September 2015 and he produced a document which stated the cost of this repair work to be €87.50.

He said that the boiler had not been maintained or serviced.

When asked about the Appellant Landlord’s Agent trying to arrange for a suitable time to attend at the dwelling and to have the various matters fixed, he said that he had received the emails but due to personal reasons it did not suit him to allow the Appellant Landlord’s Agent and workman/workmen to come to the dwelling. He said he did not wish to go into those personal reasons with the Appellant Landlord’s Agent. He also said that he wanted to know what would be fixed, and how long it would take to fix the various items. He also said that he did not accept that a good job would be done in fixing the items complained of.

The Respondent Tenant stated that the Appellant Landlord’s Agent could have arranged to have the pigeon dirt cleaned from the balcony from the outside. He accepted when questioned by the Tribunal that this would involve a cherry picker or some other sort of elevation or scaffolding to have this done. He did not accept that this suggestion was unreasonable.

**6. Matters Agreed Between the Parties**

The following matters were agreed between the Parties:

1. The tenancy in the dwelling commenced on 1 April 2011.

2. The rent is €900.00 per month.

3. The security deposit paid by the Respondent Tenant at the commencement of the tenancy in the dwelling was €900.00

**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 Landlord is in breach of his obligations under section 12 (1)(b) of the Residential Tenancies Act 2004 in failing to properly repair and maintain the dwelling. In all the circumstances the Tribunal find that the sum of €320.00 is an appropriate level of damages to be paid by the Appellant Landlord to the Respondent Tenant in respect of the breach of his obligations under section 12(1)(b) of the Act.

Reason:

1. The Appellant Landlord has accepted through the evidence of his Agent at the Tribunal Hearing that various repairs and maintenance need to be carried out to the dwelling, including the letterbox flap, the sliding door on the shower, the toilet flush, the lock on the window, the mould on the livingroom ceiling, the lino in the kitchen, and the cleaning of the pigeon dirt on the balcony.

7.2 Finding: The Tribunal find that the Respondent Tenant is in breach of his obligations under section 16(e) of the Residential Tenancies Act 2004 in failing to allow the Appellant Landlord’s Agent and workman or workmen reasonable access to the dwelling for the purpose of allowing the works which are the responsibility of the Appellant Landlord to be carried out, namely the repairs and maintenance to the dwelling.

Reason:

1. The Tribunal accepts that the Appellant Landlord’s Agent has requested access to the dwelling from the Respondent Tenant for the purpose of carrying out repairs and maintenance to the dwelling, but that the Respondent Tenant has not allowed him to do so.

2. The Tribunal further accepts that the Appellant Landlord’s Agent has suggested that the Respondent Tenant nominate a time that would suit him (the Respondent Tenant) for such access to be afforded, but that he had had no response to this request.

3. As a result of the above, the Respondent Tenant is in breach of his obligations under section 16(e) of the Residential Tenancies Act 2004.

4. However, the Applicant Landlord did not adduce any evidence of any consequential damage to him or the dwelling in this regard and the Tribunal makes no award of damages arising from this breach.

7.3 Finding: The Tribunal find that the Respondent Tenant paid the sum of €100.00 for a new hoover for the dwelling, and €60.00 for the replacement of the smoke alarm and €120.00 in respect of being clamped on 15 October 2014.

Reason:

1. The Appellant Landlord’s Agent conceded that the Respondent Tenant had bought a new hoover at a cost of €100.00, and had paid €60.00 for the replacement of the smoke alarm, and did not take issue with the €120.00 paid by the Respondent Tenant in respect of being clamped on 15 October 2014.

2. In the course of the hearing before the Tribunal, the Agent of the Appellant Landlord agreed to reimburse the Respondent Tenant the sum of €160.00, being €100.00 in respect of the purchase of the hoover by the Respondent Tenant and €60.00 in respect of payment for the replacement smoke alarm by the Respondent Tenant.

**8. Determination:**

**Tribunal Reference TR0615-001230**

**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 Appellant Landlord shall pay the total sum of €600.00 to the Respondent Tenant within 28 days of the date of the issue of the order, being €320.00 damages for the breach of the Appellant Landlord’s obligations under section 12 of the Residential Tenancies Act 2004 in failing to carry out necessary repairs and maintenance, plus the sum of €100.00 in respect of the purchase price of the hoover, plus €60.00 in respect of the payment for the replacement smoke alarm, plus €120.00 in relation to the clamping fee on 15 October 2014, in respect of the tenancy of the dwelling at 35 Delhurst Avenue, Ongar Park, Blanchardstown, Dublin 15.

The Tribunal hereby notifies the Private Residential Tenancies Board of this Determination made on 13 September 2015.

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| **Signed:** |  |

**Elizabeth Maguire Chairperson**

For and on behalf of the Tribunal.